

STATE OF FLORIDA
ORANGE COUNTY

In the Matter of Impasse Proceedings Between:

ORANGE COUNTY SCHOOL DISTRICT,
ORANGE COUNTY, FLORIDA

-And-

REPORT & RECOMENDATIONS

ORANGE COUNTY CLASSROOM TEACHERS
ASSOCIATION

Case No. SM-2021-013

Before: Dennis J Campagna, Special Magistrate

Hearing Dates: September 14 & 15, 2021

Virtual Hearing via Zoom

APPEARANCES:

A. For the District:

John C. Palmerini, Esq. – Deputy General Counsel for the School District
Vivian Cocotas, Esq. – Co-Counsel for the School District & Associate General Counsel
Scott Lindsey – District Sr. Administrator, Labor Relations,

B. For the Teachers Association

Lucia Piva, Esq. – Phillips, Richard & Rind, P.C. – Association Counsel
Wendy Doromal, Association President
Maribel Rigsby – Association Negotiations Chair

BACKGROUND

Pursuant to my authority under Florida Statute Section 60CC-3.006, virtual hearings were held before the Undersigned, acting as the Special Magistrate pursuant to Fla. Admin. Code R. 60CC-3.006 on September 14th and September 15, 2021 using the Platform Zoom. The Parties hereto were represented by experienced Counsel who, throughout the entire process, were afforded and took full opportunity to adduce evidence, examine witnesses and make arguments in support of

their respective position. At the conclusion of said hearing, the Parties elected to summarize their positions with the submission of written post-hearing briefs. Upon receipt of all submissions, the hearings were closed.

A. The Parties in This Dispute

The Orange County Classroom Teachers Association (“Association”) and the School Board of Orange County, Florida, (“District”), are parties to a three-year that expired on June 30, 2021. [Collective Bargaining Agreement with effective dates of its date of Ratification on December 18, 2020, through June 30, 2021 herein referred to as “CBA” or “Contract”].

Orange County Public Schools is the eighth largest School District in the nation and it's the fourth largest school district in Florida. The Orange County Classroom Teachers Association, “Association”, represents over 14,000 teachers, counselors, school psychologists, school nurses and other educators that serve over 200,000 students in this District.

The Association is the exclusive representative pursuant to the provisions of Chapter 447, Florida Statutes, for all certified non-administrative personnel including the following: teachers, teachers-countywide, teachers-exceptional, teachers-gifted, speech therapists, teachers-specific learning disabilities, teachers-adult full-time, guidance personnel, occupational specialists, teachers-adult basic education, librarians/media specialists, deans, department chairpersons and compensatory education teachers, registered nurses, social workers, adjuncts/technical adult, and school psychologists. There are approximately 14,200 bargaining unit members working with over 200,000 students on a daily basis and charged with their education, health, welfare and safety.

The record reflects that the Parties met on three occasions over the summer months in an effort to negotiate a successor to the CBA and despite their efforts to do so, they were unsuccessful. Those sessions occurred on June 29, 2021, July 16, 2021 and July 22, 2021. Following these three sessions, the Association declared impasse.

While there are numerous issues at impasse, noted in the chart below, to this Magistrate, the key issues are Health Insurance and Wage Increases. Each is addressed in detail below.

B. The Issues at Impasse

ARTICLE	ASSOCIATION 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 <p>Dates of summer employment to be mutually agreed upon</p>	<ul style="list-style-type: none"> • Status Quo (rejects entire proposal, except that psychologist “may” be considered for summer employment before others)
XVI(A). Salary, <i>Salary Increases</i>¹	<ul style="list-style-type: none"> • Cost of Living Adjustment for all Teachers: \$800 • Increase for Teachers rated Effective: \$1,600 <p>Increase for Teachers rated Highly Effective: \$2,200</p>	<ul style="list-style-type: none"> • Cost of Living Adjustment for all Teachers: \$25 • Increase for Teachers rated Effective: \$100 <p>Increase for Teachers rated Highly Effective: \$150</p>
XVI(F)(1)-(2). Salary, <i>Method of Payment</i>	<ul style="list-style-type: none"> • Allows employees to choose to receive their paychecks either in 22 or 26 biweekly installments. <p>Continues to allow deferred pay status for employees who choose 22 installments</p>	<ul style="list-style-type: none"> • Eliminates deferred pay status for employees who choose to be paid in 22 installments <p>Allows employees to be paid in 26 installments by being placed on deferred pay status</p>

¹ It is the District’s position that providing percentage increases to District employees would violate Florida Statute and as a result, the District will only discuss salary increases in flat dollar amounts.

2021-2022- One-time Supplement	Rejected (Salary increases, instead of supplements, as reflected in the Article XVI, Salary, Proposal)	One-time supplement of \$2,500 per employee
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 <p>Allows employees to donate their accrued sick time to all other employees, subject to statutory requirements.</p>	Allows employees to donate their accrued sick time only to family members
ARTICLE	ASSOCIATION PROPOSAL	DISTRICT PROPOSAL
Appendix A-5 – Years of Employment Supplement	Provide a supplement based on years of employment with OCPS	Status Quo (No Supplement)
Appendix C – Health Insurance Coverage	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 Pocket Max by \$1,000 - \$2,000 depending on the plan (Individual or Family) and other increased prescription costs <p>Adds “Sure Fit” Plan</p>
Appendix F. Registered Nurses, Substitute Pay & Supplement	Provide a supplement for Lead Nurses based on years of employment with OCPS	<ul style="list-style-type: none"> No Supplement

C. Governing Statutory Authority

Florida Statute Section 447.405 sets forth relevant factors to be considered by the Special Magistrate in arriving at a recommended decision as follows:

