

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

ORANGE COUNTY CLASSROOM
TEACHERS ASSOCIATION

CASE NO. SM-2021-013

Union,

The Honorable Dennis J. Campagna
Special Magistrate

v.

SCHOOL DISTRICT OF ORANGE
COUNTY, FL

Employer.
_____ /

UNION'S POST IMPASSE HEARING BRIEF

The Orange County Classroom Teachers Association (hereinafter "OCCTA" or the "Union"), by and through undersigned counsel, hereby files this post hearing brief.

BACKGROUND

This impasse arises from a dispute between OCCTA and the School District of Orange County, Florida, or Orange County Public Schools (hereinafter "OCPS," "Employer" or "District"). OCCTA is the certified collective bargaining representative of approximately 14,200 teachers, guidance counselors, psychologists, nurses, and other instructional personnel employed by the school District. Tr. 77: 12-25. These public employees work with the District's over 200,000 students on a daily basis and are charged with their education, health, welfare and safety. OCCTA and OCPS are parties to a three-year collective bargaining agreement ("CBA") that expired on June 30, 2021. (U-2). On July 22, 2021 the Union exercised its statutory right under Fla. Stat. §

447.403(1) and declared impasse on behalf of its members. A virtual hearing was held before Special Magistrate Dennis J. Campagna on September 14 and September 15, 2021.¹

The issues at impasse are:

1. Article XV(J)(6) – Work Year, *Summer Employment*
2. Article XVI(A) – Salary, *Salary Increases & 2021-22, One-time Supplement for Instructional Employees*
3. Article XVI(F)(1)-(2) – Salary, *Method of Payment*
4. Appendix A-5 – *Years of Employment Supplement*
5. Appendix C – Health Insurance Coverage (Union Proposes Status Quo)
6. Appendix F – Registered Nurses, *Substitute Pay & Supplement*
7. Article XVIII(B)(9)-(10) – Leaves of Absence, *Sick Leave Accrual & Donation*²

In making a recommendation on these issues, the Special Magistrate is guided by Florida Statute, which states:

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:

¹ At the hearing, the Union presented seventeen (17) exhibits, which will be referred to as (U-___). The Employer presented sixty-one (61) exhibits, which will be referred to as (ER-___). A 501-page transcript was produced. Each side provided the Special Magistrate with its proposed modifications to the contract. The parties' proposed additions to existing articles are underlined and the proposed deletions are reflected by strikethroughs.

² This Brief will first address salary and supplements, then health insurance, and then the remainder of articles at issue.

- (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.

Florida Statutes, Section 447.405 (emphasis added). OCCTA comes to this Special Magistrate on behalf of thousands of Orange County educators seeking a fair and just settlement of the issues at impasse.

ARGUMENT

Teachers work hard every single day to achieve successes in education. For years, teacher workload has been steadily increasing as the District requires additional paperwork, training, data collection and deliverables, and implements directives that erode planning time and require educators to work past their paid contract hours on a regular basis. Tr. 84: 9-15; Tr. 182 - 183: 1-16. During the pandemic, teachers put their own health and lives at risk to continue teaching students, and are continuing to do the impossible to make sure that learning is not interrupted. Tr. 83: 12-25; Tr. 84: 1-5. Teachers care about their students and even spend their own money to make sure each child's education and safety needs are met, even as the Employer refuses to budget any funds for raises. Tr. 84: 15-25; Tr. 85: 1-2. It is unacceptable that many OCPS teachers must work more than one job to make ends meet with their current salary. Tr. 115: 5 – 10.

Instead of searching for ways to fund the salary increases that teachers badly need and deserve, the District refused to fund any recurring wage increases this year. Tr. 491: 6-15. The District also rejected the OCCTA's longevity proposal, which is aimed at addressing the

undisputed salary compression that exists in OCPS. (U-5); Tr. 99 12 -17. Meanwhile, the District proposes passing on all health insurance increases to its employees through higher deductibles, out of pocket maximums, coinsurance and prescription costs. (U-5d).

