In the Matter of Impasse Between:

Hillsborough Classroom Teachers Association

AND

Hillsborough County School Board

PERC Case Number: SM-2022-019

Before: Special Magistrate James D. Stokes

Brief Submitted on Behalf of

Hillsborough Classroom Teachers Association

Dated: January 30, 2023

For the Union:

Graham Picklesimer,
Executive Director

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Introduction and Background

The School Board of Hillsborough County ("Board" or "Employer") is the governing body of Hillsborough County Public Schools ("HCPS" or "District"), which educates about 230,000 students with an employment force that includes roughly 14,000 certificated instructional personnel, 2,400 paraprofessional employees, and 1,000 clerical employees. All of these employees are represented by the Hillsborough Classroom Teachers Association ("HCTA" or "Union"), with the certificated instructional employees forming a single "Instructional" bargaining unit, and the paraprofessional and clerical employees, who each form their own bargaining units, covered by a single "ESP" ("education support personnel") collective bargaining agreement. The Union's collective bargaining relationship with the Employer dates back to 1975.

In protracted negotiations during 2021-2022, the Union agreed to the Employer's proposal to not grant employees experience credit during the 2021-2022 year for work performed during the 2020-2021 year and the attendant salary adjustment—commonly referred to as a "step"—but instead pay employees a non-recurring supplement equivalent to the amount of the step increase. Therefore, the Union's strategic objective in 2022-2023 negotiations was to secure not only the experience credit due in 2021-2022 but lost during 2021-2022 negotiations, but the experience credit employees were due in the 2022-2023 year.

Negotiations on an economic package for members of the Instructional and ESP units began on June 6, 2022. For several bargaining sessions, the Union held firm to its position that employees should receive two years of experience credit, and the Employer held firm to its position that not only would it refuse to provide experience credit for work performed in 2020-2021, but it would also refuse to do so for work performed in 2021-2022. Feeling that little movement was likely to be made with respect to accomplishing its strategic objective, the Union declared impasse on July 28, 2022. In a subsequent bargaining session on August 29, the Employer changed its offer to include granting one year of experience credit, and a non-recurring supplement equivalent to the step increase associated with the second year of experience credit. While a variety of other economic issues were successfully resolved, this critical issue among others was brought to the Special Magistrate at a hearing on December 8, 2022, in Tampa, Florida.

Section 447.405, Florida Statutes, enumerates factors “to be given weight by the Special Magistrate in arriving at a recommended decision.” Of relevance in the instant matter are the interest and welfare of the public, the availability of funds, and comparison of the Union bargaining unit’s salaries to their counterparts in school districts in the “local operating area” and school districts of similar size. The Union believes careful analysis of these factors supports its position with respect to the issues at impasse.

Issues

Instructional Unit

1. *Should eligible bargaining unit employees be awarded a second step increase effective July 1, 2022?*

   - The Union's position is that the answer should be "yes."
   - The District's position is that the answer should be "no" and that employees should instead be paid a one-time supplement equivalent to the amount of the second step increase.

2. *Should supplemental pay in the amount of $1,000, $2,000, or $3,000 be granted to employees whose highest degree in their area of certification is a Master's, Specialist, or Doctoral degree, respectively?*

   - The Union's position is that the answer should be "yes."
   - The District's position is that the answer should be "no."

3. *Should instructional employees have the option to receive an additional $30 per hour when required to receive additional students in their classes due to split classes, doubled-up classes, or to cover classes during their planning time?*

   - The Union's position is that the answer should be "yes."
   - The District's position is that the current practice should be maintained, under which employees may receive either compensatory time or the highest hourly rate for a substitute teacher, and only to cover classes during planning time.

ESP Unit

1. *Should eligible bargaining unit employees be awarded a step increase effective July 1, 2022?*

   - The Union's position is that the answer should be "yes."
   - The District's position is that the answer should be "no" and that employees should instead be paid a one-time supplement equivalent to the amount of a step increase.

2. *Should supplemental pay in the amount of $1,000, $2,000, or $3,000 be granted to employees whose highest degree is a Master's, Specialist, or Doctoral degree, respectively?*

    - The Union's position is that the answer should be "yes."
    - The District's position is that the answer should be "no."

3. *Should paraprofessional and assistant teacher employees have the option to receive an additional $10 per hour when required to supervise students in a substitute teacher capacity?*

    - The Union's position is that the answer should be "yes."
    - The District's position is that the current practice should be maintained, under which employees receive an additional $4.04 per hour for supervising students in a substitute teacher capacity.

Comparison of Salaries with Similar 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.*[1]

The Special Magistrate's analysis should be based on the comparable public employers submitted by the Union.

The Union submitted three classifications of comparable public employers:

1) Local Operating Area (Contiguous Districts): Manatee, Pasco, Pinellas, Polk
2) Local Operating Area (Tampa Bay Region): Citrus, Hernando, Manatee, Pasco, Pinellas, Polk, Sarasota
3) Similar Governmental Bodies of Comparable Size: Broward, Dade, Duval, Orange, Palm Beach, Pinellas

In the resolution of impasses between public school districts and unions which represent them, the "Local Operating Area" provision of statute has traditionally meant public school districts in contiguous counties. However, since many residents commute between Hillsborough County and not only neighboring districts, but Citrus, Hernando, and Sarasota Counties, the Union believes it is worth comparing HCPS salaries to school districts in these other counties as well. The Union submits that the appropriate comparable districts under the "similar public employee governmental bodies of comparable size" criterion are the school districts in those

[1] Section 447.405, Florida Statutes

counties which, like Hillsborough County, house cities of significant urban density that anchor metropolitan statistical areas (MSAs) of at least one million inhabitants:

- Broward – Ft. Lauderdale (Miami-Ft. Lauderdale-West Palm Beach MSA)
- Dade – Miami (Miami-Ft. Lauderdale-West Palm Beach MSA)
- Duval – Jacksonville (Jacksonville MSA)
- Hillsborough – Tampa (Tampa-St. Petersburg-Clearwater MSA)
- Orange – Orlando (Orlando-Kissimmee-Sanford MSA)
- Palm Beach – West Palm Beach (Miami-Ft. Lauderdale-West Palm Beach MSA)
- Pinellas – St. Petersburg (Tampa-St. Petersburg-Clearwater MSA)

To the extent that the District conducted a comparability analysis at all, it appears to have relied simply on what it describes as "Florida's Ten Largest School Districts."[2] Compared to the Union's list of comparable districts, the District's list excludes Citrus, Hernando, Manatee, Pasco, and Sarasota Counties, while it includes Lee County. The relevant statutory criteria do not justify the District's choice of comparable districts, nor did the District provide its own justification.

