

Indian River County School Board
AGENDA
Special School Board Meeting
Public Hearing to Legislate Impasse #2 with Communication Workers of America
February 5, 2013 at 1:00 p.m.

It is hereby advised that if a person decided to appeal any decision made by the Board with respect to any matter considered at this meeting, he will need to ensure that a verbatim record is made which includes the testimony and evidence upon which the appeal is to be made.
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I. Call Special Meeting to Order – Chairman Johnson

II. Purpose of the Public Hearing – Chairman Johnson

Introduction:

This is a public hearing conducted by the District School Board of Indian River County, Florida (“School Board”) pursuant to §447.403, Florida Statutes, to resolve an impasse in negotiations between the Superintendent of the School District of Indian River County, Florida (“Superintendent”) and the Communication Workers of America, Local 3180 (“CWA”) involving unresolved issues for the 2011-2012 fiscal year of the 2009-2012 Collective Bargaining Agreement.

The Superintendent declared impasse and invoked the statutory impasse procedures set forth in Chapter 447, Florida Statutes. The parties proceeded to a hearing with a Special Magistrate; and the Special Magistrate issued a Report and Recommendation dated December 31, 2012. The Superintendent rejected all but one of the Recommendations in the Report and Recommendation of the Special Magistrate by Notice dated January 10, 2013, necessitating this public hearing.

Pursuant to §447.403(4), Florida Statutes, and communication to the parties dated January 18, 2013, both parties have submitted to the School Board their recommendations for settling the impasse issues. This hearing is now required pursuant to §447.403(4)(c), Florida Statutes, in order that each party is afforded the opportunity to explain their positions to the School Board with respect to the impasse issues.

This proceeding is open to the public to observe, but it is a labor proceeding with specific statutory requirements and only the two parties, the Superintendent and CWA, will make a presentation to the School Board.

Each party will be afforded 1 hour to present their positions on the disputed impasse issues. In order to allow each party to fully make their presentations, School Board Members will hold any questions until the end of each party’s presentation. The Superintendent will be called upon first and CWA will be called upon next. Upon the conclusion of the presentations by both parties, the School Board will have an opportunity to ask any final questions, deliberate, and then vote on resolution of the impasse issues.

- III. Presentation by Superintendent
- IV. Presentation by Communication Workers of American (CWA)
- V. District School Board Deliberation – Chairman Johnson
- VI. District School Board Motion and Vote on the Resolution of the Issues at Impasse – Chairman Johnson
- VII. Adjourn the Hearing – Chairman Johnson

Anyone who needs a special accommodation for this meeting/workshop may contact the School District's American Disabilities Act Coordinator at 564-3060 (TTY 564-8507) at least 48 hours in advance of meeting. NOTE: Changes and amendments to the agenda can occur 72 hours prior to the meeting. All business meetings will be held in the Teacher Education Center (TEC) located in the J.A. Thompson Administration Center at 1990 25th Street, Vero Beach, unless otherwise specified. This meeting will not broadcast live. The agenda can be accessed by Internet at <http://www.indianriverschools.org>.

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REPLY TO: Winter Park

<http://twitter.com/anblaw>

January 22, 2013

Suzanne D'Agresta, Esquire
Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Avenue, Suite 2000
P. O. Box 2873
Orlando, FL 32802-2873

Re: School District of Indian River County v. Communications Workers of
America
SM-2012-041; Our File No. 8(O)

Dear Ms. D'Agresta:

In accordance with Section 447.403 (4)(a), Florida Statutes, and your letter dated January 8, 2013, the Superintendent hereby submits a copy of the Recommended Decision of the Special Magistrate in this matter (Attachment 1). The Superintendent's recommendations for settling the disputed impasse issue are set forth herein. A copy of this letter and attachment is being provided to the CWA.

Background

These proceedings involve an impasse in collective bargaining that arose between the School District of Indian River County (the "District") and the Communications Workers of America, Local 3180, AFL-CIO (the "Union"). The District and the Union are signatories to a collective bargaining agreement (the "Agreement"), which sets forth terms and conditions of employment for a bargaining unit of the District's blue and white collar employees, such as food service workers, custodians, transportation employees (i.e. bus drivers and mechanics), electricians, and teacher's assistants. After several months of good faith negotiations over a re-opener for Year 3 of the Agreement, Fiscal Year 2011-2012, the District declared impasse in June 2012 in accordance with Section 447.403, Florida Statutes. The parties selected Special Magistrate Dennis J. Campagna who was subsequently appointed by the State of Florida's Public Employees Relations Commission ("PERC") to hold a hearing and issue recommendations for the resolution of the disputed issues at impasse.