Indeed, the District admitted that it is only willing to offer its teachers the bare minimum—it will not offer anything that it is not required to offer its employees by law. Tr. 424: 14-23. It is no wonder that 92% of educators who responded to an OCCTA survey said they did not feel supported by the District. (U-6). The Employer’s proposals and positions at impasse provide a disincentive for anyone to become a teacher. They are demoralizing, and will only push qualified teachers into other school districts and other fields. The school system and the public deserve better. The interest and welfare of the public is served by valuing teachers and providing salaries that attract and retain qualified and dedicated educators. Florida law requires the Magistrate to weigh the public’s welfare in reaching a final recommendation. § 447.405(3), Florida Statutes. In the words of this Magistrate, “it is generally accepted that the public's interest be entitled to the highest weight.” *City of West Palm Beach and West Palm Beach Assn of Firefighters #727 IAFF SM-2020-015* at 5 (2020).

The parties are before this Special Magistrate pursuant to an impasse procedure that is enshrined in Florida’s Public Employees Relations Act. This valuable tool for dispute resolution in collective bargaining negotiations is prescribed by Florida law. Despite the insinuation at the hearing that there was something bad or wrong about being here, this is a normal part of collective bargaining that neither party should be shamed for. After years of cooperation, sacrifice, and hard work, the Union comes to this Special Magistrate for a recommendation as to what is just. OCCTA is here because its members deserve better.

**Article XVI(A) – Salary, Salary Increases & 2021-22,
One-time Supplement for Instructional Employees³**

Article	Union Proposal	District Proposal
XVI(A). Salary, Salary Increases	<ul style="list-style-type: none"> • Cost of Living Adjustment for all Teachers: \$800 • Increase for Teachers rated Effective: \$1,600 • Increase for Teachers rated Highly Effective: \$2,200 	<ul style="list-style-type: none"> • Cost of Living Adjustment for all Teachers: \$25 • Increase for Teachers rated Effective: \$100 • Increase for Teachers rated Highly Effective: \$150
2021-2022- One-time Supplement	<ul style="list-style-type: none"> • Rejected (Salary increases, instead of bonuses, as reflected in the Article XVI, Salary, Proposal) 	<ul style="list-style-type: none"> • One-time supplement of \$2,500 per employee

i. **The District chose not to budget any funds for teacher salary increases.**

The Union proposed an increase to base salary that provides education professionals with a livable wage, and is reasonable and fair in comparison to other educators in the state and in light of the members’ hard work and past sacrifice, which they will continue to experience. On the other hand, the District has proposed a \$25 cost of living adjustment and \$100-\$150 in performance pay, funded exclusively through state categorical dollars. **The District’s proposal amounts to a base increase of \$0.02 to \$0.12, depending on the teacher’s evaluation rating.**

The District itself has not put one dollar on the table for a base salary increase. Instead, it is relying exclusively on a new state source of funding called the Teacher Salary Increase Allocation (“TSIA”), which was created last year and is primarily intended to raise the teacher starting salary and to “assist school districts in their recruitment and retention of classroom teachers and other instructional personnel”—not to be the sole source of

³ At issue in the salary proposal is also whether to provide employees the option of being paid in 26 checks and through the summer, instead of the typical 22 paychecks for 10-month employees. The District’s rationale for rejecting the proposal essentially comes down to administrative issues that would have to be squared away prior to implementation. Tr. 419-422. However, the Union’s proposed changes wouldn’t take effect until the 2022-2023 school year, and the Union is willing to give the District more time to figure out the logistics if need be. The Union merely asks that the District seriously look into this issue and provide teachers this option as soon as it is able.

funding for educator raises. See FLORIDA HOUSE OF REPRESENTATIVES, FINAL BILL ANALYSIS, H.B. 641 (March 30, 2020) (emphasis added). Indeed, 80% of the TSIA must be used to increase and maintain the minimum base salary at \$47,500. (ER-41 at 917 – 918); § 1011.62, Florida Statutes(16)(a). **There is absolutely nothing in the statute that establishes it as the only funding source for teacher salary increases, or that absolves the District of its responsibility to budget for and fund raises.** See *id.*