The special magistrate shall conduct the hearings and render his/her recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employees. 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 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 government bodies of comparable size within the state.
3. The interest and welfare of the public.
4. Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:
 - (a) Hazards of employment.
 - (b) Physical qualifications.
 - (c) Educational qualifications.
 - (d) Intellectual qualifications.
 - (e) Job Training and Skills
 - (f) Retirement Plans
 - (g) Sick Leave
 - (h) Job Security
5. Availability of Funds

D. Relevant Contractual Provisions

Article II, Negotiations Procedures, of the 2020-2021 CBA provides, in relevant part, as follows:

- A. The parties agreed to implement a Collaborative Bargaining Process beginning with the 199899 fiscal year within the authority of Chapter 447 of the Florida Statutes and any appropriate rules and procedures. Salary and fringe benefits shall be automatically reopened each year, as well as any provisions imposed by the Board. In compliance with requirements that tentative agreement items must be formally ratified, the parties agree to establish the following protocol:
 - 1. Formal ratification votes on tentative agreement(s) by the parties shall be held as needed.
 - 2. Interim decisions to implement agreements before formal ratification shall be confirmed in writing in the form of a Memorandum of Understanding.
 - 3. Issues may be raised for consideration through an appropriate process at any time during the length of this ratified agreement.
- B. If negotiations reach impasse, the procedures as set forth in the Florida Statutes and/or the rules of the Public Employees Relations Commission shall be followed. At the request of either party, a mediator shall be appointed.
- C. Neither party shall have any control over the selection of the bargaining representatives of the other party, and the parties mutually pledge that their representatives will be empowered to reach tentative agreement on items being negotiated. Should either party utilize the services of outside consultants to assist in negotiations, the party using the consultants shall pay for any cost incurred for such services.
- D. This Contract may not be modified in whole or in part except by mutual written agreement

DISCUSSION AND RECOMMENDATIONS OF THE ISSUES AT IMPASSE

A. Statutory Authority Governing School District Funding

At the outset, the Parties engaged in what is generally described as mutual gains bargaining. The goal of any mutual gains bargaining is to provide a wage and benefit package that attracts and retains the best qualified staff members to the extent permitted by relevant statutory authority and available funding.

Article IX, Section 1 of the Florida Constitution requires that “Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high-quality system of free public education that allows students to obtain a high-quality education.” The Florida Education Finance Plan (“Finance Plan”), was enacted by the Florida Legislature to carry out the mandate of Article of the Florida Constitution with the design of creating equity in the distribution of resources to school districts. To do so, the Finance Plan takes monies raised through sales and ad valorem taxes in all counties of the State together with other sources and distributes those monies through formulas that apply to all school districts. This distribution method is discussed in detail below.

Pursuant to Article VIII, Section 9(a) of the Florida Constitution, counties, municipalities and school districts are limited to levying a maximum of 10 mills of ad valorem taxes on property. The ad valorem millage rate is set by the Florida Legislature for school districts which may be authorized by law to levy ad valorem taxes subject to the limitation noted. Ad valorem property tax for Florida School Districts consists of three distinct categories:

- A. Required local effort,
- B. Discretionary millage, and
- C. Capital millage.

A. With Regard to the Required Local Effort:

By July 19 of each year, the Florida Legislature sets the aggregate required Local Effort for all school districts to participate in Florida's Finance Plan based upon data received from the Department of Revenue. In this regard, Section 1011.62(4)(a)(1)(a) provides as follows:

“Not later than July 19, the Commissioner of Education shall compute a millage rate, rounded to the next highest one one-thousandth of a mill, which, when applied to 96 percent of the estimated state total taxable value for school purposes, would generate the prescribed aggregate required local effort for that year for all districts. The Commissioner of Education shall certify to each district school board the millage rate, computed as prescribed in this subparagraph, as the minimum millage rate necessary to provide the district required local effort for that year.”

The record reflects, and there is no dispute that over the past 11 years, the required local effort millage rate for the Orange County School District has decreased from 5.420 mills (representing \$5.42 in ad valorem property taxes for every \$1,000.00 of property value) in Fiscal Year 2010 to 3.480 mills (or \$3.48 in ad valorem property taxes for every \$1,000 in property value) in Fiscal Year 2021.

B. With Regard to the Discretionary Millage

The discretionary millage is set by the Legislature every year via statute. (See §1011.71(1), Fla. Statute) which provides in relevant part as follows:

“In addition to the required local effort millage levy, each district school board may levy a non-voted current operating discretionary millage. The Legislature shall prescribe annually in the appropriations act the maximum amount of millage a district may levy.”

Since Fiscal Year 2010, the Discretionary Millage has been 0.748 mills.

C. With Regard to the Capital Millage

Florida Statute Section 1011.71(2) sets the Capital Millage Rate at 1.5 mills. The Statute also provides that the Capital Millage rate may not be used for teacher salary increases.

D. Background: The School District's Funding Process

School Districts receive funding the amount of which is primarily determined by the number of students enrolled in that District, the educationally relevant characteristics of those students (for example, students with disabilities receive additional funds in order to meet their educational needs), as well as other factors identified by the Legislature. In the State of Florida, all Districts receive the same level of funding for each particular category of students and for each factor applicable to their operations. Funds are distributed on the basis of Full Time Equivalent, or FTE monies. FTEs are weighted based on the characteristics of students in select areas such as basic programs, programs for exceptional students, secondary and career educational programs, and English for Speakers of other languages. (See Florida Statute Section 1011.62(1)(a)). The Florida Educational Finance Plan ("FEFP") also includes categorical funds which are distributed by function or purpose such as school transportation, instructional materials, class size reductions and teacher salary increases. (See Florida Statute Section 1011.62(6)(b)(8) and 1011.685). FEFP also applies a District Cost Differential computed each year based on the Florida Price Index Level. (See District Exhibit 48). The Florida Price Index Level is "a comparable wage index that represents the relative cost of hiring comparable personnel among the State of Florida's school districts."