Three (3) provisions of the Agreement are the subjects of this impasse: Article 5 (Work Hours/Breaks/Lunch Breaks & Overtime Payment), Article 20 (Compensation & Fringe Benefits), and Article 21 (Special Supplements). Articles 20 and 21 were opened pursuant to

an annual re-opener, and the School District elected to open Article 5 for Fiscal Year 2011-2012. The Union did not open any additional articles, and therefore no other articles are at impasse.

The District proposed to revise Article 5 to parallel the Fair Labor Standards Act in overtime computation by eliminating the inclusion of compensatory time, vacation leave, sick leave, and paid holidays from the calculation of actual hours worked. The Union proposed status quo.

The District proposed to revise Article 20 to eliminate automatic step increases, while the Union proposed status quo.

Finally, the District proposed to revise Article 21 to eliminate the Data Processing Shift Differential, in-service incentive payments, and performance bonuses. The Union did not object to the District's proposed elimination of the Data Processing Shift Differential, but proposed status quo with regard to the District's remaining proposals. Because both parties have accepted the Special Magistrate's recommendation to eliminate the Data Processing Shift Differential, this issue requires no action by the School Board.

An impasse hearing was held before Special Magistrate Dennis J. Campagna on November 20, 2012. The parties presented their respective positions to the Special Magistrate for resolution pursuant to the procedure set forth in Section 447.403, Florida Statutes. Each party had an opportunity to present evidence and testimony to demonstrate the merits of their respective positions. The Union's participation in the Special Magistrate hearing was minimal and indicative of its overall lack of effort to reach a reasonable compromise. The Special Magistrate issued his Recommendations on December 31, 2012.

The Special Magistrate's recommendation did not adopt the position of either party in most instances, instead substituting his own suggested resolutions in an apparent attempt to appease both parties. For the reasons set forth herein, the Superintendent disagrees with the vast majority of the Special Magistrate's Recommendations. Pursuant to Section 447.403(3), Florida Statutes, the Employer filed notice of its rejection of the Special Magistrate's recommendation on January 10, 2013. The Union did not file any notice of rejection. It is recommended that the School Board resolve the impasse by adopting the District's position on the disputed impasse issues.

District's Proposal at Impasse

After extensive negotiations with the CWA, the District's proposal was as follows:

1. Revise Article 5 to parallel the Fair Labor Standards Act in overtime computation by eliminating the inclusion of compensatory time, vacation leave, sick leave, and paid holidays from the calculation of actual hours worked.
2. Revise Article 20 to eliminate automatic step increases.

3. Revise Article 21, Section 6 to eliminate Data Processing Shift Differential.
4. Revise Article 21, Section 9 to eliminate in-service incentive payments.
5. Revise Article 21, Section 10 to eliminate performance bonuses.

Union's Proposal at Impasse

The Union's proposal at impasse was the following:

1. Retain the inclusion of compensatory time, vacation leave, sick leave, and paid holidays in the calculation of actual hours worked for purposes of overtime computation.
2. Retain automatic step increases.
3. Eliminate Data Processing Shift Differential.
4. Retain in-service incentive payments.
5. Retain performance bonuses.

Special Magistrate's Recommendations

The Special Magistrate made the following recommendations:

1. Eliminate the inclusion of compensatory time, vacation leave, and sick leave from the calculation of actual hours worked for purposes of overtime computation, but retain the inclusion of paid holidays as hours worked.
2. Step increases shall be subject to negotiations on a year to year basis, except that for employees who give the District irrevocable notice of their intent to retire, those employees shall receive automatic step increase in each of their final three years.
3. Eliminate Data Processing Shift Differential.
4. Eliminate in-service incentive payments, with several modifications. First, the Special Magistrate recommended that the District pay the entire cost associated with any job-related courses taken by unit employees, an increase from the District's current obligation to pay for two out of every three credits taken through Indian River State College only, and no obligation to pay any other course-related costs such as books and fees. He also recommended increasing advanced degree incentives from \$1250 to \$1800 for AA/AS degrees, from \$1700 to \$2400 for BA/BS degrees, and from \$2200 to \$3000 for Masters or Specialist degrees.