Any reasonable interpretation of the term "local operating area" must surely include districts contiguous with HCPS such as those in Manatee and Pasco Counties, and many reasonable interpretations would also include those in Citrus, Hernando, and Sarasota Counties, to which Hillsborough County enjoys close economic links through—among other factors—the exchange of significant numbers of daily commuters along a common transportation corridor that includes Interstate 75, U.S. Routes 41 and 301, and the Florida State Road 589 (Veterans Expressway/Suncoast Parkway). On the other hand, the Cape Coral-Ft. Myers MSA, which is coterminous with Lee County, is less than half the population of the smallest MSA (Jacksonville MSA) used in the Union's analysis.[3] Its school district educates roughly 100,000

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[2] Employer Exhibit 8

[3] 2020 U.S. Census data cited at https://en.wikipedia.org/wiki/List_of_metropolitan_areas_of_Florida

students, only about 43.5% of the roughly 230,000 students educated by HCPS.[4] There are simply no reasonable grounds for including Lee County in a comparability analysis of wages paid to HCPS employees.

The District failed to provide a substantive comparability analysis.

The sum total of the District's case regarding salary comparability was an observation by municipal advisor Jerry Ford that "Hillsborough…has the second highest average salary in the state."[5] This so-called "analysis" is deficient in many ways. It is only limited to classroom teachers; it says nothing whatsoever about non-classroom teachers, or about any of the support personnel classifications whose salaries are subject to the instant proceedings. It fails any reasonable test of robustness due to its reliance entirely on potentially misleading "average" salaries.[6] It fails to account for the unusually long workday and work year required of HCPS classroom teachers. It fails to consider cost of living or alternatively to explain why cost of living should not be considered. It fails to consider the appropriate comparable public employers under the relevant statutory criteria. It fails to distinguish between "local operating area" and "similar public employee governmental bodies of comparable size."

Moreover, financial advising and employee compensation are different fields requiring different areas of expertise—the District offered nothing to establish Mr. Ford's expertise in the latter which would qualify him to give an opinion on its compensation practices. In short, the District's arguments regarding salary comparability are entirely vacuous. The Special Magistrate should give them no weight in his recommendations.

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[4] Employer Exhibit 15, p. 4

[5] Transcript, 68:24-69:1. Presumably, Mr. Ford meant to say that Hillsborough had the second highest average salary among the ten largest school districts, as those are the only school districts listed on Employer Exhibit 8 from which he was reading at the time.

[6] The average salary contains no information about how many employees are above or below that average, where employees can expect to start their careers and finish their careers, or the evenness of their salary trajectory from the start to the finish of their careers.

Hourly rates better reflect true compensation than annual salaries.

Instructional personnel in HCPS work more hours in their contract year than their counterparts among all comparable districts.[7] The most common contract year for instructional personnel in comparable districts (and indeed, throughout the state) entails working 7.5 hours per day and 196 days per year, for a total of 1,470 hours per year. In HCPS, by contrast, employees work 8 hours per day and 198 days per year, for a total of 1,584 hours per year. This amounts to an additional 114 hours of work performed by the typical HCPS teacher compared to most of their peers around the state. It is self-evident that an employee who receives a $47,500 salary to perform 1,584 hours of work is less well-compensated than an employee who receives the same $47,500 salary to perform 1,470 hours of work. Recognition of this fact must underpin any analysis comparing HCPS instructional salaries against those of comparable public employers.

Cost of living is relevant in salary comparability determinations.

Dollars are not intrinsically valuable to employees. Their value is derived from the ability to exchange them for various goods and services. The rate at which dollars can be exchanged for a particular basket of goods and services varies from one location to another. The value of a dollar itself therefore varies from region to another—the so-called "cost of living." An employee who receives $47,500 in a region with high cost of living is effectively receiving worse compensation than an employee who receives $47,500 in a region with low cost of living.

To capture the differences in cost of living between Hillsborough County and other counties relevant to the instant analysis, the Union relies on the *Family Budget Calculator* tool published by the Economic Policy Institute[8], specifically, its figures for the cost of living necessary to support 1 adult and 0 children.[9] The District offered

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[7] Union Exhibit P, p. 8, relying on Union Exhibit A

[8] https://www.epi.org/resources/budget/, Union Exhibit D describes the methodology used to develop this tool

[9] Union Exhibit P, p. 10

neither an alternative means of accounting for cost of living, nor any other argument for how (or whether) to account for cost of living.

HCPS's employee wages lag comparable employers' considerably.

After adjusting for cost of living, data from the Florida Department of Education[10] show that, of the twelve comparable districts submitted by the Union for consideration, HCPS classroom teachers lagged behind those in all but one in terms of average hourly rate[11] and those in all but two in terms of median hourly rate.[12] The average monthly salaries for non-classroom teachers were below average among comparable districts as well,[13] particularly the large urban districts. The situation for non-classroom teachers becomes even worse when the length of the workday is controlled for, after which HCPS Guidance Counselors rank 12th out of 13, Librarian/Media Specialists rank 9th out of 13, School Psychologists rank 9th out of 13, and Social Workers rank 11th out of 13.[14] Non-instructional employees fare no better,

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[10] Union Exhibits B and C

[11] Union Exhibit P, p. 10

[12] Union Exhibit P, p. 12

[13] Union Exhibit P, pp. 17-18

[14] Multiplying monthly salaries in Union Exhibit P, p. 17 by the ratio of 8 (the Employer's workday for instructional personnel) to each comparator district's hours per day for its instructional personnel (see Union Exhibit P, p. 8), gives the following results:

District	Hours per Day	Guidance	Librarian/Media Specialist	School Psychologist	Social Worker
Broward	7.5	$5,584	$6,566	$6,216	$5,780
Citrus	7.75	$5,815	$6,530	$6,256	$5,906
Dade	7.333	$5,720	$6,711	$5,829	$5,667
Duval	7.333	$6,621	$7,041	$7,838	$6,558
Hernando	7.75	$5,415	$6,523	$5,931	$5,183
Hillsborough	**8**	**$5,099**	**$6,045**	**$5,941**	**$5,120**
Manatee	7.5	$5,830	$7,011	$7,777	$7,040
Orange	7.5	$5,425	$5,840	$7,379	$5,387
Palm Beach	7.5	$5,662	$6,266	$6,860	$4,681
Pasco	7.5	$5,000	$3,493	$4,913	$4,857
Pinellas	7.5	$5,605	$5,987	$5,739	$5,533
Polk	7.75	$4,963	$6,105	$6,133	$5,724
Sarasota	7.5	$6,898	$4,176	$8,430	$8,304
Average (Large Urban)		$5,769	$6,402	$6,644	$5,601
Average (Contiguous)		$5,350	$5,649	$6,140	$5,788
Average (Region)		$5,647	$5,689	$6,454	$6,078

as average monthly salaries in HCPS were below average across every employee category for which the Florida Department of Education collects data.[15]

Detailed analysis shows HCPS salaries lag those of comparable employers even without adjusting for cost of living.

The District solicited testimony from Mr. Ford to the effect that there are many possible ways to account for cost of living.[16] The only possible relevance of this testimony is to argue against the weight of the Union's salary comparability analysis, to the extent its findings rely on differences in cost of living. For this reason, the Union presented in its rebuttal a more robust salary analysis that does not rely on differences in cost of living. This analysis is derived from public records requests submitted to comparable districts[17] of lists of employees showing their position and their salary.[18] Employees with similar positions were compared by percentile (lowest paid employees being compared to other lowest paid employees, highest paid employees compared to other highest paid employees, etc.). The results showed:

1) About 55% of classroom teachers are below the averages among all three comparability groups, and about 60% are below two of the three;[19]
2) About 70% of non-classroom teachers are below the averages among all three comparability groups, and about 97% are below two of the three;[20]
3) 100% of paraprofessional/aide employees are below the averages among all three comparability groups;[21]
4) 100% of secretarial/clerical employees are below the averages among all three comparability groups;[22]

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[15] Union Exhibit P, p. 25
[16] Transcript, 72:15-73:3
[17] Dade is not included in this analysis, since the Union did not receive a response from Dade County Public Schools' public records department before the hearing.
[18] Transcript, 205:2-19
[19] Union Exhibit P, p. 40
[20] Union Exhibit P, p. 41
[21] Union Exhibit P, p. 45
[22] Union Exhibit P, p. 46

5) About 97% of Licensed Practical Nurses are below the averages among all three comparability groups, and 100% are below two of the three;[23]
6) About 55% of Registered Nurses are below the averages among all three comparability groups, and about 97% are below two of the three.[24]

Even without considering cost of living, the great majority of HCPS employees are underpaid relative to their counterparts in comparable districts.

HCPS is unique in its failure to offer advanced degree supplements.

Florida law distinguishes between a "grandfathered salary schedule," available to employees who hold a Professional Services Contract or Continuing Contract, and a "performance salary schedule," which is mandatory for any employee hired on or after July 1, 2014. [25] Advanced degree supplements are permitted under Florida law to be attached to the salaries of instructional employees on the performance salary schedule.[26] The only district in which employees on the performance salary schedule are not eligible for advanced degree supplements is Hillsborough.[27]

Although there are a few (less than 100 according to the testimony of Danielle Shotwell, the District's General Manager of Employee Relations[28]) instructional employees left who have not switched to the performance pay salary schedule, these amount to less than 1% of the instructional workforce. The overwhelming majority of employees do not have any form of advanced degree supplement available to them, and no employee hired now or in the future (or within the past eight years) has the

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[23] Union Exhibit P, p. 47
[24] Union Exhibit P, p. 48
[25] § 1012.22(1)(c)5., Florida Statutes, provides that "Employees hired on or after July 1, 2014… shall be compensated pursuant to the performance salary schedule."
[26] § 1012.22(1)(c)3., Florida Statutes, provides that "A district school board may not use advanced degrees in setting a salary schedule for instructional personnel or school administrators hired on or after July 1, 2011, unless the advanced degree is held in the individual's area of certification and is only a salary supplement."
[27] Union Exhibit P, p. 28, relying on Union Exhibit E
[28] Transcript, 102:6-14

option of choosing a salary schedule with additional pay for holding an advanced degree.

The Educational Reimbursement Supplement (ERS), which provides up to $12,000 to an employee who earns an advanced degree while in an instructional position over a four-year period,[29] is a poor substitute for a *bona fide* advanced degree supplement. It is of no value to employees who already held advanced degrees before becoming employed with the district.[30] It is of no value to employees for whom advanced degrees are required as a condition of employment (such as guidance counselors), and therefore impossible to earn *during* employment. It is temporary, which encourages employees to leave for other districts to continue earning compensation for their advanced degree after the ERS expires.

The Union's proposed advanced degree supplements of $1,000, $2,000, and $3,000 for employees holding appropriate Masters, Specialist, and Doctoral degrees, respectively, would still not even come close to the average values of such supplements in comparable districts. But it would be a step towards the norm among comparable school districts in Florida.

[29] Transcript, 137:3-21

[30] Transcript, 140:19-23

Ability to Pay

> *The factors…to be given weight by the special magistrate in arriving at a recommended decision shall include… (5) Availability of funds.*[31]

The District bears the burden of proving that it suffers from an inability to pay for the Union's proposals.