While the District is now hiding behind the TSIA to skirt its duty to provide proper compensation and salary increases, the District has historically budgeted for raises. As acknowledged by this Magistrate, in addition to the specific factors enumerated by statute “the Special Magistrate may consider ‘other factors’ including past practices of the parties.” *City of West Palm Beach and West Palm Beach Assn of Firefighters #727 IAFF SM-2020-015* at 5 (2020). The District’s proposal ignores a history of wage increases that the Employer acknowledges were budgeted for and funded by the District year after year. Tr. 363:17-20; (U-7); (ER-60).

Nevertheless, ever since the TSIA went to effect in July of 2020, the District has refused to consider any options that would give teachers anything other than the increases afforded by this new statutory provision—which this year would amount to a mere \$25-\$175 depending on the teacher’s evaluative score. Similarly, the only raises that were received last school year were from the TSIA. (U-7); (ER-60). If this Magistrate accepts the District’s proposal, it will have little incentive to ever look beyond the leftover TSIA funds for base salary increases and will merely become a pass through organization that relies on categorical state dollars and allocates only those dollars without ever budgeting more. Perpetuating such a practice would render negotiations between the Union and the District meaningless.

ii. The District's proposal for a one-time supplement hurts teachers.

The District also proposed a one-time, non-recurring, \$2,500 supplement. This supplement is only temporary, it is not an increase to teachers' base salaries, and will not pay for recurring bills or allow families to budget for outgoing years. One-time supplements only serve to widen the gap between continuing salary and the cost of living, resulting in loss of buying power for teachers.

Under the District's proposal, employees will automatically get a pay cut next year and will have to fight just to make up that loss. As testified by OCCTA President, Wendy Doromal,

This Union has said repeatedly, for years, we do not want bonuses. We do not want supplements. We need a recurring salary increase to be able to pay bills, to be able to budget for our families, to be able to get a mortgage or get a car loan. You can't do that with a bonus.⁴

Tr. 87: 16-21. Mathew Hazel, an OCPS High School teacher, further testified:

I just got married. I'm going to be looking to be in the home buying market pretty soon and the mortgage market here. **And any mortgage provider is going to ask me for my annual salary, and I can't give a one time bonus as part of my annual salary. It's not.** I know Mr. Palmerini mentioned \$2,500 will buy a lot of groceries this year, and it will, but I still have to eat next year. And if I get a mortgage, I still have to pay the mortgage next year, and the year after that, and the year after that and the year after that. **I, and all of my colleagues, we have recurring expenses and we need recurring raises to pay for those expenses, just to keep up with inflation.**

Magistrates have recognized the importance of fair teacher salaries and the importance that a school board take the initiative to try to find funds to pay for these salaries. In *Collier County Education Association and the District School Board of Collier County*, SM-2007-050 (2007), the Magistrate found that the "District left no stone unturned . . . in its search for funding sources for teacher salaries." Sadly, this is not the case here. **Here, the District did not provide any testimony regarding what options it considered for funding recurring salary increases.** This

⁴ Although the term bonuses and supplement has been used interchangeably, the Union acknowledges that the supplement is pensionable.

is simply bad practice by our governmental leaders and does a serious disservice to OCPS educators.

- iii. Budget adoption is based on choices and priorities. The District chose not to budget for raises in spite of having the ability to do so.

The District has failed to take advantage of, or even fully evaluate its options for saving money, shifting costs, making appropriate budgetary cuts, looking for efficiencies, or any other creative methods to funding recurring raises for its educators. It is important for governmental agencies to use fiscal ingenuity to provide for raises. *Volusia County Florida and IAFF Local Union No. 3574*, SM 2007-043 (2008). However, the Employer has failed to use such ingenuity or to explore potential savings or efficiencies to offer a single penny for salary adjustments. The District acknowledged that there may be enough money in the actual general fund for the Union's salary proposal, but that there would need to be a reprioritization to free up recurring dollars. Tr. 324:2-16. Instead, the Employer continues to attempt to balance its budget on the backs of its employees.

