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Agenda
Edison State College
District Board of Trustees Special Meeting
Lee Campus – Building AA, Room 177
May 8, 2013
3:00 p.m.

Call to Order

Pledge to Flag

PUBLIC HEARING

Public hearing pursuant to Section 447.403, Florida Statutes, to resolve the impasse in labor negotiations between Edison State College and the Edison College Faculty Federal Union, Local 3513, affiliated with the United Faculty of Florida, AFT, AFL-CIO regarding the contract wage reopener for the fiscal year 2012 - 2013.

1. **Presentation by the College (15 Minutes)**
2. **Presentation by the Union (15 Minutes)**
3. **Rebuttal by the College (5 Minutes)**
4. **Rebuttal by the Union (5 Minutes)**

ACTION: Motion on decision of Board of Trustees

Adjournment

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

In the Matter of Special Magistrate)

Proceedings)

between)

Edison State College)
District Board of Trustees)

and)

Edison College Faculty Federation)
Union, Local 3513,)
United Faculty of Florida,)
AFT, AFL-CIO)

Case No. SM 2012-76

Before: Robert B. Hoffman, Special Magistrate

Appearances:

For the UFF: Michael Moats

For the College: Mark E. Lupe, Esq.

Place of Hearing: Fort Myers, Florida

Date of Hearing: January 15, 2013

Briefs Received/Hearing Closed: February 18, 2013

Date of Decision: March 7, 2013 at Fort Myers, Florida

RECOMMENDED DECISION

I. Introduction and Background

This is an impasse proceeding pursuant to Sec. 447.403 of the Florida Statutes and Florida Administrative Code Rule 38D-19.005. Following efforts to resolve their differences through collective bargaining, and the declaration of an impasse by the District Board of Trustees of Edison College (“the College” or “ESC”), Edison College Faculty Federation Union, Local 3513, United Faculty of Florida, AFT, AFL-CIO (“the Union”) and the College submitted their unresolved issue to this Special Magistrate. The parties waived the 20-day limit for the

hearing. Both parties were afforded a full opportunity to present evidence at the Special Magistrate hearing convened at the Lee County Campus of ESC in Fort Myers and to file post-hearing briefs. The sole issue at impasse concerns an annual re-opener for the salary schedule in the third year of a three-year collective bargaining agreement, which ends June 30, 2013.

In short, the College maintains that it cannot afford any increase as a result of a host of negative economic factors that have converged on the College prior to and during negotiations. Its no-increase decision has been applied to all College employees. The Union contends that despite arguing that dire financial circumstances prevent the College from funding any salary increase or one-time payments to faculty, the College's financial situation is essentially the same as when it offered the Union a one-time \$750 payment. It requests the Special Magistrate find that the College remains in a financial position sufficient to provide a "one-time net payment of \$750 payable as soon as practical."

Established in 1961, ESC is a one of 28 Florida public colleges. It operates three campuses in Charlotte, Collier and Lee Counties and a center in Hendry County. In FY2011-12; its full-time equivalent (FTE) enrollment was 11,943. This enrollment ranked 14 out of the 28 member institutions of the Florida College System. The College employs approximately 1,361 employees, including 179 members of the bargaining unit. This unit covers all full-time personnel on the faculty salary schedule, including teaching faculty, counselors and learning resource faculty. By average faculty compensation, ESC ranks 12 out of 28. The parties negotiated 11 CBA's since 1977. The current CBA provides for a wage re-opener for each fiscal year. The College declared impasse in 2012; the parties reached an agreement after the impasse hearing and before the Special Magistrate issued a recommendation.

ESC and the Union started salary schedule re-opener negotiations on August 21, 2012 for the fiscal year 2012-2013. The College's chief negotiator, Dr. Patricia Land, stated at the outset

that its new President “specifically asked me to mention that his desire was to compensate faculty as much as they possibly could but it was a very difficult financial time for the college. . . .” The Union by its chief negotiator, Dr. Marty Ambrose, then offered a package proposal for the College to: Reimburse faculty for the 3% pension contribution; pay a \$1000 (net) one-time bonus at the end of Fall, 2012 semester; pay a wellness stipend or provide faculty free access to a fitness center; provide unlimited tuition reimbursement for full-time faculty members' dependents; pay tuition reimbursement for faculty at 100%; pay \$500 each semester for club sponsors. Dr. Land noted concern with the current enrollment numbers and its impact on bargaining; she suggested scheduling a second meeting where the College would address its “financial . . . picture.” Dr. Land expressed that it would afford “an opportunity for everyone at the table to ask questions, to talk about how funds are generated from the state, how funds are restricted in various areas, what can be available for salaries and those kinds of things.”