5. Eliminate performance bonuses, but implement longevity bonuses.

Superintendent's Recommendations for Resolving the Impasse as Required by Statute

1. Article 5 – Overtime

The Superintendent recommends the elimination of compensatory time, vacation leave, sick leave, and paid holidays from the calculation of actual hours worked in the computation of employee overtime. This recommendation is intended to parallel the FLSA requirements for what constitutes hours worked. Under the FLSA, hours worked includes all time in which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace. It does not include time in which an employee is on a paid holiday, vacation, at home sick, or otherwise not present at work. For purposes of overtime calculation, the FLSA does not differentiate between different forms of non-attendance, nor do any other counties in the region compute overtime in this manner. The Superintendent cannot recommend an arbitrary distinction between paid holidays and other forms of leave, as suggested by the Special Magistrate without explanation or reason.

2. Article 20 – Salary Steps

The Superintendent recommends the elimination of automatic step increases. Automatic step increases are costly to the School District and create disparity among District employees. Additionally, because of the time limitations set forth in the Agreement, the District does not have sufficient time to consider and address the budgetary implications of the step increases after the close of the legislative session. This is an infeasible, recurring cost that the Superintendent cannot recommend in these times of economic uncertainty. The Special Magistrate's recommendation with regard to salary steps is bizarre, considering that neither party raised an issue related to step increases for employees nearing retirement. These issues were not raised at the hearing, nor has the School District had sufficient opportunity to consider the implications of the Special Magistrate's *sua sponte* concern for employees nearing retirement. The District seeks revisions to the Agreement that will save money across-the-board, not decrease expenditures on one budget line, while increasing expenditures on another. The only feasible solution in terms of salary steps is to eliminate the automatic granting thereof in favor of annual negotiations over salary increases.

3. Article 21, Section 6 – Data Processing Shift Differential

The parties both accepted the Special Magistrate's recommendation, and therefore, this provision requires no action by the School Board at this time.

4. Article 21, Section 9 – In-Service Incentives

The Superintendent recommends the elimination of in-service incentives. The District

already pays for two out of every three credits for courses taken at Indian River State College, pursuant to an inter-local agreement. The in-service incentives also awards points to employees for the same coursework that accrues to cash. Bargaining unit members are basically double dipping by receiving multiple cash payments for enrollment in the same college courses. Neither of these incentives are offered to non-bargaining unit employees.

The Special Magistrate's proposal does not achieve the District's goal of reducing costs. In fact, his proposal may actually increase costs. For Florida residents, one credit hour at Indian River State College costs approximately \$103 for associate level courses and \$117 for baccalaureate level courses. The Special Magistrate's recommendation would cost the city one credit hours for *each course* that an employee takes. The current in-service incentive is paid once a year in recognition of the cumulative coursework of an employee over a period of 10 years. Additionally, the Special Magistrate has recommended significant increases to advanced degree incentives. These recommended increases are likely to exceed the cost savings to the School District from the elimination of in-service incentives, and would provide no assistance to the School District in its effort to reduce costs.

However, the Superintendent desires to recognize and substantively acknowledge the importance of job related training, and proposes only the elimination of in-service incentives, while bargaining unit employees will continue to receive reimbursement for credit hours taken at Indian River State College.

5. Article 21, Section 10 – Performance Bonus

The Superintendent recommends the elimination of the performance bonus provided for under Article 21 of the Agreement. The District already recognizes the importance of an educated workforce by reimbursing 2 out of every 3 credits taken through Indian River State College and by providing employees with an already substantial degree supplement. The Special Magistrate's recommendation to increase these already generous benefits is misguided for several reasons.

The legality of longevity bonuses in light of Senate Bill 88 (2011), revising Section 215.425, Florida Statutes, remains unlitigated, unsettled, and unclear. On this basis alone, the Superintendent cannot recommend the implementation of provisions that might subject the District to unnecessary and costly litigation. Additionally, the implementation of longevity bonuses is inconsistent with the District's treatment of non-union employees and inconsistent with District principles to maintain an effective workforce. In negotiations, we did not seek to address concerns regarding the nature of the bonus offered to employees; rather, we sought to eliminate bonuses altogether, to reduce costs and promote parity among our employees. The adoption of a non-performance-based bonus system is not prudent; nor is the continuation of a performance-based bonus system that results in disparity and creates large recurring costs in a time of economic uncertainty. Therefore, The Superintendent recommends the elimination of the performance-based bonus altogether in order to give the District more flexibility and time to determine an appropriate bonus scheme after the close of

the legislative session on an annual basis, should the budget permit.