One potential source of funding comes through the District's decades long practice of budgeting expenditures that never come to fruition. For example, year after year the District has overbudgeted the instruction line item. A comparison of what was budgeted for instruction to what was actually spent over time shows enough room to absorb an increase to teacher's salaries. In four of the past five years, the difference in budgeted versus actual instruction expenditures has been over \$46 million each year—more than the difference in cost between the parties' recurring salary proposals. (U-8 at 8). **In keeping with this pattern, the District's total budgeted expenditures have also been consistently higher than actual expenditures by an average of \$142,413,558 since the 2009-2010 school year.**⁵ *Id* at 9.

⁵ The Department of Education website only provides this information back through the 2009-2010 school year.

Similarly, year after year since at least 2009, the District has significantly underbudgeted its fund balance. *Id.* at 16. **Indeed, in the past five years the assigned and unassigned portion of the fund balance has been underbudgeted by an average of \$168.5 million each year.** *Id.* In *District School Board of Collier County and Collier County Education Assn*, SM-2012-083 at 11(2013), the Magistrate Stanley Sergent found that a consistently underbudgeted “balance represents an additional recurring source of income that can be used with confidence if ever needed.”

Further, while state statute requires that the combined assigned and unassigned fund balance be maintained at least at **3%** of total revenues, the District has consistently maintained this portion of its fund balance at above **17%**. *See* § 1011.051, Florida Statutes; (U-8 at 19). As such, OCPS has kept a significantly higher fund balance than is required, and a significantly higher fund balance than its neighbors and other comparable Districts in the state. (U-8 at 19-23). The District’s assertion that it must maintain its fund balance at above 17% to maintain favorable lending rates is misleading. A review of Moody’s methodology reveals that numerous factors are considered when assessing credit risk and no one factor is dispositive. *See Moody’s US k-12 Public School Districts Methodology* (January 26, 2021). Fund balance is not necessarily the most significant factor in assigning ratings and there is no specific threshold that would lead to an automatic downgrade as rating decisions are much more nuanced than that. *Id.*

The District cannot claim that it cannot afford raises when it has consistently underbudgeted its fund balance, and consistently maintained its fund balance over 14% what is required by the state. The District apparently has two faces, one that it puts on for its investors and one that it puts on for its employees.

Importantly, the majority of the Union’s salary proposal is already budgeted for the 2021-2022 school year so the real issue is the District’s willingness to budget appropriately in outgoing years to maintain the increase.⁶ The budgets for outgoing years have not yet been developed, and the District has the capability to explore cost saving decisions and to prioritize accordingly. The Union has pointed to several potential sources of funding and it is the Employer’s job to explore each of these and other opportunities.

iv. Comparison with other Districts

A comparison with other large Districts in Florida further evidences the need to adopt the Union’s proposal. The average salary for OCPS teachers is lower than the Florida average as well as than the average teacher salary of all other large districts in the state including Palm Beach, Broward, Miami-Dade and Hillsborough. (U-8 at 30). At the hearing, the District objected to comparing Orange County to Miami-Dade and Broward. However, Florida Statute contemplates such a comparison as one of the factors the Special Magistrate must consider.

Specifically, Section 447.405(2), Florida Statutes, requires a “comparison of the annual income of employment of the public employees in similar public employee governmental bodies of comparable size within the state.” OCPS is the fourth largest school District in the state of Florida serving over 200,000 students. Orange County is the primary economic center in central Florida, and the District acknowledged that Orange County is one of the fastest growing districts in the State. Tr. 294: 17-20. OCPS educators face the same types of urban challenges faced by educators in Miami-Dade and Broward, such as high housing and transportation costs. Indeed, the Florida Price Level Index, “a comparable wage index that represents the relative cost of hiring

⁶ The Union’s salary proposal costs \$48,217,761 and the District’s proposal, including the non-recurring supplement, costs \$44,805,272—the difference amounts to less than 3.5 million.

comparable personnel among Florida’s school districts,” shows that Orange County has similar price levels to Miami-Dade and Broward. (ER-48).