That next meeting occurred on September 7, 2012. As promised the College presented its financial concerns to the Union. Gina Doeble, the College’s Chief Financial Officer and a CPA, gave a detailed presentation of the College’s poor financial condition that showed declining revenues and rising costs. She attributed the drop in revenue in part to declining tuition and fees. A chart showed a three semester drop of some \$1.8 million from the budgeted amount and \$3.6 million less in revenue. FTE Funding was projected to decline for FY 2013 and Appropriations from the State remained flat. The declining tuition and fees resulted from a student enrollment decline in the 2012 – 2013 academic year. The College’s District Board of Trustees also decided not to increase student tuition in the 2012 – 2013 Fiscal Years. The original budget, CFO Doeble informed the Union at this meeting, anticipated a decline in enrollment of 5%. However, actual enrollment numbers for the Fall and Spring Semesters showed a 10% drop, which produced an additional revenue shortfall of \$1,856,184.00 above the original budget.

CFO Doeble advised the Union that the College also faced rising costs. In her graphic presentation of expenses (i.e., instructional, institutional support, academic support, student support and physical plant operations), all expense items substantially increased since FY08. Most significant have been increases in the last fiscal year and projected into FY2013 for academic support (30%) and student support (35%). Physical plant operations showed a slight decline of approximately 5% and instructional expense a slight increase of about 5%.

She further pointed out that the increased instructional expense results from hiring of 19 new faculty members in response to a recommendation by the Southern Association of Colleges and Schools (SACS). This accreditation group found concern with the full-time faculty ratio and the number of courses taught by part-time (adjunct) faculty. Ms. Doeble testified: "If we lost our regional accreditation we would all out be out of jobs. Our students are not going to want to come here if we are not accredited." To remedy this SACS finding the College's administration recommended increasing the full time faculty.¹

After presenting the financial picture to the Union, the College made an offer. CFO Doeble testified: ". . . we did submit an offer, a nonrecurring which I think is a very critical piece . . . based on the financial data, the college administration did not feel that we could commit to recurring salary dollars, and -- however, we did want very much to provide some opportunity and presented the seven hundred fifty dollar nonrecurring. . . ." Following a caucus the Union renewed its demand for a three percent recurring salary adjustment and dropped its other proposals. Dr. Land then told the Union that she would take this counter-offer to College President Allbritten.

¹ The Union raised at this hearing the question of whether the College could have instead had full time faculty work overtime (or overload) to lessen the cost of hiring full time faculty. It cannot be determined from this record that non-mandatory overtime would assure the ratio remains lower and constant to satisfy SACS. Union President Ellie Bunting testified that although most faculty work overtime, she disclosed that some will not do so. "I'm sure there's some in sciences."

On October 11, 2012 the parties met again. A recording of this session, which only lasted a matter of minutes, shows the meeting started with a prepared speech by Dr. Land. She referred to a “challenging budget environment” that included declining student enrollment, the “unclear financial situation” for the next fiscal year, “SACS-necessitated increase of 19 fulltime faculty members” that cost \$1.2 million, and the “essential absence of State support” for repair and maintenance projects. She noted that the \$750 offer from the College at the last session, even in the face of the financial problems, was “open and honest” and that was “as much as we can do.” In the light of the Union’s countering with a recurring wage proposal and considering ESC’s the budgetary “constraints,” she announced: “It is unfortunate that the differences are too great and an agreement is not possible. The College declares an impasse.” A Union rep responded that “it is not bargaining to present one proposal.”

After the October 11, 2012 bargaining session President Allbritten emailed to the entire College community the same speech given to the Union. On November 5, 2012 he wrote Union President Bunting and proposed that the College would waive its rights to a Special Magistrate and “to allow the Union to take its case directly to the final decision-making authority, the College Board of Trustees.” Bunting responded on November 7: “Although this offer (\$750) was well below what our team proposed, the membership voted to accept the offer. The purpose of this letter is to formally accept the offer of a \$750 onetime payment. . . . This can be accomplished without returning to the table and will eliminate the impasse process.” President Allbritten replied on November 9, 2012 that in light of the Sunshine Law he was unable to take action regarding the Union’s proposal. That same day the College notified PERC of the impasse.