School Districts also receive funding from the State designated as Teacher Salary Increase Allocation, or "TSIA", which was created in 2020 for the primary purpose of assisting School Districts in their recruitment efforts, as well as assisting in the retention of classroom teachers and other instructional personnel. TSIA cannot be the sole source of funding for educator raises. However, 80%k of the TSIA funds must be used to increase and maintain the minimum base salary set at \$47,500. Notwithstanding the important nature of TSIA funds, the District is permitted to budget for salary increases and may look to other funding sources to support its

efforts. As discussed in greater detail below, the Union maintains that since TSIA went into effect in July 2020, the District has refused to consider that aside from State provided resources, other funding options that could provide additional funding for instructional salaries.

The record reflects that since the inception of Section 1011.71(9) in 2010, which permitted Districts to levy funds, the District has done so for the purpose of preserving academic programs, retaining highly qualified teachers, and the continuation of protect arts, athletics and student activities. Notably, the millage rate will expire unless extended by the voters on June 30, 2023. The record reflects that since this millage was adopted in 2010, it has only been used as part of the budget and has not used for additional salary increases.

Notably, the millage rate has decreased since 2010 when the rate was 7.673 mills to its current 2022 rate of 6.737 inclusive of an additional 1.000 mill as approved by the County. (See District Exhibit 29). Over the same time period, the required local effort millage rate for the District has decreased from 5.420 mills in fiscal year 2011 to 3.480 mills in ad valorem property taxes for every \$1,000 in property value for fiscal year 2021.

Finally, to compute fair salary increases, the FEFP applies a District Cost Differential based on the Florida Price Index Level, a “comparable wage index that represents the relative cost of hiring comparable personnel among the State of Florida school districts”. The higher the number on the Florida Price Index Level, the more expensive it is for a school district to hire an employee.

To summarize, the District receives monies from the State that are substantially uniform on a per-student basis and with such monies, the District is required to operate the County’s public schools in accordance with all applicable Federal and State Laws and Regulations.

E. The District’s 2021-2022 Budget

As noted and discussed above, funding for school district relies in large part on student enrollment. In this regard, the record reflects that in 2020-2021, the District was held harmless by

the State of Florida when the District fell short of its anticipated enrollment of 209,000 students with an actual enrollment of 200,851 students. Moving forward, based on its anticipated enrollment figure, the District received \$54.6 million in funding for the 2020-21 fiscal year. As a result, the District will receive its funding for any particular year based on actual student enrollment. Notably, additional funds anticipated for McKay and Family Empowerment Scholarships did not materialize for 2020-21. Even had the District received such funds, they could not be used to support teacher salary increases.

The record reflects that class size categorical funds created to reduce class sizes to those required by Article IX, Section 1 of the Florida Constitution fell from \$239,347,794 in fiscal year 2021 to \$213,799,162, a decrease of \$25.5 million dollars notwithstanding a projected increase of approximately 4000 students. This point notwithstanding, the District remained obligated to meet the class size obligations set forth in the Florida Constitution.² In addition to absorbing this loss of funds, the record reflects that the District remained obligated to contribute to the Florida Retirement System in the amount of about \$8.4 million.

In terms of the impact of the District's current funding reduction of approximately 3.5%, Richard Collins, the District's former Director of Finance and Budgeting testified as follows:

“Q. And, finally, since you were a consultant working on this budget, in these appropriations, in your opinion, is there any way that the District could afford 60 million dollars in recurring raises within these existing appropriations, as you've seen this budget?

A. The problem this year, in particular, is that the per student funding actually decreased by three and a half percent under last year's levels, which means that there really aren't any recurring dollars available for this year, other than the categorical dollar specifically appropriated for salary increases. So there's actually a decrease in per student funding this year throughout the FEFP.” (Hearing Transcript: Page 323, Line 14 – Page 324, Line 1)

There was no consistent and credible testimony to overcome Mr. Collins' conclusion.

Accordingly, I find Mr. Collins to have been a credible witness for the purpose of describing the

² Article IX Section 1 of the Florida Constitution sets the following class size limitations: Kindergarten to 3rd Grade: 18 Students; 4th to 8th Grade 22 Students and 9th to 12th Grades 25 Students.

District's current financial status, as well as the District's inability to fund the approximately \$60 million dollars in recurring funds to support the Union's wage proposal without taking drastic steps to do so such as cutting programs and/or staff. While the Union maintains that the District has a potential source of funding as a result of "[t]he District's decades long practice of budgeting expenditures that never come to fruition", Mr. Collins credibly testified that there was no evidence that the District was over budgeting because its financial condition ratio (the amount of assigned and unassigned reserves divided by current revenues) had decreased between Fiscal Years 19 and 21. In this regard, Mr. Collins gave the following response to the following question:

"Q. So we heard yesterday the Union's witnesses talking about how the District continuously over budgets. What would the financial condition ratio indicate to you about whether or not the District is over budgeting?"

A. If the financial condition ratio is declining, it means that the District is utilizing or using resources faster than the resources are coming in. So that means that there are no resources -- no resources available for any other purpose. In other words, essentially, your uses are greater than your sources in that particular year, and, therefore, there are no additional resources available."