The District’s attempt to exclude the comparison of other large Florida districts is self-serving. At the end of the day, it is in the best interest of the public to consider similarly situated school districts, and OCPS educators are underpaid when compared to their peers in the state.

The Union’s proposal should be recommended.

Appendix A-5 – Years of Employment Supplement

Article	Union Proposal	District Proposal
Appendix A-5 – Years of Employment Supplement	<ul style="list-style-type: none"> Provide a supplement based on years of employment with OCPS 	<ul style="list-style-type: none"> Status Quo (No Supplement)

The Union proposed a non-cumulative annual longevity supplement based on years of employment with OCPS, as follows:

	<u>5 - 9</u> <u>Years</u>	<u>10 - 14</u> <u>Years</u>	<u>15 - 19</u> <u>Years</u>	<u>20 - 24</u> <u>Years</u>	<u>25 - 29</u> <u>Years</u>	<u>30+</u> <u>Years</u>
<u>Supplement</u>	<u>500</u>	<u>1,000</u>	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>

(U-4d). Failure to provide this supplement will perpetuate harsh inequities among teachers. Over the years, several factors have contributed to disproportionately lower wages and lower salary increases for veteran teachers. The Union’s proposal merely attempts to begin to address this problem. The District did not even provide a counterproposal or offer any alternatives to address this serious issue. (U-5); Tr. 99 12 -17.

One factor that has contributed to salary compression has been state law increasing the base teacher salary to \$47,500, which provided a significant raise for many employees while leaving

behind the most experienced educators. Tr. 187: 8-19. Further, for years, the District has maintained the position that providing percentage increases to employees would violate Florida statute and has refused to consider anything other than salary increases in flat amounts.⁷ Tr. 186.

As testified by Mr. Hazel,

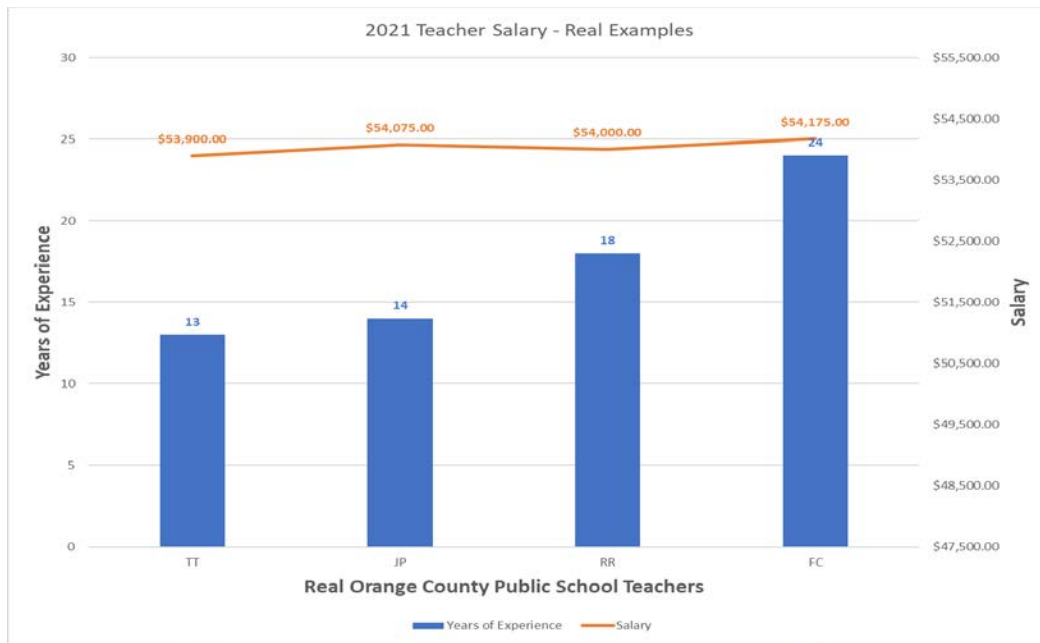
Q. And so has this kind of framework in which, year after year, salary increases have been flat amounts, has this impacted more experienced teachers with the District?