On June 28, 2022, in its very first response to the Union's initial bargaining proposals, the District pleaded an inability to pay.[32] The District is in possession of far greater evidence regarding its ability to pay than is the Union. Therefore, it should be expected to produce any such evidence which may exist. This principle, standard in the arbitration of interest disputes, is described in the classic text *How Arbitration Works* by Elkouri & Elkouri:

> *Employers who have pleaded inability to pay have been held to have the burden of producing sufficient evidence to support the plea. The alleged inability must be more than "speculative," and failure to produce sufficient evidence will result in a rejection of the plea.*[33]

The District's claims in support of its instant plea can be summarized as follows:

1) Compared to the other 9 largest school districts in Florida, HCPS has relatively little cash on hand[34], a relatively low "liquid" fund balance[35], and no voted operating millage.[36]
2) Cash on hand tends to be low in late fall before that year's property taxes begin to be received. If the district is not careful, it risks running out of money to make payroll, etc., especially in the event of a hurricane. [37]

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[31] § 447.405, Florida Statutes
[32] Transcript, p. 113, ll. 2-9
[33] *How Arbitration Works*, Frank Elkouri & Edna Asper Elkouri, 8th Edition, Ch. 22 p. 65, BNA, 2016
[34] Transcript, 67:8-10
[35] Transcript, 67:12-18
[36] Transcript, 67:19-24
[37] Transcript, 61:22-62:12

3) Having low amounts of cash on hand depresses the District's bond ratings and thereby increases its borrowing costs.[38] This is problematic when the District needs to issue a Tax Anticipation Note[39] (TAN)—as it did during the 2021-2022 year[40]—or any other form of debt.
4) Adoption of the Union's proposal would impose a perpetual $28 million recurring expenditure on the District's General Fund.[41] This would put the district at an operational deficit of at least $11 million for, at a minimum, the next five fiscal years.[42]
5) The District is currently making the maximum possible use of its flexibility under the law to transfer capital funds into the General Fund to defray operating expenditures.[43] Any attempts to use more capital funds in this way would result in another audit finding and various undesirable consequences.[44]
6) Elementary and Secondary School Emergency Relief (ESSER) funds are not recurring. The District has been able to grow its General Fund balance by temporarily offloading certain recurring General Fund expenditures to ESSER funds. But in future years, about $120 million in such expenditures will be shifted back to the General Fund[45], revealing anew its "structural deficit."[46]

The District's case therefore stands or falls on the strength of the evidence it has proffered in support of these claims. The record establishes, quite unambiguously, that each of these claims is either irrelevant or inaccurate.

[38] Transcript, 69:2-21
[39] Transcript, 69:22-70:9
[40] Transcript, 63:2-6
[41] Transcript, 167:17-168:11
[42] Employer Exhibit 18
[43] Transcript, 159:1-15
[44] Transcript, 146:16-147:1
[45] Transcript, 181:22-184:19
[46] Transcript, 175:21-25

The District's financial position or spending patterns relative to other school districts is not relevant to determining its own ability to pay.

The ability of a household to pay its monthly bills is independent of the size of its neighbors' bank accounts. Similarly, wondering whether HCPS has, for example, more (or less) cash on hand than other school districts is asking the wrong question. The relevant question is whether the benefits of adopting the Union's economic proposals are outweighed by the impacts their effects on the District's cash flow would cause. This question cannot be answered by looking outside the District.

By the same token, statistics purporting to show how much HCPS spends on instruction relative to other schools districts are also irrelevant. However, even if they were, the statistics the District has presented in this case do not provide what the Districts claims they provide and should not be given weight. For instance, the "Instructional Expenditures as a Percentage of Total Expenditures" figures[47] presented by the District do not account for spending that is passed through to charter schools, which is coded as a "Purchased Service" (Object 300)[48] within "Instructional" (Function 5000)[49] expenditures. They also do not account for differences in staffing levels. Without this information, it is impossible to draw relevant and meaningful conclusions from what the District has provided.

Moreover, comparability of the District's financial position relative to similar public employers is not contemplated by F.S. § 447.405 as a factor that should be considered by the Special Magistrate. The statute is very specific as to when comparability among similar public employers is to be considered—if the Legislature intended for a Special

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[47] Employer Exhibit 8

[48] *Financial and Program Cost Accounting and Reporting for Florida Schools 2021*, Ch. 4, p. 8. Published by the Florida Department of Education, Bureau of School Business Services, Office of Funding and Financial Reporting.

[49] *Financial and Program Cost Accounting and Reporting for Florida Schools 2021*, Ch. 5, p. 2: "Direct costs of programs are those costs identified with Function 5000, instruction except…charter school distributions."

Magistrate to compare similar public employers in the way suggested by the District, the language of the statute would reflect this intent.

Cash flow issues due to the timing of property tax receipts can be easily mitigated, at negligible cost, through a Tax Anticipation Note.

Notably, the otherwise scary-looking decline in HCPS's "General Fund Cash Position" over the course of the fall during the last five fiscal years displayed in Employer Exhibit 3, is "net of TAN."[50] A TAN, or Tax Anticipation Note, is a short-term loan issued by a governmental entity to enhance the entity's cash position so that it can cover day-to-day expenses until the entity receives certain tax revenues that it 'anticipates.'

In other words, Employer Exhibit 3 does not truly represent what the District wishes the Special Magistrate to conclude it represents. The District has not provided evidence that it ever ran out or even came close to running out of cash at any point during any year. It has merely shown that, in some years, it would have come close to doing so in the days leading up to its receipt of property taxes from the County had it not issued a TAN. As for the significance of this fact, the District offered little more than Mr. Ford's cheeky and disingenuous description of a TAN as a "payday loan,"[51] a classist dog-whistle intended to hoodwink a credulous audience into believing that issuing a TAN is somehow "bad" and must be avoided at all costs. The Special Magistrate should attach no weight to this spurious attempt by the District to unburden itself of its obligation to explain why using a TAN would evince an inability to pay for the Union's proposals.