[See TR 311, L22 & TR 312, L8]

While the Union correctly noted that funds could be made available through "creative methods" such as budgetary cuts, looking for efficiencies and any other creative methods to funding recurring raises for its educators, Mr. Collins warned that use of these creative methods could have detrimental consequences. In this regard, Mr. Collins gave the following response to the following question posed by the Union:

Q. Okay. So there's not money in the actual general fund to pay for 60 million dollars in raises, correct?

A. Well John, I can't say there isn't because, you know, you have money appropriated for staff -- primarily for staff and for other, you know, supplies and things like that.

Q. I guess, the better way to ask it is, in order to do that, you would have to make some cuts to employees and cuts to supplies and cuts to your equipment in order to pay for that, right?

A. That is correct. That is correct. There would have to be a reprioritization, where you would basically eliminate staff in order to free up recurring dollars to pay for a recurring cost.

(See Tr 324, L2-16).

Heeding Mr. Collins' wise advice, this Magistrate is not prepared to recommend the salary increase sought by the Union where the funding for such would be paid for primarily through staff and program cuts.³

F. The District's Wage Proposal

The District's proposed increases for its instructional staff is as follows:

- A one-time \$2,500 supplement for teachers. A supplement is credited to retirement under §1012.22(1)(c)(1)(g), Fla. Stat., and accordingly, those unit members nearing retirement, will be credited an extra \$2,500 in compensation for retirement purposes in determining the average of their highest five or eight years of service under §121.021(24)(a)(1)-(2), Fla. Stat.
- For those non-classroom teachers who did not receive the disaster relief payment of \$1,000 from the Governor, the District has agreed to fund a \$1,000 bonus.

The foregoing amounts represent one-time payments and accordingly, are non-recurring. The District maintains that with the supplement, bonus/disaster relief payment, and performance pay it is willing to fund, the vast majority of the District's teachers will receive \$3,675 in increased pay. Accordingly, the District notes that if a teacher makes \$47,500, the proposed amount of

³ It is also worth noting that the District has earned the highest bond rating of school districts in Florida from Moody's, Standard and Poors and Finch. Were the requested salary increases, a recurring expense, require the District to dip into its fund balance, such an act could have dire consequences. In this regard, the District is progressive and growing and should its fund balance fall to a point that adversely impacts its ability to borrow money at attractive interest rates, such could very well have a negative impact on the District's bond rating.

bonuses, supplements, and performance pay of \$3,675 would amount to 7.7 percent of his/her salary. Likewise, the District notes that if a teacher makes \$65,000, the proposed amount of bonuses, supplements, and performance pay would amount to 5.65 percent of his/her salary.

G. Years of Employment Supplement [Longevity]

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

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

The record reflects that the cost of the Union’s Longevity proposal is approximately \$14.39 million dollars per year. (See District Exhibit 38). The Union has not disputed this cost estimate.

It is the Union’s position that a failure to provide this supplement will perpetuate harsh inequities among teachers. In this regard, the Union notes that over time, several factors have contributed to what the Union deems “disproportionately lower wages and lower salary increases for veteran teachers”. It is the Union’s position that one factor that has contributed to the current salary compression is the State Law increasing the base teacher salary to \$47,500.

Here, the Union notes that when reviewing salary and wage data, it becomes evident that newly hired teachers are earning the exact same as the average 5-year employee. (See Union Exhibit 10). Moreover, the Union adds, the average difference between a new hire and an employee with 15 years of experience “is a mere \$6,000”. Similarly, the Union notes that with the starting salary at \$47,500, the average employee with 30 years of experience is still earning only \$67,500.

The Union maintains that the impact of these discrepancies is evident when one compares the salaries of real employees. For those reasons discussed above, I see merit in the Union’s concern.

I. RECOMMENDATION ON WAGES AND LONGEVITY SUPPLEMENT

For those reasons noted and discussed above, it is RECOMMENDED as follows:

1. That the District's proposed increases be accepted and
2. That the Union proposed wage increases be denied, and
3. That the Union's proposed Years of Employment Supplement, discussed in greater detail below, (Longevity) be accepted.

Interest of the Public, Including the Members of This Bargaining Unit

The foregoing Recommendations on Wages and Longevity, in the opinion of this Magistrate, reflect a balanced approach in that the cost factor is well within the ability of the District to pay.

While this Recommendation did not provide all that the Union was seeking, in the end, when comparing the net results of these recommendations, the bargaining unit fares well among the comparables particularly given the fact that the District was able to ensure that every teacher in the District was raised to a minimum salary of \$47,500. In so doing, the record reflects the following increases given to members of this bargaining unit:

- 1,627 teachers received raises of greater than \$6000 per year;
- 268 teachers received raises of more than \$5000 per year;
- 852 teachers received raises of more than \$4000 per year;
- 324 teachers received raises of more than \$3000 per year;
- 815 teachers received raises of more than \$2000 per year;
- 626 teachers received raises of more than \$1000 per year;
- 836 teachers received raises anywhere up to \$1000 per year and
- The remaining 6,417 teachers received a 1.27% increase in their salary.

(See District Exhibit 5)

II. DISCUSSION AND RECOMMENDATION ON HEALTH INSURANCE COVERAGE

The Current Contractual Language addressing Health Insurance is as follows:

Appendix C, Health Insurance Coverage, provides as follows:

- B. Employees shall be able to choose from in-network and out-of-network doctors, hospitals and pharmacies. In addition, a select in-network option shall be available.
 - 1. The Board agrees to provide, a health insurance program with various health plan options through the Orange County Public Schools Employee Benefits Trust. Fifty percent of the cost will be paid by the Board for half-time employees who elect coverage. Annual individual premium cost increases exceeding 8% over the prior year will be equally shared by the District and employees. Such shared costs may be accomplished by either employee premium cost sharing or plan revisions, or both.