While referring to the “absence of State support” for maintenance and repairs,” the College did not specifically point out at the October 11 meeting how the PECO funds from the State had changed since the September 7, 2012 bargaining session. At the hearing CFO Doeble

testified that on September 19, 2012 she attended a conference for the Council of Business Affairs (COBA), a group of representatives from the 28 Florida colleges in the Florida College System. At this session the State of Florida, Department of Education, Division of Florida Colleges – Office of Financial Policy notified the attendees of the final revision for the 2013–2014 Public Education Capital Outlay (PECO) allocation for the System. PECO is a State program established by an amendment to the Florida Constitution to fund public higher education construction and maintenance projects. This State funding is the primary source for new construction, remodeling, and the maintenance and repair of facilities.

Ms. Doeble received documentation at this meeting from the Department of Education regarding PECO. She testified:

Q Was there something unusual about this particular PECO outlook presentation?

A Yes. On the very first page where you look under as of August 3rd, 2012, that's the revenue estimating conference date and if you look at the bond proceeds under 2013-14, it's zero. . . . they sell the bonds of the facility tax and those bond proceeds are then given to fund these estimates, and then if you turn to what's marked as page three . . . no allocation for 2013-14. Again, that's the first time that I've ever seen that occur. So that was how we were notified.

Q Was it a surprising development for the business officers?

A It was, it was absolutely a surprising development for the business officers to have that we were going to get nothing.

In effect there would be no PECO money for FY13-14, either cash or bond proceeds going to the College for construction and maintenance projects. CFO Doeble testified that ESC has been deferring maintenance projects and renovation projects of about \$29 million. “Some of these things we cannot continue to defer,” she pointed out. Documentation in evidence shows that of this amount \$20 million represents remodeling and renovation and \$9 million represents “deferred maintenance.” The College maintains that it must fill the” gap” left by the lack of PECO dollars with whatever funds it can gather on its own. And that “gap,” according to the College CFO, was partially filled when she “set aside two million dollars to take this money out

of here [unencumbered reserves] so I have some building and plant maint -- clearly it's not what we need but it's what we can get by with and still meet our State minimum. . . . “

At the start of the current fiscal year the College’s operating fund balance stood at \$15,353,431. With the enrollment decline ESC projected that balance would fall to \$13,509,460 by the end of the current fiscal year, a 12% decline. From this balance certain reserves must be deducted to ascertain the unallocated balance. The net result is a Operating Fund year-end balance after compensated absences of \$875,525.00. This amount represents 5.28% of Total Funds Available (i.e., the percentage obtained from adding the \$15 million projected beginning balance plus projected revenue of \$58 million, to get \$73 million that creates the TFA, and dividing it into the unallocated balance before comp absences of \$3.8 million).

ESC’s concern is that five percent is the minimally acceptable ratio below which the College may not fall, as set forth in §1011.84(e), Florida Statutes, without control over the budget amendment process passing to the College to the Chancellor of Colleges. CFO Doeble testified 5% is “not our comfort zone. We would like to be closer to seven percent.” She is aware of only one other State College that has the Chancellor in control of its budget.

II. Resolution of the Issues at Impasse

Any recommendation made from the Special Magistrate process comes from a consideration of the factors deemed relevant by the Florida legislature. Section 447.405, Florida Statutes, sets the standard for rendering the recommended decision as a "just settlement." In *School District of Manatee County and Manatee Education Association*, SM-2011-091, this Special Magistrate stated: “The overall SM scheme provides latitude within this statutory framework for the Special Magistrate to weigh the significance of statutory factors and then reach a conclusion that reflects a fair and reasonable recommendation of the impasse issues. It is not a gathering of points for winning each factor. Rather it is a consideration of which factor or

factors should be decisive when examining the overall issue for these parties.” The five statutory factors in 447.405 include:

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

The economic context of this dispute is much the same faced by many other educational institutions in this State. The floundering economy has hurt State revenues that many schools depend upon. In the case of State Colleges certain funds are generated by the State and passed on for specific projects, as seen above. This Special Magistrate has witnessed these disputes throughout the State and has seen firsthand the serious concerns both schools and teachers face during this recession and even in earlier times. See for example his decisions in *School District of Manatee County and Manatee Education Association*, SM-2011-091, 125 LA 775 (2012); *Miami-Dade County Public Schools v. United Teachers of Dade*, SM-2010-100, 2011 WL 7112644 (2011); *Gadsden County Schools v. Gadsden Education Staff Professional Association*, SM-2008-037 (2008); *Broward Community College and UFF*, SM-02-043 (2003).

Unlike the free public school districts, State Colleges depend significantly on tuition and fees for revenue. Noteworthy is that the recession has actually increased enrollment, as many young people unable to find jobs turned to higher education. From FY09 through FY11 enrollment increased. As the economy improved enrollment began a downward slide almost back to the levels before the recession. And it is undisputed that as these revenues from enrollment declined expenses increased dramatically for the College, with both the drop in revenue and cost increases converging at the same time – the start of the current fiscal year and projecting through the year and the next fiscal year. In this context the Union sought increases in

wages and other benefits. The reopener is limited to wages; after first proposing a variety of cost items that the College rejected, the Union came back with a 3% increase wage offer that would be recurring.