In fact, issuing a TAN is a common if not routine way to prevent the quirks of the tax receipt calendar from disrupting a governmental entity's normal operations. In any case, HCPS did not need to issue a TAN during 2022-2023[52], and the District

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[50] Transcript, 62:13-18

[51] Transcript, 62:23-63:1

[52] Transcript, 190:17-19

presented no evidence or argument that adoption of the Union's proposals would have necessitated one, let alone why this would have been an unacceptable measure to take at the time. The District *did* issue a TAN for $85 million during 2021-2022.[53] Romaneir Johnson, the District's Chief Financial Officer, testified that the District paid around $41,000 in interest on the TAN it issued in 2021-2022.[54] This works out to a total rate of interest over the life of the TAN of around 0.048%. Even if the District had argued that the borrowing costs associated with issuing a TAN are so overly burdensome that it could not risk necessitating one by funding the Union's proposals, this would have been preposterous.

The District offered no evidence of how credit rating downgrades would impact its borrowing costs; even if it had, the point is moot.

Mr. Ford testified that the District's borrowing costs would increase if its credit rating were downgraded:

> *Q. You've mentioned cash on hand and investing in a company. How – how does that factor in with the District's ability to secure credit?*
>
> *A. Sure. Well, at some price, credit is always available, right. There's always somebody willing to charge you an exorbitant rate, regardless of your credit condition; but the fact of the matter is, borrowing costs vary depending upon your credit quality…The lower your credit rating drops, the higher that cost of borrowing becomes.*[55]

Beyond stating a simple truism, Mr. Ford's testimony adds nothing of value to the record about the likely impact adoption of the Union's proposal would have on the District's credit rating and therefore its bargaining costs. In order to enable the Special Magistrate to make an informed judgment as to whether the benefits to the

[53] Transcript, 63:2-6

[54] Transcript, 189:25-190:8. Ms. Johnson testified that the TAN issued was $75 million, not $85 million, but the Special Magistrate should credit Mr. Ford's testimony over Ms. Johnson's on this point since Mr. Ford was working with the district at the time this TAN was issued whereas Ms. Johnson was not.

[55] Transcript, 69:2-21

public of adopting the Union's proposal would outweigh the risk of potentially increased borrowing costs, the District would have needed to supply some kind of specific information about any—ideally all—of the following:

- The likelihood that the Union's proposal would contribute to or result in a credit downgrade;
- How much higher the interest rates the District would expect to pay on its debts following such a credit downgrade would be;
- How much debt the District would expect to issue at said rates;
- The increase in the amount of interest paid on said debt.

The District supplied no information whatsoever about any of these points. Furthermore, under cross examination, Mr. Ford admitted that the District's borrowing costs on debt previously issued would not change:

> *Q. Okay. And does the – if bond ratings go up or down, does that affect any of the cost of servicing debt that's already been issued in the past?*
>
> *A. It does not. It does not impact the cost of servicing debt that's been issued in the past.*[56]

Mr. Ford, on whom the District relies for advice regarding its capital planning,[57] could not say how much interest rates would increase if its credit were downgraded:

> *Q. …So the District wants to issue an $80 million – wants to borrow $80 million to build an elementary school and repay that over 20 years. What other factors do we need to consider before we can say, Oh, well, the interest rate would probably be in this range?*
>
> *A. …You would look at the average life of the issue; you would look at the size of the issue; and you would look at the interest differential over that average life, and you would multiply it there. That's – that's the calculation.*

[56] Transcript, 81:2-6
[57] Transcript, p. 53:1-14

Q. Right. I guess what I'm trying to get is, what are – what are reasonable things to plug into that calculation?

A. The average life, the current – I would – I would get into the systems that we subscribe to…and I would come up with a cost factor. I'd be happy to supply that in a follow-up, but I'm not going to do – I can't do the math here at the stand.

Q. Okay. No. I'm just trying to figure out what would the – I mean, we can do the calculation. That's, you know, fairly routine. I'm just trying to figure out what would be the inputs into that calculation…what would the numbers actually be, or what would be reasonable estimates for what those numbers would actually be?

A. I'm happy to provide you those estimates in a follow-up, but I'm not going to do the math here on the stand.[58]

The District never provided the "follow-up" to which Mr. Ford referred.

Happily, none of this is relevant at the end of the day, as Mr. Ford also testified that the District has no plans to issue any debt:

Q. …do you have knowledge of how much debt the District anticipates issuing in this fiscal year or next fiscal year?

A. We have no plans to issue debt over the next fiscal year or two at this point in time.[59]

Mr. Ford's testimony was corroborated by Ms. Johnson:

Q. …Mr. Ford testified earlier that he was not aware of any current plans by the District to – to issue debt. Are you aware of any such plans?

A. No.[60]

In sum, the record shows that the District does not know how a credit downgrade would affect the interest rates at which it issues debt, and therefore does not know

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[58] Transcript, 79:1-81:1

[59] Transcript, 82:22-83:2

[60] Transcript, 189:21-24

how much the cost of issuing a particular amount of debt would increase. All the District could say for certain is that it has no plans to issue any kind of debt in the foreseeable future—which immediately begs the question of why its borrowing costs are relevant at all. The Special Magistrate should attach no weight to the District's handwaving and speculation regarding the impact of the Union's proposal on its borrowing costs.

Salary increases do not perpetually burden the District's budget.