- C. Annual out-of-pocket maximums and deductibles:

2019-20 Health Insurance Plans					
Plan A (Local Plus Network)		Plan B (Open Access Plus HRA)		Plan C (OAPIN)	
No premium cost for Employee Only Coverage (full-time)		PPO Like: Open Access Plus HRA (In and Out of Network)		Employee Paid Premium \$18.64/paycheck, \$373/year	
In-Network Benefits					
Out of Pocket Maximums	Medical: \$5,500 Individual/\$10,500 Family	Out of Pocket Maximums	Medical: \$5,000 Individual/\$10,000 Family	Out of Pocket Maximums	Medical: \$5,000 Individual/\$10,000 Family
	Pharmacy: \$1,000 Individual/\$2,000 Family		Pharmacy: 1,000 Individual/\$2,000 Family		Pharmacy: 1,000 Individual/\$2,000 Family
Deductibles	\$250 Individual/\$500 Family	In-Network Deductibles	\$2,000 Individual/\$1,000 Family	Deductibles	\$100 Individual/\$200 Family
Out of Network Coverage					
		Out of Network Deductibles	Medical: \$3,000 Individual/\$6,000 Family		

	Out of Network Maximums	Medical: \$9,000 Individual/\$18,000 Family Pharmacy: Unlimited	
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- * Family deductibles and out-of-pocket maximums are two (2) times the individual deductible and out-of-pocket maximum amounts.
- ** In-network out of pocket annual maximums shall include any deductibles, copayments, and coinsurance. Once a member has met their out-of-pocket maximum, the plan will pay 100% of the covered charges for the remainder of the plan year.

In-network and out-of-network deductibles and out-of-pocket maximums shall accumulate separately. Deductibles paid for services rendered during the last three months of a plan year (July, August, and September) shall apply toward the next plan year.

3. In the PPO-like Plan B, HRA product in-network co-insurance shall be 80 percent (with the member paying 20 percent) and out-of-network co-insurance shall be 70 percent (with the member paying 30 percent) of the in-network fee schedule.
4. In-network copayments for the contracted provider network for each Primary Care Physician (PCP) and for each Specialist visit covered by the healthcare products are covered as listed in the chart below.

Plan Name	Plan A: Local Plus In-Network	Plan B: Open Access Plus HRA In and Out of	Plan C: OAPIN
Specialist and Primary Care Visit Copays (in-network only)			
Primary Care (PCP)	\$20	\$30	\$25
Specialist	\$35	\$65	\$45
Specialist CCN*	N/A	\$45	N/A

* Cigna Care Network Specialist

5. For plan year 2019-20 the PPO-like, Plan B: Open Access Plus HRA In and Out of Network and HMO-like Plan C: OAPIN Plan shall provide a prescription plan with a \$7 charge for generic drugs for a 30-day supply; a \$40 charge for formulary drugs for a 30-day supply; and a \$75 charge for drugs more than \$1,500 for a 30-day supply at participating network pharmacies. Certain non-formulary drugs may be provided at a participating network pharmacy for a \$60 charge for a 30-day supply when medical necessity has been

verified with a Prior Authorization form filed with the Pharmacy Benefit Management Company. See your physician for step therapy details.

For plan year 2019-20 the HMO-like, Plan A: Local Plus In-network product shall provide a prescription plan with a \$7 charge for generic drugs for a 30-day supply; a 10% coinsurance/minimum \$40 co-pay charge for formulary drugs for a 30-day supply; a 10% coinsurance/minimum \$75 co-pay for medications more than \$1,500 for a 30 day supply at participating network pharmacies. Certain non-formulary drugs may be provided at a participating network pharmacy for 50% coinsurance/minimum \$60 co-pay charge when medical necessity has been verified with a Prior Authorization form filed with the Pharmacy Benefit Management Company. See your physician for step therapy details.

Maintenance medications must be purchased through the mail order at Caremark.com or via the CVS Pharmacy Retail 90 program. Members shall be charged the full cost of the medication if mail order or CVS Retail 90 is not utilized for maintenance medication. In Plan B: HRA employees using out-of-network pharmacies for prescription drugs will pay copay plus the difference in cost between out-of-network and network cost to the plan (excluding maintenance medications which must be purchased at mail order). There are no out of network benefits for pharmacy in Plan A: Local Plus In-Network or Plan C: OAPIN.

6. Hospice treatment in network coinsurance shall match coinsurance amounts in the plans.

7. Second opinions are covered as outlined in the plan.

8. Emergency Room visits copayments are as follows:

- HMO-like products Plan A and C: \$300
- PPO-like products Plan B: \$300 plus co-insurance

Emergency Room copayment shall be waived if the plan member is admitted to the hospital. If a plan member has a documented referral to the ER by an urgent care center or physician and is not admitted to the hospital, he/she may use the appeal process as outlined in the Plan Document for possible reimbursement of the Emergency Room copayment.

9. Advanced Radiological Imaging copayments are as follows and apply in outpatient settings as well as in the Emergency Room. Advanced Radiological Imaging includes but is not limited to MRIs, CT scans, PET scans, and radiological stress tests.

- HMO-like products Plan A and C: \$100
- PPO-like products Plan B: \$100 plus co-insurance

C. Medically necessary home health care services shall be provided through a contracted provider network as specified in the plan.