* * * * *

You are required by law to consider the public interest, which clearly values the Board's continuing policy of fiscal responsibility and the maintenance of reserve funds to protect the viability of public education. The Superintendent recommends that the School Board continue its practice of fiscal responsibility in maintaining a conservative General Fund balance and avoiding any additional layoffs in the future. The Board has taken pro-active measures to substantially reduce its spending, and an adoption of the Union's proposal or the Special Magistrate's recommendation would render those efforts meaningless. Based on the foregoing, the Superintendent recommends that the School Board implement the recommendations as set forth above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wayne L. Helsby".

Wayne L. Helsby

cc: Dr. Fran Adams

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

SCHOOL DISTRICT OF INDIAN RIVER COUNTY,

DISTRICT,

-AND-

CASE NO. SM-2012-041

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 3180, AFL-CIO

UNION

Before: Dennis J. Campagna – Special Magistrate

APPEARANCES

A. For the District:

Wayne L. Helsby, Esq. – Counsel
Denise S. Roberts – Executive Director of H/R & Chief Negotiator
Carter Morrison – Assistant Superintendent of Finance & Operations

B. For the Union:

Gary L. McCallister – CWA International Representative
Harrell Davis – CWA Local 3180 President

BACKGROUND

The School District of Indian River County (“District”) and CWA Local 3180 (“Union”) are parties to a collective bargaining agreement with effective dates from July 1, 2009 through June 30, 2012, (“CBA”). The Agreement outlines agreed-upon terms and conditions of employment of members of a bargaining unit consisting of blue and white collar employees including food service workers, transportation employees, electricians and teacher’s assistants.

The CBA provides an automatic annual reopener for negotiation – Article 20 (Compensation & Fringe Benefits) and 21 (Special Supplements). In addition to these two articles, the parties to this CBA, have the opportunity, on an annual basis, to open two additional Articles for

consideration. For the July 2011 through June 2012 contract year, the District opted to open Article 5, (Work Hours/Breaks/Lunch Breaks & Overtime Payment). As more fully discussed below, it is the District's goal to resolve the inequitable distribution of benefits and incentives afforded to the Union's bargaining unit as compared to non-bargaining unit employees who, over the last three years, have witnessed a decrease wages and benefits¹. It was the Union's decision not to open any additional Articles and that the terms of the 2009-2012 CBA should remain status quo until negotiated otherwise.

Negotiations began in the fall of 2011. Subsequently, the parties met four times in the course of their negotiations during which time the District proposed specific modifications to Articles 5, 20 and 21. The District declared impasse on June 8, 2012. Subsequently, by letter dated July 17, 2012, PERC advised that the undersigned was appointed as the Special Magistrate in this matter. A one-day hearing commenced and concluded on November 20, 2012 at the District offices where the parties were represented by skilled and experienced advocates who were afforded throughout the hearing process the right to call and examine witnesses, as well as the right to introduce relevant evidence. At the conclusion of the hearing, the parties elected to summarize their respective positions with the filing of post-hearing briefs, filed electronically. Upon receipt of said briefs, the hearing was closed.

THE DISTRICT'S FINANCIAL PICTURE

There is no dispute, and the record reflects that the State of Florida has suffered as a result of the deep recession that hit the U.S. Economy, and as a result, has witnessed one of the worst economic downturns in its history. Given that the District has traditionally received financial assistance from the State, the District's budget has been severely impacted as a result of the State's economic instability most notably as a result of the Legislative imposition of significant changes in homestead and property tax ratios. These changes coupled with a significant reduction in property values and attendant tax revenues have only added to the reduction of District revenues as demonstrated by the following chart:

¹ The record reflects that the Assistant Principals witnessed a 5% across the board pay reduction for fiscal years 2010-11, 2011-12 and 2012-13. In addition, the Board voted to accept a 7.5% salary reduction of a three year period.