A. Oh, very much so, very, very much so. A \$3,000 raise for a teacher making 47,500 is very different than a \$3,000 raise for a teacher making 65,000, just in term of the percentage of income. A flat amount raise means that the more years of experience and the higher salary, the smaller the percentage rate is you're getting. So the system of a flat rate disproportionately benefits new teachers.

Tr. 186: 18 – 25; 187: 1 – 4.

Regardless of the cause, it is undisputed that there is significant salary compression in the District. Tr. 373:7-11. **A review of the data demonstrates that all newly hired teachers are earning the exact same as the average 5-year employee. (U-10). Moreover, the average difference between a new hire and an employee with 15 years of experience and loyalty to the District is a mere \$6,000. *Id.* Similarly, while the starting salary is now \$47,500, the average employee with 30 years of experience is still earning only \$67,500. *Id.*** The impact of these discrepancies is evident when one compares the salaries of real employees:

⁷ The Union disagrees with Employer's interpretation of the statute. Indeed, other districts, who are subject to the same Florida Statutes do in fact give percentage increases. Tr. 186; Tr. 391-392.



(U-11). Such inequities in compensation should not be allowed to continue.

The District has the ability to fund the proposed longevity supplements. In addition to the sources of funding identified above, the District can and should use funds from the One Mill Resolution passed through a voter referendum. (U-12). The OCCTA partnered with the District to help get this referendum passed by voters, who were promised that a portion of the funds would be used to retain highly qualified teachers. Tr. 98 6-17. Indeed, the ballot question expressly specifies retaining highly qualified teachers as one of the purposes of the One Mill. (U-12). The resolution brings in \$165 million a year, the cost of the Union’s longevity proposal is \$14 million. Tr. 99 5-11. The District did not know how many of the referendum dollars are currently being allocated towards retaining highly qualified teachers. Tr. 327:2-4. However, the District did agree that improving the pay of experienced teachers helps retain those teachers. Tr. 477:12-17.

The failure to implement a years of experience supplement does not promote the retention of the most experienced and loyal employees and does not comport with the public good. The

public interest in undoubtedly served by retaining qualified and dedicated educators. The Union’s proposal should be recommended.

Appendix C – Health Insurance Coverage (Union Proposes Status Quo)

Article	Union Proposal	District Proposal
<p>Appendix C – Health Insurance Coverage</p>	<ul style="list-style-type: none"> Status Quo 	<ul style="list-style-type: none"> Increases Deductibles by \$150 – \$2,000 depending on the plan Increases Out of Pocket Maximums by \$1,000 - \$2,000 depending on the plan (Individual or Family) Increases Coinsurance for Local Plus Plan by 10% Increases RX out of Packet Max by \$1,000 - \$2,000 depending on the plan (Individual or Family) and other increased prescription costs Adds “Sure Fit” Plan

The District’s health insurance proposal to increase deductibles, out of pocket maximums, coinsurance, and prescription costs will have the biggest impact on the sickest employees. Tr. 187: 20-25 – 188: 1-143. While the District’s proposed salary increase totals \$2.3 million (fully funded by the state) it is simultaneously proposing to pass on millions more in insurance costs to educators.⁸ Further, while its proposed one-time supplement may help cover some of the increased costs of health care this year, the District’s permanent proposed insurance increases will remain next year and in all outgoing years while the supplement will not. Tr. 283: 9-15. Although the Union recognizes the benefit of the District absorbing some of the health insurance increases in previous years, the District did not assume any of the health insurance increase this year. Tr. 274: 15-17. The economic reality that this year teachers are going home with less money because of

⁸ The projected savings from the benefit changes are about 10.5 million dollars, and while the District did not calculate what percentage of the savings would come from each bargaining unit, 60% of plan members are CTA bargaining unit members. (ER-27 at 716 -717); Tr. 273: 3-10; 274:15 -25; 275: 1-10.

health insurance costs just bolsters the notion they need recognition at some level in terms of salary.