- D. In both the PPO-like and HMO-like product child health supervision services in network shall be \$20 per visit.
- E. A mammography benefit shall be provided. Preventive care will be covered at no cost to the member. The services must be coded from the provider as a preventive.
- F. The daily room rate allowance shall be at least \$175 for out-of-network hospitals.
- G. A pre-certification/utilization review program will be utilized, requiring the submission of a written form to the Third-Party Administrator five working days prior to non-emergency surgery (in- or out-patient). Concurrent review will be performed during admission to a hospital. Pre-certification will be mandatory for non-emergencies and could result in a reduction in covered benefits if not followed. The Third-Party Administrator (TPA) must be contacted within 48 hours following any emergency admission.
- H. In cases involving life-threatening illnesses where the recommended experimental or investigative treatment or procedure is not covered by the Plan Document, a case management review may be requested by the affected member.
 - 1. Such requests shall be referred to a medical review panel to review the recommended alternative experimental or investigative treatment or procedure. The five members of the panel shall be: a representative from the Association, a representative from the Board and three medical representatives agreed to by the parties. The Association and the Board representatives shall have no voting power. These five panel members shall mutually agree on other panel members from medical specialties who might be needed to resolve each special case.
 - 2. An experimental or investigative treatment or procedure may be recommended by the panel if all of the following criteria are met:
 - a. The illness is life-threatening.
 - b. The experimental or investigative treatment or procedure is recommended as having merit by a licensed board-certified specialist, in lieu of conventional medical procedures recognized by a national medical authority such as (but not limited to) the National Institute of Health, the American Medical Association, or the Food and Drug Administration.
 - c. The experimental or investigative treatment or procedure is conducted by a Joint Commission accredited hospital and a licensed board-certified specialist.
 - d. The experimental or investigative treatment or procedure is recognized as having merit by national medical experts.

- e. The affected employee must fit the provider’s qualifications to be a candidate for such treatment or procedure.
- f. The affected employee is fully informed of the treatment or procedure and acknowledges that the treatment or procedure is experimental or investigative.
- g. The affected employee requests to participate in the treatment or procedure after analyzing the benefits and the risk.

DISCUSSION

As an initial note, the District’s Health Insurance program is self-insured meaning that the District bears the risk of loss and unlike a “traditional” insurance program offered through a noted insurance company/agency, there is no sharing of any loss with other employers. The move to a self-insurance program occurred nationwide as Employers discovered a way to maintain good coverage for their employees while at the same time experiencing substantial savings. Historically, the record reflects that until fiscal year 2010-2011, the District provided fully funded insurance to its employees and accordingly, there was no out-of-pocket premium costs for its employees.

The Beginning of Employee Contribution to Their Health Insurance

As background, the Florida Department of Insurance Regulations (“Regulations”) regulates self-insurance plans including the plan offered by the District. As noted above, while a move to self-insurance plans provides savings to the District, it does so at a cost. In this regard, the Regulations require all self-insurance plans to have no less than sixty (60) days of claims in reserves. In this regard the Regulations provide, in relevant part:

“In order to obtain approval from the Office of Insurance Regulation of any self-insured plan for health, accident, and hospitalization coverage, each local governmental unit or consortium shall submit its plan along with a certification as to the actuarial soundness of the plan, which certification is prepared by an actuary who is a member of the Society of Actuaries or the American Academy of Actuaries. The Office of Insurance Regulation shall not approve the plan unless it determines

that the plan is designed to provide sufficient revenues to pay current and future liabilities, as determined according to generally accepted actuarial principles.”

The record reflects that in 2009, the Florida Department of Insurance determined that the District had insufficient funds to cover the sixty (60) days of claims as required by the Regulations. In order to comply with this requirement, the District was obligated to contribute \$6.7 million per year for four (4) years in order to provide a sufficient fund balance. Recognizing the substantial size of this contribution and the difficulty the District had with compliance, the District and Union agreed that bargaining unit employees would begin contributing toward the cost of their premiums. In this regard, the Parties agreed that those who selected the most expensive health plan would contribute \$372.80 toward their premiums each year. The record reflects that this employee contribution equated to about 4% of the premium amount, with the District covering the remaining 96%.

In a fairly recent article in *Modern Healthcare*, it was noted that Patient out-of-pocket costs increased up to 14%. This was a stark reminder that with many American Workers living paycheck to paycheck, even expensively insured families can face financial ruin as a result of routine illness and injury. This dilemma is reflected on a national scale with health care consuming nearly 20% of our gross domestic product and rising. Currently, Employer-sponsored health coverage is considered compensation, and the cost of health coverage has risen so quickly that there is little room for wage increases. This fact is reflected in the District’s health care program, where health care expenditures increased \$101.7 million dollars in the past 6 years. While the District and the Union may disagree on numerous issues, they both agree that the District’s health insurance costs continue to rise. In this regard, the record reflects that even with increased premium contributions, the District experienced a deficit of \$446,907 that was obligated from the general fund for the stabilization reserve in order to meet the required sixty (60) days of claims.

While the District has experienced increased costs in health coverage, so too have employees. In this regard, while the District covered the majority of health insurance increases in previous years, the District did not do so for 2021-22. Noting that the District has proposed salary increases of approximately \$2.3 million, which would be fully funded by the State, while the

District's proposed one-time supplement would assist in covering the cost of health care increased this year, as a one-time supplement, the District's proposed insurance contribution increases would become a permanent fixture which the one-time supplement would not cover. Moreover, given my Recommendation rejecting the Union's proposed wage increases, and given the net result created by current employee out-of-pocket payments for health care, permanent increases in health insurance contributions would have a negative effect on employee take home pay such that employees would be taking home less money than they did prior to any recommended increase in health insurance contributions.

Finally, it is important to note that our Country is just beginning to break free from the negative effects caused by the pandemic. During this time, the record reflects, and there is no dispute, that bargaining unit members put their own health at risk by continuing to perform their teaching duties with students on an in-person basis. In addition, the record reflects and there is no dispute that numerous teachers spend their own money to ensure that their student's educational and safety needs are met. Moreover, the record reflects that many bargaining unit members are forced to work more than one job in order to meet the needs of their family budget.