The crux of the parties' dispute is over whether the second "step" should be a *bona fide* step increase which recurs from one year to the next, or a one-time payment which the District may elect not to renew in 2023-2024. There is no dispute about the affordability of the Union's proposal in 2022-2023—if there were, the District would not be offering a one-time payment equivalent to the amount of the step—rather, the dispute is over its affordability in 2023-2024 and beyond. Specifically, the District's position is that a recurring step increase represents a permanent drain on the District's budget, which cannot be risked at this time because of the General Fund's underlying operational deficit, as expressed by Ms. Johnson (emphasis supplied):

> *Q. And to be clear, Ms. Johnson, if I understand it correctly, that 28,000 in the column[61] where the pointer is –*
>
> *A. 28 million.*
>
> *Q. – is if it was one time, and it's the same – and what the Union is asking for is for that 28,000 to repeat, repeat, repeat, repeat?*
>
> *A. Correct. Because it become mortalized (sic) in our budget. Once you give an increase and it's a recurring increase, it stays – it becomes part of your budget.[62]*
>
> *Q. So, Ms. Johnson, is there any correlation between the recurring 28,000 – 28 million over the years and the increased operational deficit that you project a couple of rows below that?*

[61] Referring to Employer Exhibit 18
[62] Transcript, 167:21-168:5

> *A. Yes. As you can see, if we have a – if we are in a structural deficit and you start eating at your savings – I call the fund balance our savings – then we start eating that down, and that's being fiscally irresponsible.*[63]

The District clearly assumes that the $28 million it costs to grant both steps will continue to cost it $28 million forevermore.[64] This would only be true if the employees who received these two steps remained employees forevermore—obviously, they will not. As the employees who would have received the two steps retire or resign, the $28 million cost will steadily diminish. A well-designed step system accounts for the rate of attrition so that the effects of employees receiving steps on the one hand, and resigning/retiring and being replaced with lower-paid employees on the other, balance out over time.

In the previous two years of negotiations, the parties have agreed to step increases, or one-time supplements in equivalent amounts. Otherwise, the only forms of increases to compensation have been the result of state-mandated increases to the minimum teacher salary (to $47,500 for 10 month employees, and $53,900 to 12 month employees) and the overall minimum wage of school district employees (up to $15 per hour). This allows an 'experiment' to be run to determine the net impact of step movement and attrition on personnel costs. By taking lists of employee salaries and wages from previous years and retroactively applying the state-mandated increases to them, the effects of step movement and attrition can be isolated.

The Union performed this analysis,[65] and the results were telling. The net change in personnel costs due to the two step increases (or step increase equivalents) since 2020-2021 across the Union's bargaining units was not $28 million, but $2.1 million. Less than 10% of the cost of two step increases remained on the district's budget after two years.

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[63] Transcript, 170:8-16

[64] Employer Exhibit 18

[65] Union Exhibit P, p. 36

The District offered no rebuttal to this point. Ms. Johnson described benefit payouts to retiring employees as an “unfunded liability”[66] in service to an argument that attrition itself has costs. But no specifics were provided as to how many employees are eligible for such payouts or how much they receive in total. This testimony should be afforded no weight.

In light of this analysis, the $28 million shown in the columns on Employer Exhibit 18 as the recurring cost of the Union’s proposal should be disregarded. More likely, the amount will decrease by almost half in FY 2024 and almost disappear entirely by FY 2025. The result is that the “Change in Financial Position” row should, in fact, be positive in FY 2024 and thereafter.[67]

The District is not making full use of its capacity to defray General Fund expenditures via transfers from Capital Projects funds.

In 2021-2022, Hillsborough only transferred about 2.18% of its General Fund revenues from Capital Projects, whereas the other large urban school districts combined to transfer about 5.18% of their total General Fund revenues:

[66] Transcript, 169:20 to 170:7

[67] If steps are given every year, this would naturally affect the “Change in Financial Position” each year. But steps in *future* years are not at issue in the instant proceedings, only steps for *this* year.

District	Total Transfers to the General Fund	Total General Fund Revenues	Transfers as % of Revenues
Broward	$133,407,699.40[68]	$2,235,237,859.64[69]	5.97%
Dade	$202,077,867.40[70]	$2,977,035,606.34[71]	6.79%
Duval	$33,280,823.52[72]	$1,010,154,483.78[73]	3.29%
Orange	$34,620,746.00[74]	$1,792,687,446.45[75]	1.93%
Palm Beach	$113,399,446.50[76]	$1,915,915,567.01[77]	5.92%
Pinellas	$41,148,087.94[78]	$842,320,849.43[79]	4.89%
Total	**$557,934,670.76**	**$10,773,351,812.65**	**5.18%**
Hillsborough	$38,922,319.10[80]	$1,783,501,409.87[81]	2.18%

The gap between HCPS and other large urban districts is significant and certainly suggests that HCPS could find more opportunities to make use of Capital Projects funds transfers than it currently does. If HCPS were to increase its transfers from Capital Projects funds to the General Fund by even just 1% of its General Fund revenue, it would generate an additional $17.8 million per year, more than enough to fund the cost of the second step the Union's proposal demands.

Despite the fact that HCPS transfers far less from Capital Projects funds to the General Fund than most other large urban districts, the District denies that there is any further capacity to make such transfers. As Ms. Johnson testified (emphasis supplied):

> *So this year I implemented that we going to do a structural, when I came in, fiscal recovery plan that going to look at capital transfer. I was – scrubbed the ledger. Anything that represent capital or people that should support capital projects that have been paid, I make sure that I have, for*

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[68] Union Exhibit J, p. 4
[69] Union Exhibit J, p. 2
[70] Union Exhibit J, p. 40
[71] Union Exhibit J, p. 38
[72] Union Exhibit J, p. 40
[73] Union Exhibit J, p. 76
[74] Union Exhibit J, p. 110
[75] Union Exhibit J, p. 109
[76] Union Exhibit J, p. 142
[77] Union Exhibit J, p. 140
[78] Union Exhibit J, p. 170
[79] Union Exhibit J, p. 168
[80] Union Exhibit H, p. 4
[81] Union Exhibit H, p. 2

audit purposes, only recognize those transfers; and we put it in a place so we can do an additional transfer of 17 million from the capital fund to cover those expenditures, and I scrubbed that ledger. I'm telling you. My staff scrubbed that ledger to make sure we within the statute because there's statutes and laws governing capital transfer, and I don't violate any laws and regulations.[82]

During cross-examination, Ms. Johnson testified that several specific expenditures could not be supported with transfers from Capital Projects funds and must instead be supported by the General Fund:

Q. So for software. I think I'm hearing for software, yes; personnel, no?
A. No personnel.[83]
Q. …What about like buses, buses and other vehicles?
A. They are paid directly out the capital fund. Most of those purchases are made in the capital fund.
Q. So if the District goes out and buys buses, that's paid out of capital?
A. Correct.
Q. …I guess I'm wondering if it's correct to draw the analogy between the IT that we were just talking about. The software was capital; the buses are capital. The personnel who do it is not capital. What about personnel who maintain buses and vehicles?
A. No.
Q. So that has to be supported by general?
A. That's correct.[84]

However, the preponderance of record evidence shows that Ms. Johnson and her office have an incomplete understanding of what kinds of General Fund expenditures may be supported by transfers from Capital Projects funds. According to documents obtained by the Union via a public records request,[85] Miami-Dade County Public

[82] Transcript, 158:19-159:15
[83] Transcript, 194:4-13
[84] Transcript, 195:4-21
[85] Transcript, 203:23-204:2

Schools does, in fact, use transfers from its Capital Projects funds to support General Fund personnel cost expenditures for employees responsible for maintenance of IT infrastructure and buses and other vehicles.[86] Moreover, the Union supplied every Operational Audit[87] issued by the Florida Auditor General covering the period for which the Union requested documents from Miami-Dade County Public Schools. Not a single finding was made by the Auditor General that any of the uses to which Miami-Dade County Public Schools has put its transfers from Capital Projects funds was unallowable.

This evidence, to which the District had no response, is a point-blank refutation of the entirety of Ms. Johnson's testimony regarding HCPS's inability to make additional transfers from its Capital Projects funds to its General Fund. Indeed, there is only one way to credit Ms. Johnson: to find that the Florida Auditor General has inexplicably been asleep at the switch for over a decade in its audits of Miami Dade County Public Schools. The District offered no evidence whatsoever for this extraordinary proposition, nor did it offer any alternative explanation to square the Union's findings with Ms. Johnson's testimony. The far more likely explanation is that Ms. Johnson is simply wrong.

The District's 2022-2023 budget artificially inflates Student Support Services personnel costs by over $145 million.

The centerpiece of the District's presentation was the notion that HCPS is in a structural deficit that is being temporarily papered over by an influx of federal dollars relating to pandemic relief. Once those federal dollars go away, the District alleges, HCPS will start showing operating deficits in its General Fund again. Specifically, while the District may be projecting an overall budget surplus this year resulting in the Unassigned portion of its General Fund balance going from $114,637,135.77[88] at

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[86] Union Exhibit O, p. 1
[87] Union Exhibit N
[88] Union Exhibit H, p. 4

the end of 2021-2022 to $142,948,893.46[89] at the end of 2022-2023 (an increase of over $28.3 million), a significant structural deficit remains because some $120 million[90] that is currently being supported by ESSER funds will need to be supported by the General Fund in the future. Included in this $120 million is the bulk of about $145 million Student Support Services personnel costs, as Ms. Johnson testified under cross-examination:

> *Q. …what I'm looking at is the difference between Instruction and Student Support Services in terms of Salaries and Benefits… Overall, Instruction is usually the much bigger number, but for what's being transferred to ESSER III, it looks like the Student Support Services is a much bigger number. Can you describe what -- what those personnel are doing? Are those permanent positions? Are they going to be coming back to the general fund?*
>
> *A. All transfers, if these are permanent positions and they're being transferred over to ESSER resource, they will be coming back to the general fund.*
>
> *Q. Well, I guess that's my question. Are they permanent positions?*
>
> *A. Yes, they are.*
>
> *Q. Okay. What kinds of positions? What are those employees doing?*
>
> *A. I will have to defer to my budget director exactly all the list of people, personnel.*
>
> *Q. Okay. But this is an example of an expense that next year would be coming back to the general fund?*
>
> *A. That is correct.*

Student Support Services (Function 6100) consists of "activities that are designed to assess and improve the well-being of students and supplement the teaching process."[91] These activities are primarily social work, guidance services, and psychological services. The District's total spending in Student Support Services is

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[89] Union Exhibit I, p. 3

[90] Transcript, 181:22-184:19

[91] *Financial and Program Cost Accounting and Reporting for Florida Schools 2021*, Ch. 4, p. 17.

historically fairly stable. Actual spending on Salaries (Object 100) and Employee Benefits (Object 200) within Student Support Services in 2020-2021 and 2021-2022, and projected spending for 2022-2023, are as follows:

	2020-2021			2021-2022			2022-2023		
Fund	Salaries	Employee Benefits	Total	Salaries	Employee Benefits	Total	Salaries	Employee Benefits	Total
100 – General Fund[92]	56,414,896	17,506,192	73,921,088	16,327,770	4,672,299	21,000,069	67,223,999	20,813,388	88,037,387
441 – ESSER I[93]	75,244	9,347	84,591	0	0	0	14,755	0	14,755
442 – Other CARES Act Relief[94]	153,432	27,801	181,233	0	0	0		0	0
443 – ESSER II[95]	8,246,516	2,075,686	10,322,202	6,458,428	1,940,516	8,398,944	174,528	194,742	369,270
444 – Other CRRSA Act Relief[96]	0	0	0	23,076	4,576	27,652		0	0
445 – ESSER III[97]	0	0	0	42,998,080	13,525,148	56,523,228	103,881,463	41,494,414	145,375,877
446 – Other ARPA Relief[98]	0	0	0	0	0	0	15,040	2,855	17,895
Total	64,890,088	19,619,026	84,509,114	65,807,354	20,142,539	85,949,893	171,309,785	62,505,399	233,815,184

The District's budget reflects an increase in total personnel costs being charged to the Student Support Services function of over $147.8 million (or 172%) from 2021-2022 to 2022-2023. Such an increase in expenditures would necessitate an equally dramatic increase in the number of employees performing duties that are categorized as Student Support Services—i.e., guidance counselors, psychologists, and social workers—to justify these increased costs.[99] The District's allocations for each of these job titles in the 2021-2022 and 2022-2023 years is as follows[100]:

Job Title	11/29/2021 Allocation	11/28/2022 Allocation	Difference
Counselor, Elem School	176.00	168.00	(8.00)
Counselor, High School	174.20	172.00	(2.20)
Counselor, Mid School	113.00	108.82	(4.18)
School Psychologist	134.00	117.60	(16.40)
School Social Worker	202.00	205.50	3.50
Total	**799.20**	**771.92**	**(27.28)**

[92] Union Exhibit G, p. 3; Union Exhibit H, p. 3; Union Exhibit I, p. 3
[93] Union Exhibit G, p. 10; Union Exhibit H, p. 10; Union Exhibit I, p. 9
[94] Union Exhibit G, p. 11; Union Exhibit H, p. 11; Union Exhibit I, p. 11
[95] Union Exhibit G, p. 12; Union Exhibit H, p. 12; Union Exhibit I, p. 13
[96] Union Exhibit G, p. 13; Union Exhibit H, p. 13; Union Exhibit I, p. 15
[97] Union Exhibit H, p. 14; Union Exhibit I, p. 17
[98] Union Exhibit H, p. 15; Union Exhibit I, p. 19
[99] The only potential alternative explanation would be dramatic increases to the salaries of these employees, but this would not explain why employee benefit costs rose even more sharply—more than tripling from 2021-2022 to 2022-2023—than salaries.
[100] Union Exhibit L

Far from a dramatic increase, there was, in fact, a slight (3.41%) *decrease* in the total number of employees performing these duties. Clearly, the additional $145 million the district has budgeted for Student Support Services—which Ms. Johnson testified was for permanent positions eventually needing to be borne by the General Fund—will not be spent. Whichever fund is ultimately charged the Student Support Services expenditures in the 2022-2023 year, the unavoidable consequence of this fact is that either:

1. The expenditures will be charged to the General Fund in 2022-2023, and therefore there is not $120 million in expenditures that will be returning to the General Fund in the future and putting it back into an operational deficit; or else
2. The expenditures will be charged to ESSER III in 2022-2023, and therefore the General Fund has an operating surplus of $88 million more than the District represented in its budget (and in its exhibits at hearing) for the 2022-2023 year and the years therafter.

In either case, far more than enough funds are available to pay for the Union's proposal.

Conclusion – Interest and Welfare of the Public

> *The factors…to be given weight by the special magistrate in arriving at a recommended decision shall include… (3) The interest and welfare of the public.*[101]

The record firmly establishes that salaries for the employees represented in the Union's bargaining units significantly lag behind those of their counterparts in comparable districts, even without accounting for the relatively high cost of living in Hillsborough County. This fact is highlighted all the more when comparing employees by percentile between districts—97% of non-classroom teachers, paraprofessionals, clerical staff, and nurses are paid below average compared to at least two of the comparability group averages, as are 60% of classroom teachers.[102] When cost of living is accounted for, nearly all HCPS employees fare among the worst—if not the worst—of all.[103] The Union's proposals, which do not call for increasing any salary schedules themselves, would do little to close the gap between HCPS and comparable districts—they would simply prevent HCPS employees from falling even further behind. The District presented no evidence or argument of any kind to dispute any of the Union's findings or analysis with respect to salary comparability.

Speculation and budgetary skullduggery are the foundation of the District's case that it cannot afford to pay for the Union's proposals. Ms. Johnson's testimony that the General Fund is worse off than it looks because of costs currently being supported by ESSER is flatly contradicted by the record and common sense.[104] Her testimony that the District has no flexibility to use its healthy capital funds reserves to offset General Fund expenses meets a similar fate.[105] Her long-term analysis of the district's financial position under adoption of the Union's proposals fundamentally errs in assuming

[101] § 447.405, Florida Statutes
[102] *Supra*, notes 19-24
[103] *Supra*, notes 11-13
[104] *Supra*, notes 88-100
[105] *Supra*, notes 82-87

that there will be no employee attrition.[106] In fact, when attrition is accounted for, the isolated impact of step increases on the district's personnel costs is negligible.[107] Whether the result of incompetence or dishonesty, the unrefuted evidence in the record shows that fact and Ms. Johnson's testimony have parted company.

Mr. Ford, for his part, could not provide any specifics as to the impact of credit rating downgrades on the District's borrowing costs, only vague assertions that there would be one.[108] This all turns out to be a moot point, however, since both Mr. Ford and Ms. Johnson testified that the District had no plans to incur any borrowing costs any time soon.[109]

The District is hard-pressed to convincingly argue that adoption of its proposals would better serve the public interest than would adoption of the Union's proposals. Nearly 7%[110] of the allocated instructional positions in the district are unfilled, leaving thousands of students without a teacher in their classroom for—at this point—more than half of the school year. Withholding recognition of the work employees have performed by denying their experience credit to protect bond ratings for which the District's own sworn testimony establishes that it has no foreseeable use evinces, to put it mildly, a serious misalignment between the District's priorities and the public's interests. Inducing more teachers into classrooms better serves the public interest than minimizing nonexistent and hypothetical borrowing costs. The District's resources should be allocated accordingly.

Finally, the difference between the Union's proposal and the District's proposal regarding across-the-board compensation for 2022-2023 is $0. The only difference is in 2023-2024 and future years. Even in the unlikely event that adoption of the Union's proposal does negatively alter the District's financial recovery trajectory in a

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[106] *Supra*, notes 62-64
[107] *Supra*, note 65
[108] *Supra*, notes 55-58
[109] *Supra*, notes 59-60
[110] Union Exhibit L, p. 3 (884.40 "unfilled" positions divided by 13,429 "allocated" positions is 6.58%)

significant way in 2023-2024 or beyond, the District will have many options at its disposal. It could bargain that there is no step increase in 2023-2024, that the 2022-2023 step be reversed, that employees must contribute more towards health insurance, etc. These are solutions that can be enacted if, and when, necessary. The hypothetical problems of 2023-2024, to the extent the District has demonstrated that there will be, do not need to be preemptively solved by exacerbating actual problems here and now.

For all of the above reasons, the Special Magistrate is respectfully urged to recommend adoption of the Union's proposals with respect to the issues at impasse.