The District acknowledged that it is capable of cost sharing increases in insurance costs this year; indeed, the OCPS Senior Director of Risk Management testified that one of the options proposed during Fringe Benefits Committee Meetings actually increased employer premium contributions. Tr. 278: 12-25. However, no cost sharing option was brought to the bargaining table and once the Fringe Benefits Committee reviewed the different options, the bargaining team was then “presented with the proposal from the District for health insurance . . . And then there’s really no negotiation to speak of, no adjustment of numbers, no looking into alternative plans or whatever else.” Tr. 189: 17-24.

In the middle of a pandemic, when the District is proposing a cost-of-living adjustment of \$25, it is telling its employees that more money is going to come out of their pocket if they utilize health services. The District’s proposal should be rejected.

Appendix F – Registered Nurses, Substitute Pay & Supplement

Article	Union Proposal	District Proposal
Appendix F. Registered Nurses, Substitute Pay & Supplement	<ul style="list-style-type: none">• Provide a supplement for Lead Nurses based on years of employment with OCPS	<ul style="list-style-type: none">• No Supplement

The Union’s proposal seeks to provide a supplement to Lead Nurses, or District Registered Nurses, who have numerous duties and responsibilities above and beyond those of other nurses across the District.⁹ Tr. 200 – 203. There are only seven nurses in this classification, and they serve

⁹ The District attempted to distract from the issue at hand by arguing over whether the correct title for this position is Lead Nurse or District Registered Nurse. Tr. 205: 2-8. The record reflects that both of these terms have been used to refer to this classification employees. Tr. 212 -213; U-16; U-5e. However, regardless of what these employees are

as liaisons between schools and the Employer. Tr. 201: 13- 17. While other nurses are assigned to one school, Lead Nurses are assigned a case load of up to sixty schools. Tr. 201: 7-10. Indeed, Lead Nurses are charged with training school-based nurses and often have upwards of 100 individuals who are working under their professional license. Tr. 200: 16 -20; Tr. 202: 17- 23. They train other nurses to administer diabetes medications, to look for signs and symptoms of stroke, and to identify sickle cell or cardiac conditions in students. Tr. 200: 21-25 – 201: 1-4; Tr. 203: 1-16. They monitor other nurses and must ensure that those working under their license are engaging in safe practices with students and are properly trained and prepared to provide health services to children. *Id.*

In spite of the significant added responsibilities and accountability expected from Lead Nurses, there is no difference in their salary and that of a school-based nurse. Tr. 203: 18-21. The OCPS Supplement Handbook defines a supplement as “additional salary for which an instructional employee performs extra duties and/or responsibilities *before, during or after* the regular workday.” Tr. 207:10-15. The Union is merely asking for a supplement for these seven professionals who perform significant extra duties above what other nurses perform, and are charged with overseeing clinic operations at every single school and for every single student in the District.

The Union’s proposal should be recommended.

called, it is a distinction without a difference as there is no dispute regarding the numerous added responsibilities that these employees take on.

Article XV(J)(6) – Work Year, Summer Employment

Article	Union Proposal	District Proposal
XV(J)(6) Work Year, Summer Employment	<ul style="list-style-type: none"> • School psychologists to be considered for summer employment before others • Offers Elementary School Counselors 5 days of employment over the summer • Offers Middle/High School counselors 20 days of employment over the summer • Dates of summer employment to be mutually agreed upon 	<ul style="list-style-type: none"> • Status Quo (rejects entire proposal, except that psychologists “may” be considered for summer employment before others)

The Union has asked that school psychologists be considered for summer employment before other non-bargaining unit members. The District’s proposal merely states that the District “may” consider school psychologists for summer employment before others which, of course, it may already do. The District’s proposal does not enhance the rights of bargaining unit members in any way.