To this Magistrate, it would be unconscionable to recommend that bargaining unit members pay more than the status quo for health care. While there may be a time to do so, now is surely not the time.

For those reasons noted and discussed above, this Magistrate recommends **NO CHANGE** to the current health care coverage.

III. Registered Nurses, Substitute Pay and Supplement

Proposals from the Union and the District are as follows:

Article	Union Proposal	District Proposal
Appendix F. Registered Nurses, Substitute Pay & Supplement	<input type="checkbox"/> Provide a supplement for Lead Nurses based on years of employment with OCPS	<input type="checkbox"/> No Supplement

The record reflects that the Union’s proposal consists of two items:

- Appendix F, Section H, “Nurses who are asked to cover school clinics in lieu of a substitute nurse will receive the average rate of pay for an agency registered nurse to cover a school clinic.” There is a mutual agreement by the Parties on this language and it affects seven District nurses.
- A supplement⁴ for lead nurses contingent upon years of service ranging from \$3795 for 0-3 years of service, to a maximum of \$5313 for 15+ years of service.

The Union’s proposal seeks to provide a supplement to Lead Nurses, or District Registered Nurses, who the Union maintains have numerous duties and responsibilities above and beyond those of other nurses across the District. Currently, there are seven nurses in this classification, who serve as liaisons between schools and the District. The Union notes that by their very nature, Lead Nurses have a greater workload and more responsibilities than “regular” school nurses. In this regard, the Union notes that while other nurses are assigned to one school, Lead Nurses are assigned a case load of up to sixty schools. Moreover, the Union adds, Lead Nurses are charged with training school-based nurses and often have upwards of 100 individuals who are working under their professional license. The record reflects that Lead Nurses train other nurses to administer diabetes medications, to look for signs and symptoms of stroke, and to

⁴ The Supplement Handbook defines “Supplement” as “additional salary for which an instructional employee performs extra duties and/or responsibilities before, during or after the regular workday.” See Article XV, Section B(4) of the CBA.

identify sickle cell or cardiac conditions in students. In addition, Lead Nurses monitor other nurses to 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.

The Union notes and the record supports the fact that notwithstanding the added responsibilities and accountability expected from Lead Nurses, Lead Nurses receive the same salary as that of the school-based nurse. While the District notes that Lead Nurses are not performing “extra duties” [See Tr 209], the fact remains that the regular duties of a Lead Nurse include duties and responsibilities not assigned or expected from the District’s “regular” nurses. These added duties and responsibilities deserve, in the opinion of this Magistrate, additional or supplemental salary.

RECOMMENDATION

It is for the foregoing reasons that I RECOMMEND that the Union’s proposal be accepted as modified. In this regard, this Magistrate recommends a 5% supplement, that is, 5% of the Lead Nurse’s base salary.

IV Work Year, Summer Employment [Article XV(J)(6)

Article	Union Proposal	District Proposal
<p>XV(J)(6) Work Year, Summer Employment</p>	<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)

As noted above, the Union proposes that school psychologists be considered for summer employment before other non-bargaining unit members. In this regard, the Union requests that elementary Counselors be assigned five (5) days of summer work per year and that Middle and High School Counselors be assigned twenty (20) days of summer work per year and that all such dates be mutually agreed upon between the Administrator and the employee. The District adopts

substantially the same language, but inserts the word “may” as a reflection of the District’s position that all such assignments fall under the Management’s Rights rubric pursuant to Section 447.209 of the CBA. The District further notes that not all schools may not need Counselors to work the number of days proposed by the Union due to enrollment numbers.

In advancing proposals such as this, the Union bears the burden of showing that there is a need to fill in where the current scheduling process falls short. Respectfully, based on the testimony from Tina Bullet, the Union’s witness, the Union has not satisfied its burden. In this regard, Ms. Bullet gave the following response to the following question posed by Mr. Palmerini:

Q. Just very briefly, so up until COVID, you did get 20 days a year?

A. Pretty much, yes.

Q. And you said that you got 11 days from the District, but your principal gave you an additional amount of days. How many days was that?

A. I received twenty days total. So an additional nine.

Q. In 2020, when you got seven, how many days did you actually end up working?

A. I also worked twenty days that year.

Q. So your principal made up for whatever days the District did not provide, correct?

A. Correct.

Q. And do you know if before 2020 the District provided 20 days and the school budget didn’t have to incur any cost or not?

A. So from the communication that I saw, it all appeared to come from the District, not from the principal’s budget. . . .

Q. All right. And with respect to other schools, other than what you were told, do don’t have any direct knowledge as to how many days counselors are eligible to work, correct?

A. Only from what other counselors have told me from other schools.

[See TR 226-227].

There were no other witnesses who gave testimony regarding the number of days granted to psychologists and counselors and accordingly, the only true evidence we have is that given by Ms. Bullet in her testimony. Upon careful review of this issue particularly the testimony given by Ms. Bullet, it is apparent that while the District has been consistent in granting the requested number of days, whether through the District's budget, the principal's budget, or some combination thereof, the Union's proposal reflects its concern that there may come a time when these days are not granted. However, based on the record before me, while anything is possible, in the instant matter, it appears very unlikely. In this regard, as properly noted by the Union, counselors and psychologists perform a multitude of crucial functions during the summer months that given the nature of their job duties and responsibilities, they would not be able to perform during the school year. Such tasks include, but are 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. [See TR 221-223]. Clearly, it is in the District's best interest that counselors have the required time to perform these important tasks and based on the record before me, I see no evidence that the District intends to stray away from what it has done in the past. Should that change, it will be a proper time for the Union to raise this proposal.