At the second meeting the College offered a one-time \$750 payment, stating that it was all it could afford at that time. The Union made no counter proposal, formal or informal for some five weeks, when impasse was finally declared by the College. The issue then for this proceeding is whether the College presented sufficient evidence to establish that funds are unavailable for its \$750 offer, which it apparently withdrew by its later declaring an impasse and not responding to the Union's subsequent informal acceptance (except by referring to a lack of Sunshine law compliance), and/or whether the interests and welfare of the public are affected by this offer. To be clear – this Special Magistrate proceeding is not about the bargaining process and whether there was bargaining in good faith. That is not the purview of the Special Magistrate under Florida law.

At first blush there does not seem to be much in dispute. The Union, not just the bargaining committee, but the membership, voted to accept the College's \$750. No Union ratification would be needed. But no meeting with ESC occurred thereafter. Why then has this matter proceeded this far?

The evidence presented at the hearing shows that in the intervening five weeks between meeting two and three (from September 7 to October 11) the College received more economic bad news. It already learned that revenues expected from declining student enrollment decreased by some \$2 million from the original projection and that costs were rising dramatically just in that one year. The hiring of 19 new full time faculty members also added to the costs, but was needed to shore up accreditation that risked being taken away.

CFO Doeble learned shortly after the September 7 bargaining meeting that funds from PECO used to mostly pay for construction, repairs and maintenance would be zero rather than the \$2 million projected, which was also dramatically lower than most past PECO money allotments. Maintenance, which appeared to need at least \$9 million, could not go without funding. CFO Doeble moved unencumbered reserve funds to create a \$2 million reserve. The already strapped College concluded that it could no longer justify the expense for the \$750 payment for its faculty. It was some of the money ESC counted on for financing the \$750 payments it offered on September 7 to the Union.

The upshot is that the College has shown substantial evidence warranting serious financial concern as to whether any further costs items would be appropriate. However, any recommendation regarding the availability of funds and the public interest factors will be made after considering the Union's positions below.

At this hearing the Union raised a number of challenges to the College's claim of unavailability of funds. First, it maintains that the College's financial picture did not change after the September 7 meeting. As seen, the PECO documentation from the State Board of Education was not presented to the CFO until a meeting that she characterized as taking place in "late September," and the State documents themselves are dated September 19, almost two weeks after the College proposed the \$750. The tape recording of the September 7 meeting confirms that the zero allocation of PECO funds was never mentioned. Instead CFO Doeble spoke of a reduction to \$2 million from the projected \$6 million. That \$2 million then went to zero 12 days later.

Secondly, the Union correctly notes that the College was concerned about having to repay the State somewhere between \$1.5 million and \$3 million should the Florida Supreme Court overrule legislation requiring FRS members to contribute 3%. CFO Doeble seemed

uncertain as to whether repayment would be required by the State. “. . . would FRS pay it back, would the colleges pay it back . . . so it’s unknown.” Asked if a reserve was created she answered yes, but did not refer to any specific amount.² And inasmuch as the Court recently ruled in favor of the State, the contributions will not be returned. As such, the Union maintains that ESC has saved \$3 million. As seen in CFO Doeble’s testimony, although vague as to whether liability actually existed, she still disclosed that if ESC had to pay back the money it would come from the emergency reserve. That contingency no longer exists. See Recommendation, *infra*.

Thirdly, the Union questions the CFO’s testimony that FTE enrollment decreased from Fall FY11 to Fall FY12; it points to a very slight increase as shown in the bar graph. Ms. Doeble admitted as much. However, the same bar graph shows that enrollment then decreased sharply for Fall FY12-13 to a point below the enrollment starting at FY11. Further, the Spring FTE enrollment decreased even more sharply for both FY11-12 and FY12-13, which placed it almost at the same level for FY09 at about 4,000.