Description	FY 2008-09	FY 2012-13	Increase (Decrease)	% Change
District Tax Roll	\$18,410,651,454	\$13,515,321,926	(\$4,895,329,528)	-26.59%
Total Budget (All Funds)	\$412,737,280	\$274,841,113	(\$137,896,167)	-33.41%
Base Student Allocation	\$4,163	\$3,583	(\$580)	13.93%
Capital Projects Budget	\$207,726,351	\$63,427,439	(\$144,298,912)	-69.47%

The record reflects and there is no dispute that the District has employed a pro-active response to address its declining revenue and declining budget including the implementation of layoffs through the elimination of 294 positions since 2008, a reduction of its capital projects budget as noted in the chart above, implementation of pay cuts for non-union personnel, the elimination of performance bonuses and in-service incentives, all totaling approximately \$9.3 million in reductions between fiscal years 2008 and 2012.² During this same time period, the bargaining unit represented by CWA has been contractually exempt from cuts in that unit members have received \$1,264,387 in step increases, \$1,603,633 in degree supplements, \$1,149,686 in in-service incentive pay, and \$2,608,186 in performance bonus payments for a grand total of \$6,625,892 in benefits and bonuses. While the District does not deny that unit members are dedicated and hardworking, they note that the sharp disparity that has existed between bargaining unit and non-bargaining unit personnel cannot continue.

² The record reflects that during this time period, the total pay cuts to non-bargaining unit personnel was \$9,327,767.

THE ARTICLES AT IMPASSE

The Articles at impasse together with a description of each is as follows.

1. Article 5 – Overtime Payment

Current Language:

Article 5(A) of the CBA provides, in relevant part that "time worked when in excess of a forty hour week shall be paid at a rate of one and one half (1 and ½) hours pay for each hour worked in excess of 40 hours. Compensatory time will be earned at the overtime rate of 1.5 to comply with the Fair Labor Standards Act."

Article 5(B) provides, in relevant part: "In computing overtime work hours any approved paid leave constitutes 'Normal Hours'; i.e. Vacation leave, Personal Time Charged to Sick Leave, Comp Time and Paid Holidays. The Board will assume responsibility for determining which employees will be assigned."

Proposed Language – The District Proposes as Follows:

- A. Time actually worked when in excess of a forty hour work week shall be paid at the rate of one and one half (1-1/2) hours pay for each hour worked in excess of 40 hours. * Compensatory time will be earned at the overtime rate of 1.5 to comply with the Fair Labor Standards Act. In determining who will be selected for overtime work, seniority may be one of the factors of consideration. The work week for white collar is thirty-seven and one-half (37-1/2) hours and blue collar is forty (40) hours, unless posted otherwise with notification to the union.
- B. Overtime will be calculated on the actual time worked. Time-and-a half will be paid for actual worked hours in excess of 40 hours for the designated work week. Straight time will be paid for all hours actually worked up to 40 hours within the designated work week. Holidays, compensatory time, and all approved unpaid or paid leaves will not be included in the calculation of actual worked hours. The supervisor will assume responsibility for determining which employees will be assigned.

Position of the Parties

The record reflects that the current contractual method of computing overtime over a period from fiscal year 2009-10 through November 12, 2012 has cost the District a total of \$151,670. On the other hand, if overtime was calculated using a straight Fair Labor Standards Act (“FMLA”) formula based on time “actually” worked, the cost of overtime during this same time period would drop to \$102,496 for a reduced savings of \$49,174³. It is the District’s position that its proposed change to the current language would provide both immediate and long term relief to the District’s deflated budget while at the same time remaining consistent with the overtime provisions of other counties in the region.

It is the Union’s position that the District’s proposal, if adopted, would “unfairly deny overtime payments to employees who work beyond the normal hours during any workweek that contains a holiday, compensatory time, vacation, sick leave or any personal time.” Moreover, the Union adds, any savings reaped as a result of this change is “miniscule” at best.

2. Article 20 – Salary Steps

Current language:

Salary steps are increased on a yearly basis with the effective date of change July 1 each year. One day more than one-half of the work year will entitle the employee to an increase when recommended.

It is the District’s proposal to strike the above language and in lieu of automatic step increases, to engage in yearly negotiations to determine if a step increase can be provided.