RECOMMENDATION

Based on the foregoing, the Union's proposal is NOT RECOMMENDED at this time.

V. 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 Union’s proposal in the above matter is as follows:

9. Employees who work in the summer school program shall earn sick leave as follows:

PST [Paid Service Time] Hours Worked During Summer	Earned Sick Leave Hours
0.00 – 36.75	0.00
36.75 – 110.25	3.75
110.26 – 183.75	7.50
183.76 – 257.25	11.25
257.26 – 333.75	15.00
333.76 – 407.25	18.75

10. Sick Leave Donation

a. Any district employee may authorize his or her spouse, child, parent, or sibling who is also a district employee to use sick leave that has accrued to the authorizing employee.

b. Any district employee may authorize any district employee to use sick leave that has accrued to the authorizing employee as follows:

The recipient must provide documentation, by the treating physician, of the illness, accident, or injury for which leave is otherwise authorized.

i. The recipient must provide documentation, by the treating physician, of the illness, accident, or injury for which leave is otherwise authorized.

ii. The recipient must require a minimum of two sick leave days to be eligible to receive donated sick leave.

- iii. Any unused transferred sick leave shall be returned to the authorizing employee whose donated sick leave has not yet been used.
 - iv. The employee who authorizes the donation must retain at least a ten-day balance in his or her own sick leave account.
- c. The recipient of donated sick leave may not use the donated sick leave until all of his or her sick leave has been depleted, excluding sick leave from a sick leave pool.
- d. Donated sick leave shall have no terminal value.” (See Union Exhibit 4c)

It is the Union’s position that the foregoing proposal simply incorporates the current practice for sick leave accrual over the summer and that doing so comports with the practice in other School Districts. The Union notes that the importance of this proposal is to make employees aware of the accruals that they are entitled to so that they are allotted appropriately. The second change proposed by the Union would permit employees to donate their own sick time to other bargaining unit employees. The District notes that it can agree to Subsection 9 as proposed by the Union except for the award of 18.75 hours of leave since such proposal conflicts with State Law. In this regard, the District sites to Florida Statute Section 1012.61(2)(a)(1) which provides as follows:

“Each member of the instructional staff employed on a full-time basis is entitled to 4 days of sick leave as of the first day of employment of each contract year and shall thereafter earn 1 day of sick leave for each month of employment, which shall be credited to the member at the end of that month and which may not be used before it is earned and credited to the member. Each other employee shall be credited with 4 days of sick leave at the end of the first month of employment of each contract year and shall thereafter be credited for 1 day of sick leave for each month of employment, which shall be credited to the employee at the end of the month and which may not be used before it is earned and credited to the employee. **However, each member of the instructional staff and each other employee is entitled to earn no more than 1 day of sick leave times the number of months of employment during the year of employment.**”

(Emphasis added by the District)

The foregoing language describes the sick leave entitlement for full-time instructional staff “each contract year.” To this Magistrate, a “contract year” equates to a school year. Currently, Florida operates on a 180-day school year, equivalent to a period of 10 months. Accordingly, I read the

noted statutory language as applying to this 10-month period. Therefore, those days, weeks and months making up the summer school calendar fall outside the language of Florida Statute Section 1012.61(2)(a)(1) as evidenced by the current practice utilized for sick leave accrual during the summer months.

Notwithstanding the foregoing, to this Magistrate and to be fair, while I believe that a teacher is entitled to earn sick leave for work performed during the summer months, said teacher should earn no more than he/she was eligible to earn during the regular school year – namely, one (1) day or seven and one-half (7 ½) hours per month. Accordingly, a teacher should be entitled to earn a maximum of fifteen (15) hours of sick leave time for their two (2) months of summer work.

RECOMMENDATION

It is for the foregoing reasons that I RECOMMEND that the Union’s proposal be adopted to the extent that the maximum earned number of sick leave hours does not exceed fifteen (15.0). If adopted by Orange County, Orange will not be the sole County in Florida with this language since others like Escambia County and Hendry County have adopted similar language.

VI. Salary, Method of Payment, Article XVI(F)(1)-(2)

The Union proposes that bargaining unit members have two options for receiving their checks:

1. Receiving 22 checks paid through the school year, or
2. Receive 26 checks paid through the school year and the summer months.

In response to the Union’s proposal, the District proposes the following:

“These employees should be placed on deferred pay status and a percentage of the employee’s pay will be reserved for payment after the final paycheck of the year. These employees shall receive their regular salary in twenty-two (22) biweekly installments, and the remaining reserved net money shall be divided by four and paid bi-weekly over the summer.”

Director of Labor Relations Leigh Ann Blackmore testified that the foregoing method currently exists in the District's payroll system and believes that it would meet the Union's needs. While the Union rejected this method, it has not suggested a reasonable alternative. Moreover, Ms. Blackmore testified that payment in the method suggested by the Union could have a detrimental impact on teachers as a result in a delayed payment process where payment would not be made for one month or more after the work was completed, resulting in smaller paychecks since the payroll period has been stretched over a 26-week period.

Based on the record before me, it is apparent that bargaining unit members can achieve what they desire through the 26-week deferred payment method which would in turn provide biweekly pay over the summer months.

RECOMMENDATION

For those reasons noted and discussed above, the District's proposed language is **RECOMMENDED**.

CONCLUSION

The foregoing Report and Recommendation provides a balance approach that addresses, to the best extent possible, the stated needs of the parties in a way that comports with Florida Statute Section 447.405. I wish the Parties the very best moving forward.

Dated: **November 6, 2021**



Dennis J. Campagna
Special Magistrate