The second part of the Union’s proposal is to include in the CBA extended days over the summer for counselors to complete work that needs to be completed at that time. Counselors have numerous duties to complete over the summer including, but not limited to, summer school registration, monitoring student progress, addressing social and emotional concerns through counseling, re-entry meetings for students, assisting with college applications and FAFSA applications for financial aid, calculating final grades, correcting transcript errors, discussing graduation requirements, creating schedules and schedule changes, meeting scholarship deadlines, and meetings with parents and students. Tr. 221-223.

These tasks are specific to the summer, and the failure to provide these additional days hurts students more than anyone else. Tr. 221 – 225. The failure to guarantee a uniform number of summer employment days for counselors, depending on whether they teach elementary, middle or

high school, will create disparities in the services offered to students across the District. Tr. 225: 4-20.

The Union’s proposal should be recommended.

Article XVIII(B)(9)-(10) – Leaves of Absence, Sick Leave Accrual & Donation

Article	Union Proposal	District Proposal
Article XVIII(B)(9)-(10). Leaves of Absence, Sick Leave Accrual & Donation	<ul style="list-style-type: none"> • Incorporates current practice regarding summer employment sick leave accrual • Allows employees to donate their accrued sick time to all other employees, subject to statutory requirements. 	<ul style="list-style-type: none"> • Allows employees to donate their accrued sick time only to family members

The first part of the Union’s proposal is merely to incorporate the current practice for sick leave accrual over the summer. Tr. 430: 10-14; Tr. 100 24-25; Tr. 101: 1-6; U -14. The current accrual mechanism must be incorporated into the CBA, as is done in other Districts, so that employees are aware of the accruals they are entitled to and can ensure that they are allotted accordingly. Tr. 101: 7-12; 103: 14-21; (U-15d).

The second change proposed by the Union is to allow employees to donate their own sick time to other OCPS employees.¹⁰ **This Union’s proposal will not cost the District anything.** The District asserts that allowing employees to donate their sick time to other employees would somehow deplete an employee sick leave bank that is maintained by employees of the District. However, in spite of several requests from the Union, the District never provided an analysis of how offering this benefit would deplete the sick leave bank. Tr. 107: 1-10; Tr. 491:21-25. The reality is that allowing employees to donate their sick leave to other employees will not harm the sick leave bank. Indeed, the statute that allows for employee to employee leave donation also

¹⁰ The District rejected the Union’s proposal and only agrees to allow employees to donate their accrued sick time to family members who are employed by OCPS, which it is already legally required to do. § 1012.61(2)(e)(1), Florida Statutes.

allows for the creation of sick leave banks and even assumes the two can coexist. *See* § 1012.61(2)(e)-(3), Florida Statutes.

The Director of Labor relations, LeighAnn Blackmore, provided the real reason why the District is refusing to offer this benefit.

Q. Okay. And so when you say, "Permissive section of the Statute," I presume you're speaking to the fact that a district may offer something to its employees, but doesn't have to offer it to its employees; is that correct?

A. Correct.

Q. And so is it your position that the District will not offer anything that it is not required to offer to its employees by law?

A. Typically the District does not.

Tr. 424: 14-23.

The District's position underscores its lack of appreciation for educators and should not be encouraged. This posture must be factored into the analysis behind an impasse proceeding. No reward should be extended to a governmental entity that serves its public employees so inadequately. The Union's proposal should be recommended.

CONCLUSION

During these challenging and uncertain times, teachers are giving their all to make sure that every child remains engaged and protected. Unfortunately, the District is not doing its part to reward and protect these employees who are sacrificing so much each day. The District's refusal to acknowledge teacher's rights and its resistance to get things done on behalf of its employees is troubling and has forced OCCTA to bring these issues to this Special Magistrate for a neutral and just recommendation.

For the reasons set for herein and during the Special Magistrate hearing, the Union requests the issuance of a recommendation which rejects the District's proposals and incorporates the Union's proposed modifications to the agreement.

Respectfully submitted,

/s/ Lucia Piva

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic mail on John Palmerini, Esquire, John.Palmerini@ocps.net, this 29th day of October, 2021.

By: /s/ Lucia Piva

Lucia Piva, Esq.