Position of the Parties:

It is the District’s position that the result of the foregoing automatic step increases has not only been costly to the District, but has also resulted in a disparity among other non-bargaining unit members in the District. This is so, the District notes, since at the time Unit members are

³ The District notes that this sum represents the equivalent of two bus drivers positions. (District Brief at page 5).

receiving their contractual increases, District-wide layoffs and reduction in pay for other non-union employees has been ongoing in that approximately 294 positions have been eliminated since 2008. Moreover, the District adds, the current language has resulted in a logistical issue for the District since given the timeliness of the step increases, there is less than 21 business days from the close of the Florida Legislative session to make a complete determination as to how much money it has available in order to fund the step increases by July 1st of each year.

It is the Union's position that the District has not asserted an inability to pay for the step increases but rather the District has taken an inflexible position to remove automatic step increases from the CBA. Moreover, the Union notes, the District's proposal to eliminate Article 20 from the Agreement is no longer necessary since the School Board voted to restore wages to themselves, administrators and other non-bargaining unit employees. And finally, the Union notes that over time, step increases will become negligible since senior, high and top step employees will leave the District and be replaced by new, lower step, lower paid employees.

3. Article 21, Section 6 – Data Processing Shift Differential

Article 21, Section 6 provides a shift differential for Data Processing Personnel working the 3:00 p.m. to 10:30 p.m. shift (\$54.37/month), and for those working the 11:00 p.m. to 6:30 a.m. shift (\$64.64/month). The District seeks to delete this language since this provision “[h]as simply been rendered unnecessary as a result of changing technology.” The Union does not object to the District's proposal “[s]ince newer technology would allow the work to be performed much faster, with fewer employees, and during daytime hours.”

Based on the foregoing mutual agreement, I RECOMMEND the deletion of this provision.

4. Article 21, Section 9 – In Service Incentive

Current Language:

Employees who attend job related workshops and earn college credits as pertains to their job, earn inservice points. In service points have a validity period of (10) years, and

accumulate during that time frame. Each year, the first year of the validity period will be dropped while points continue to be credited throughout the current year for training completed. The Inservice Incentive will be paid in one payment and issued between mid November and mid December. Such payment shall be completed through June 30 of the preceding school year. In order to receive an inservice check, an employee must receive a regular paycheck on the designated payday and must be present at work or on an approved leave status that day. An employee who has earned in service incentive during a school year in which they retire will receive their performance on or before June 30 of their retirement year.

There are eight (8) increments of inservice points that are recognized for a bonus payment:

Professional Support Staff Point – incentive
90 points - \$125.00
180 points - \$250.00
270 points - \$375.00
360 points - \$500.00
450 points - \$625.00
540 points - \$750.00
630 points - \$875.00
720 points - \$1000.00

All incentives will be subject to applicable employee payroll taxes and Florida Retirement System.

Position of the Parties

It is the District's position that because the District, pursuant to an inter-local agreement with the Indian River State College pays for two credits out of a three credit hour course employees enroll in, employees are essentially “double dipping” as a result of their receipt of the foregoing incentive. Moreover, the District adds, such incentives are not offered to other bargaining unit employees in the District and elimination of this provision will assist the District in its budget woes particularly since this provision has cost the District \$1,149,686 since the 2008-09 fiscal year, in addition to the payment of \$1,603,633 in degree supplements.

It is the Union's position that the District's proposal to eliminate this provision is “puzzling” at best. In this regard, the Union notes that it is “[u]nimaginable that a School District would seek to eliminate the incentive payments for employees who further their education and training in

their fields, which directly benefits the School District with increased productivity, quality and overall job performance of their employees.”

5. Article 21, Section 10– Performance Bonus

Current Language:

Section 10 - Performance Bonus

A Performance Bonus shall be paid to all CWA eligible individuals who meet the following criteria:

1. Exemplary performance assessment in the prior fiscal year.
2. Worked 21 hours per week or more in the prior fiscal year.
3. Were on Continuous Employment Status in the prior fiscal year.

This bonus- will be paid annually prior to Christmas break. An employee who has earned exemplary evaluation status during a school year in which they retire will receive their performance bonus on or before June 30 of their retirement year.

The performance bonus for all CWA eligible individuals who meet the criteria above will be five (5) percent of their base salary.