Fourthly, the Union contends that the College did not need to hire 19 additional full time faculty. It points out that if there are fewer students, then fewer faculty is needed and fewer classes to be taught. It maintains that there are other, more cost-effective, ways to improve this FT/PT faculty ratio without hiring new full-time tenure-track faculty. Thus, “with fewer classes needed, maintaining the same number of full-time faculty means fewer part-time faculty, thereby improving the full FT/PT faculty ratio”. But whether that happened in actuality is unknown. The size of the classes may have been reduced, but it is quite a leap to assume that the classes themselves were eliminated to adjust to the drop in enrollment. The Union also believes that the stated cost of \$1.2 million should actually be \$600,000 inasmuch as the College related at the

² She referred to a Board Reserve, which she later identified as a reserve “for continuity of operations in the event of a disaster or an emergency above that five percent minimum.”

hearing that the “new dollar” cost of full-time faculty is only about half the cost of part-time faculty “with the balance funded by shifting existing money between the full-time and part-time faculty lines in Instructional Support costs.” The Special Magistrate concludes that these numbers, whether real or not, lack any detailed cost analysis from either side. Whether actual dollars were saved in this process is thus uncertain.

The Union further points to improving the FT/PT faculty ratio by assigning to full-time faculty additional classes beyond their basic contract. The overload classes, the Union states, “cost only slightly more than hiring part-time faculty. This saves considerably over the cost of hiring new full-time faculty reducing that \$600,000 new money figure more.” As seen above, the overload or overtime option is one that produces uncertain results if it is not mandatory. And while many of the faculty may elect to overload, whether that would also satisfy SACS is unknown and perhaps risky for the College. In any event the Union’s suggestions about not hiring the 19 would still cost the College. What that would be in comparison to the actual cost of the hirings is not shown in the record. Clearly, though, if the College elected to have done so, it could have saved some of the cost it otherwise incurred. That it elected to hire full time faculty is of course its management prerogative; it does not in any way indicate impropriety, or for the purposes here suggest an unreasonable approach to improving the quality of its faculty.

Next, the Union contends that the projected 30% increase in Academic and Student Support costs from FY11 to FY12 was never explained at the hearing by Ms. Doeble. “Fewer students translates to reduced need for academic support services and student support services and thus reduced costs in those two areas,” the Union argues in its brief. However, while her testimony on one hand appears to offer no explanation, other parts of it actually do explain the increase. She testified: “. . . our student support services, looking at our total funds and we were one of the lowest in the State, how much funds we committed to student support services and so

there was a reorganization effort that went inside of student support services in the last year to really reorganize that area to bring -- to bring that area up and dedicate more resources. . . we have added staff to those areas and reorganized the area, which would account for the majority of the increases there.”

Moreover, the Union argues that the Board of Trustees approved two new administrative positions on October 23, 2012, two weeks after the declaration of impasse: Special Assistant to the President at a cost of \$203,000 and a Director of Communications and Public Information at a cost of \$90,300. Ms. Doeble, however, explained that there was no added cost to the College. “. . . those positions were funded through reorganization so they were through existing dollars, not new dollars, so that department (Communications) went through a major reorganization, the communications department and the funds were already in the operating budget Same (for the Assistant to the President), we did shifting . . . the funding came from other positions that were eliminated, and so it wasn't increasing our budget for personnel overall even though you see those as new positions.”

The Union further maintains that the PECO lack of funding is inapplicable inasmuch as “PECO is primarily to fund new construction and remodeling, which is not an annual recurring expense. Materials may be funded from PECO. Repair and maintenance salaries are operating expenses.” However, CFO Doeble testified that 90% of the maintenance and repair budget in past years came from PECO. For example, if a ceiling needed repair “we would take it from the [PECO] maintenance and repair allocation We've had to supplant some of it from operating funds because that maintenance repair money has gone down.” That supplement from operating funds clearly would be increased noting the PECO funds in FY12 at \$2 million, FY13 at \$3 million and FY 14 at zero, and especially noting that PECO funding received was at \$12 million in FY11 and maintenance and repair at \$21 million for that fiscal year. These are dramatic

decreases that could only be partially paid for by shifting unallocated reserve funds, which still left funding well below the PECO funding, when it did occur.

Finally, the Union suggests that the College allocate more funds from reserve for the \$750 payment, which it calculates at costing ESC about \$150,000 as a high number, depending on the actual number of full time faculty and whether the amount is gross or net. In any event the Union maintains that with the reserve funding dropping to about 5.28% of the operating budget, the College is not prohibited from allowing the reserve fund to fall below 5% by Florida Statutes and State Board of Education rules, contrary to Ms. Doeble's testimony. The Union cites Section 1011.84(3) (e), Florida Statutes, which "does permit the College this flexibility as long as they notify the State Board of Education of the action." CFO Doeble later corrected her testimony in line with the statute. And the College's brief points out that once this notification occurs, Board's rules then shift control of the budget to the Department. Such flexibility is then lost.

The key point raised by the Union is the \$150,000 cost of the \$750 onetime payment. Whether this relatively small cost item detrimentally affects the unencumbered balance in the general fund operating budget, which is already near five percent, comes down to a question of financial prudence. As CFO Doeble testified:

- Q Do you have a clue how much that [the \$750 proposal by the College] would reduce the five point two eight percent?
A It would be a small -- very small percentage.
Q A percentage point?
A Maybe.
Q Fraction of a percentage point?
A Possibly.
Q Probably still keep you above five percent?
A Keep us very close to the five, yes.
Q Okay.
A Which is again not our comfort zone. We like to be closer to seven percent.
Q Okay?
A Five percent is getting a little too close.

Clearly the evidence shows that the College has used some of its reserves to make funds available. There comes a point, however, that to be financially prudent it must guard against spending that would hurt its ability to operate without State intervention. And although financial prudence appears as a non-statutory factor, it is highly relevant for both the unavailability of funds and the public welfare and interest factors, as this SM held recently in *City of Jacksonville Beach, Florida and IAFF*, SM 2012-38 (2012). And, as with proving the unavailability of funds factor, this SM found that “to establish a ‘financially prudent’ factor, an otherwise vague notion, a public employer must at the minimum have relevant ‘financial statements and forecasts’ so as to provide the Special Magistrate with a starting basis to analyze such prudence, citing his decision in *City of Hollywood, Florida and IAFF*, SM-2011-083 (2012): That “starting basis” and more exists in this record and will be discussed further in the Recommendation.

Before making a recommendation the Special Magistrate calls to the attention of the parties his decision in *Miami-Dade County Public Schools v. United Teachers of Dade*, SM-2010-100, 2011 WL 7112644 (2011). As here, there was little disagreement that serious financial problems existed as a result of decreases in revenue sources. As here, the employer rejected the Union’s request for a recurring salary increase and instead offered a onetime payment (1%). Similarly, that union rejected the onetime payment. In a matter of weeks, as here, a State adverse economic action occurred. The new Florida governor (in January 2011) submitted a state-wide proposed budget which cut education funding by \$1.7 billion or 10-percent. This school district’s revenue would be reduced by \$200 million. (The budget passed the state legislature four months later). This school district then withdrew its onetime payment offer. Finally, as here, the Union came back and sought the onetime payment. But significantly at their Special Magistrate hearing the union left it up the SM to at least recommend some financial payment for the teachers. The union there put it this way:

Although the Union's members deserve that and more, the Union recognizes that it is within this Magistrate's discretion to find an equitable resolution. Equity requires that the Union's members get something for the 2010-2011 fiscal year, whether in the form of a one-percent bonus or otherwise.

As the SM in that case I was concerned about balancing the financial plight of the school district with the "interest and welfare of the public" statutory factor, for "even in the face of the above financial concerns . . . support for teachers is vital if the public expects them to produce quality education, let alone the buildings to make it happen." And while free "high quality" public education is protected by the Florida Constitution, it is just as important for State supported colleges to provide that "high quality" education. Doing so for the citizens of the area served by this State college should be an ongoing responsibility of the College. It's an obligation that the Special Magistrate found in *M-DCPS* for free public schools: "As such, the District must weigh against this obligation its obligation to have a balanced budget and to not bankrupt the system." In the past this District, when faced with financial problems found "room in its budget after declaring there was none." I then concluded:

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

Keeping in mind the serious financial situation of that school district, I recommended several approaches for their consideration. The thought was to give that "signal" both to the public and more significantly to the teachers that they remained the most valuable asset the school district possessed. Giving them "some" recognition, even in the face of bad times, provided important recognition worth much more than the money involved.³

³ As to the onetime payment several approaches to lessen the burden on the school district were suggested: "The 1% District offer, or some variation, is the best way to provide teachers with that recognition. It meets the criteria expressed by the District of not being recurring. It's a onetime payment that does not burden the District beyond this year. And it can be done in ways that are less burdensome for the one year, such as making the amount .5% or even .75% as first offered. It can be paid in two stages, with the first payment upon ratification and the second after six

III. Recommendation

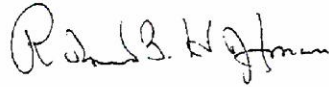
The College presented a strong case for both the unavailability of funds and financial prudence. There can be little doubt that the convergence of decreasing revenue and rising costs hurt ESC's ability to pay recurring wage increases, or even onetime payments that could eat into reserves. Although the cost for the \$750 appears to only drop the reserve ratio by a fraction of a percent, the Special Magistrate well appreciates a) College employees other than faculty members may be affected, thus raising the cost, b) CFO Doeble's concern that ESC's financial prudence to maintain the current ratio is discomfotingly too close to the 5% level. As such, the Special Magistrate is constrained to recommend a number that carries with it consequences that go beyond this bargaining unit, or disturb this reasonable basis for financial prudence.