Position of the Parties

It is the District’s Position that the foregoing provision be struck in its entirety. In addition to the staggering cost of \$2,608,186 since fiscal year 2008-09, the District notes that this bonus system is not provided to any other non-bargaining unit employees and represents a significant recurring cost to the District at a time of economic uncertainty.

It is the Union’s Position that the proposed elimination of this provision by the District “[c]learly demonstrates that the District Administration is not interested in having quality, exemplary performance of its employees.”

DISCUSSION

A. This Magistrate's Authority and Obligation

In reaching a determination that is fair and reasonable, Special Magistrates are guided by the criteria set forth in Section 447.405 of the Florida Statutes, which provides as follows:

- 1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.
- (2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.
- (3) The interest and welfare of the public.
- (4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:
 - (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.

B. Application of the Statutory Criteria

As an initial note, while the record reflects that bargaining unit employees received Contractual benefits at a time when numerous other non-unit employees were witnessing pay cuts, those benefits received were as a result of a mutual agreement reached during the collective bargaining process when the economy generally and the District's economic picture specifically were much healthier. However, times have changed and given the District's fiscal picture since 2008, reasonable reductions must be shared by all District personnel in order to guarantee, to the extent possible, the viability of the District. A fiscally sound District and a stable workforce is in the public's best interest. Accordingly, while each of the foregoing statutory criteria is important and will be considered, this is a case where the downturn in the District's economic picture has resulted in their desire to become a leaner and more efficient running. In its effort to do so, and by way of example, the District's reduced revenues has resulted in the elimination of 294 positions, representing approximately 13% of the District's workforce. In addition, and as noted above, pay cuts to non-unit employees from 2008-2012 have resulted in a cost savings of approximately \$9,327,767 while at the same time, bargaining unit members have received contractual benefits to which they were entitled in the amount of \$6,625,892. Accordingly, given the current and forecasted District economic picture, reductions that are reasonable must be effectuated while at the same time keeping District employees competitive such that the District will continue in its ability to attract and retain qualified and dedicated employees.

Turning now to the open issues, and in keeping with the Statutory criteria I find the following recommendations both reasonable and necessary and in keeping with the Statutory criteria noted above.

1. Article 5 – Overtime

The record reflects that comparable school districts including St. Lucie County and Martin County have adopted language that parallels the FLSA in addressing overtime payment. Moreover, modification of the current provision will save the District approximately \$49,000, not a paltry sum at a time when the District is struggling to keep afloat. Accordingly, I

RECOMMEND adoption of the District's proposal with one exception – that paid Holidays count as time worked for the purpose of overtime computation.

2. Article 21 – Data Processing Differential

For those reasons noted and discussed above, with particular emphasis on the mutual agreement to eliminate this provision, I RECOMMEND that it be eliminated from the CBA.

3. Article 21, Section 9 – In-Service Incentives

The record reflects that from fiscal year 2008-09 to November of Fiscal year 2012-13, the District has expended \$1,149,686 in this benefit. Also, as noted above, the District pays for two of every three credits taken through the Indian River State College. In addition, the District pays a stipend for the successful completion of an AA/AS, BA and MS or Specialist degree that ranges from \$1250 to \$2200. Since there is a mutual interest in having an educated workforce while at the same time assisting the District in its effort to reduce costs, I RECOMMEND the adoption of the District's proposal with two modifications – that the District pay the entire cost associated with any job related course(s) taken by unit employees, and that the Degree Supplement (Article 2, Section 11) be increased as follows:

1. AA/AS Degree - \$1800.00
2. Bachelors Degree - \$2400.00
3. Masters or Specialist - \$3000.00

4. Article 21, Section 10 – Performance Bonus

The Union's chief concern regarding the elimination of the Performance Bonus and the Step Schedule is its impact on future retirees. The current scattergram reflects that there 132 employees with 20 or more years with the District. The record also reflects that the District currently spends an average of \$521,637 per year on the Performance Bonus, an amount that represents an average expenditure of approximately \$754.00 per bargaining unit employee. In an

effort to address the interests of both the District and the Union, I would RECOMMEND the following:

- a. The elimination of Section 10 as currently written, and
- b. The creation of a (non-cumulative) Longevity schedule as follows:
 1. Twenty to Twenty-Four years of District Service - \$350 per year (77 employees, \$26,950.00)
 2. Twenty-Five to Thirty years of District Service - \$500 per year (55 employees, \$27,500.00)
 3. Thirty or more years of District Service - \$750 per year.