He is not constrained, however, to recommend a flexible approach for the parties. The Union is not asking for much. The importance of recognizing this faculty with some financial gain, at the least as a symbol of its vital importance to the College, may be balanced against this prudence. In so doing, the recommendation is for the College to consider the type of approach the Special Magistrate recommended to the Miami-Dade School District and the United Teachers of Dade, as discussed above, and which those parties utilized. And even though the Union here has not asked for anything but the \$750, by exploring some of the options suggested in the *M-DCPS* case, and considering that the College's concern about having to repay the State some \$3 million for FRS reimbursement no longer exists, a onetime increase could still be preserved for the faculty and at the same time provide the College a way to lessen its financial impact and still be financially prudent. It is recommended that such discussions begin within seven days of this Recommended Decision.

months. And that payment can be conditioned on the financial ability to make the payment at that time. Section 407.4095 could be invoked then for the 14 day impact bargaining period regarding any change that is a financial urgency. Or, the payment would be spread out over a number of pay periods. There is no limit to the variations that can be utilized." *Miami-Dade County Public Schools, supra at 21*

CONCLUSION

This recommendation is made after fully considering all the evidence presented at this hearing, including the written submissions of the parties. The Special Magistrate makes this recommendation to reflect the objective set forth in Sec. 447.405 “of achieving a prompt, peaceful and just settlement” of the dispute between these parties.



Robert B. Hoffman
Special Magistrate

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

In the Matter of Special Magistrate)	
Proceedings)	
Between)	
)	
Edison State College)	Case No. SM-2012-076
)	
And)	
)	
Edison College Faculty)	
Federal Union)	

**DISTRICT BOARD OF TRUSTEES OF EDISON STATE COLLEGE, FLORIDA'S
NOTICE REJECTING THE SPECIAL MAGISTRATE'S RECOMMENDED DECISION**

COMES NOW, the Employer, District Board of Trustees of Edison State College, Florida ("ESC"), by and through its undersigned counsel, and pursuant to Chapter 447, Part II, Florida Statutes, and hereby rejects the Special Magistrate's Recommended Decision, issued March 7, 2013 and deemed received on March 11, 2013, in the above-captioned matter. In accordance with the statute, the Employer states the following:

1. On August 21, 2012, the parties commenced re-opener negotiations for the 2012-2013 fiscal year, which included only the salary schedule as specified in Articles 10.2 and 10.3 of the CBA. The parties met in three sessions. In the second session held on September 7, 2013, the union rejected the College's best offer and countered with only a demand for a three percent recurring wage increase. A declaration of impasse followed on October 11, 2012. In reviewing the evidence that the College presented at the hearing in this case the Special Magistrate concluded:

[t]he College presented a strong case for both the unavailability of funds and financial prudence. There can be little doubt that the convergence of decreasing revenue and rising costs hurt ESC's ability to pay recurring wage increases, or even onetime payments that could eat into reserves. Although the cost for the \$750 appears to only drop the reserve

ratio by a fraction of a percent, the Special Magistrate well appreciates a) College employees other than faculty members may be affected, thus raising the cost, b) CFO Doeble's concern that ESC's financial prudence to maintain the current ratio is uncomfortably too close to the 5% level. As such, the Special Magistrate is constrained to recommend a number that carries with it consequences that go beyond this bargaining unit, or disturb this reasonable basis for financial prudence.

Thereafter the Special Magistrate, while recognizing the legitimate financial concerns of the College and the circumstances which prevented the College from reaching agreement with the Union, merely recommended that the parties return to the bargaining table and seek a solution in negotiations. The recommendation simply suggests that after more than six months of contract discussions and negotiations which culminated in impasse and a formal hearing, that the parties simply return to the table and "give it another try." The report and Recommendation thus thereby fails to bring closure to the impasse and invites the parties after seven difficult months, to begin the process once again as the fiscal year (in which the decision was to have been made) draws to a close.

2. Section 447.403(3), Florida Statutes, requires the College to provide this notice and a statement of the cause for each rejection. The College, for the reasons set forth herein, hereby rejects the recommendation in its entirety.

3. The College states that the Special Magistrate's Report and Recommendation fundamentally fails to meet the basic requirement of Florida Statute, Section 447.403(3), that "[t]he special magistrate . . . render a decision on any and all unresolved contract issues." Here the recommendation contains no decision on the unresolved contract issues. The decision thereby fails to meet the requirements of statute. Moreover, the decision while fully recognizing the College's financial constraints and finding that the concerns are supported by substantial evidence, fails to contain a recommendation that is consistent with the facts as so determined. The College is mindful that the issues surrounding this contractual wage reopener must be brought to closure and finality without further undue delay and cost and therefore is constrained to reject the Special Magistrate's Recommendation in its entirety.

CONCLUSION

For the foregoing reasons, the District Board of Trustees of Edison State College, Florida hereby rejects the Special Magistrate's Recommendation in its entirety.

Respectfully submitted,

Mark E. Lupe
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Fort Myers, Florida 33919
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mlupe@edison.edu

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished via email and United States Mail this _____ day March 2013 to:

Michael L. Moats, Service Unit Director
2023 North Atlantic Avenue, #273
Cocoa Beach, Florida 32931
Cellular: 813-240-5602
Office/Fax: 321-613-3308
michael.moats@floridaea.org

Mark E. Lupe



April 5, 2013

Board of Trustees
Edison State College

Dear BOT Members:

As you are aware, the College and the faculty union have been engaged in contract negotiations as a result of a wage reopener clause in the existing union contract. In the face of very difficult financial circumstances the College was unable to meet a union demand for a 3% recurring pay raise. After clarifying with the union that the 3% recurring pay raise was the only issue that the faculty union wanted the College to reconsider, the College was constrained to conclude that the parties were simply at impasse.

A declaration of impasse by the College sets in motion a legal dispute resolution process. The first step in the impasse process was a hearing before a Special Magistrate, whose job was to consider the evidence presented by both the College and the union. After such consideration, he was to make a recommendation to resolve the impasse. Such a hearing did occur in this case and the Special Magistrate did issue a Report and Recommendation.

In reviewing the evidence that the College presented at the hearing in this case, the Special Magistrate concluded:

[t]he College presented a strong case for both the unavailability of funds and financial prudence. There can be little doubt that the convergence of decreasing revenue and rising costs hurt ESC's ability to pay recurring wage increases, or even onetime payments that could eat into reserves. Although the cost for the \$750 appears to only drop the reserve ratio by a fraction of a percent, the Special Magistrate well appreciates a) College employees other than faculty members may be affected, thus raising the cost, b) CFO Doeble's concern that ESC's financial prudence to maintain the current ratio is uncomfortably too close to the 5% level. As such, the Special Magistrate is constrained to recommend a number that carries with it consequences that go beyond this bargaining unit, or disturb this reasonable basis for financial prudence.

Unfortunately, the Special Magistrate, while recognizing the legitimate financial concerns of the College and the circumstances which prevented the College from reaching an agreement with the Union, merely recommended that the parties return to the bargaining table and seek a solution in negotiations. The

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recommendation simply suggests that after more than seven months of contract discussions and negotiations which culminated in impasse and a formal hearing, that the parties simply return to the table and "give it another try." The report and recommendation thereby failed to bring closure to the impasse and simply invited the parties after seven difficult months, to begin the process once again as the fiscal year (in which the decision was to have been made) draws to a close. For this reason the College rejected the Special Magistrate's Report and Recommendation.


With this rejection the matter of the resolution of the contract reopener issue has passed to the Board of Trustees as the "legislative body" for a final decision. The law also requires that I, as chief executive, submit to Board of Trustees and the union a copy of the findings of fact and recommended decision of the special magistrate, together with my recommendations for settling the disputed impasse issue.

The wage reopener and the salary issue which was in dispute involved compensation for fiscal year 2012-13, which ends on June 30, 2013. In light of the College's current financial circumstances, as validated by the Special Magistrate, and the fact that the fiscal year for which the wage adjustment was to be granted is now almost at end, I am constrained to recommend that that no wage adjustment be granted at this time.

Rather than attempt to now reward past work, I ask the faculty and the Board of Trustees to join me in my focus on the future. Although we continue to exist in an era of economic uncertainty, I am optimistic that our ability to reward the dedicated faculty of Edison State College will improve. I believe that going forward we will be able to work together to create a compensation scheme that fairly compensates the dedicated faculty of Edison State College while also recognizing excellence. I believe that the College will continue to have the ability to attract and retain needed faculty in highly competitive fields.

In accordance with Florida statute we will now be proceeding to schedule a Special Meeting of the Board of Trustees at which the parties shall explain their positions with respect to the rejected recommendations of the special magistrate and thereby enable the Board of Trustees to make a final decision regarding the wage reopener.

Sincerely,



Dr. Jeffery S. Allbritten
President

JSA/ds