5. Article 20 – Salary Steps

The record reflects that since Fiscal Year 2008-09, the District has expended a total of \$1,264,387 for Step Increases. This amounts to an average yearly expenditure of \$252,877, or an average of approximately \$365 per employee per year. Given the District's current fiscal situation together with the uncertain economic climate that currently exists, I would RECOMMEND that such step increases (together with the possibility of any schedule increases) be subject to negotiation on a year-to-year basis and where the parties agree that movement in any year is warranted, movement on the salary schedule shall occur in January⁴. In addition, I further RECOMMEND that for those employees who give the District irrevocable notice of their intention to retire, that for the last/final three years of their employment with the District, that such employees be permitted to progress normally on the salary schedule effective July 1st of each year.

⁴ Movement in January will help to alleviate the District's concerns regarding the timing of the Florida Legislative Session and the District's determination of how much money it has in order to meet its obligations regarding the payment of salary steps by July 1st of each year.

CONCLUSION

Difficult economic times call for difficult measures to ensure, to the best extent possible, the continued viability of this District together with the continued employment of its staff. The Recommendations set forth above, while difficult, were designed to meet the interests of both parties while at the same time save the District needed capital. I wish the parties the very best in their continued talks and hope that these Recommendations assist in the resolution of the current state of Impasse.

Dated: December 31, 2012

Respectfully submitted,



Dennis J. Campagna, Esq.⁵
Special Magistrate

⁵ Admitted to practice in New York State

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**Communications
Workers of America
District 3
AFL-CIO**

**4901 NW. 17th Way
Suite 100A
Fort Lauderdale, Florida 33309-3770
954-771-1771
Fax: 954/771-1773**



29 January, 2013

Via E-mail: sdagresta@orlandolaw.net

Suzanne D'Agresta
Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Ave
Suite 2000
Orlando, FL 32802-2873

RE: School District of Indian River County v Communications Workers of America
SM-2012-041

Dear Ms. D'Agresta:

Attached please find the Communications Workers of America recommendations for settlement of impasse issues.

A copy has been forward to the School District's counsel.

Sincerely,

Gary L. McCallister

Gary McCallister
CWA Representative

GM/bjc
opeiu #2, afl-cio

Attachment

COMMUNICATIONS WORKERS OF AMERICA
RECOMMENDATIONS FOR SETTLEMENT OF IMPASSE ISSUES

Article 5 – Overtime Payment

Article 5(A)

The union proposes no change to the current contract language.

Article 5(B)

The union proposes no change to the current language. With zero general wage increase and the Superintendent's position of no step increases, the Superintendent's proposal constitutes a wage decrease for all employees of the bargaining unit.

Article 20 – Compensation

Article 20 (B2)

The union proposes no change in the current contract language.

The longstanding purpose of step increases is to recognize the increased productivity and quality of employees as they gain experience. Prior Boards have recognized the need for pay compensation with experience and insisted on up to 10 years credit for outside experience of new hires, internal transfers and promotions.

As the job market improves, the Superintendent's recommendation will put the School District at a competitive disadvantage. The District will experience an outflow of trained employees to other School Districts and employers as occurred in past years.

Article 21 – Supplements

Section 6

The union accepts the Superintendent's proposal.

Section 9 – In Service Incentive

This provision was negotiated more than 20 years ago to encourage employees to take job related workshops, training, and college courses. The points are accumulated over a 10 year period. Employees must continue to accrue points each year in order to maintain the in-service payments. The Superintendent's position borders on insanity. It is incomprehensible that a School District would eliminate a program that encourages education and training.

The District directly benefits from the training and education of its employees through increased productivity and overall job performance.

Employees spent considerable time and effort accumulating their in-service points over a 10 year period. It would be unfair to those employees for the School District to eliminate the promised and negotiated payments. The Superintendent's proposal constitutes a race to the bottom.

The union recommends no change to Section 9.

Sincerely,

Gary L. McCallister

Gary L. McCallister
CWA Representative

GLM/bjc
opeiu #2, afl-cio

c: Wayne Helsby, Esquire, Allen, Norton & Blue, P.A. (whelsby@anblaw.com)

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