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May 24, 2021

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**Re: USF Board of Trustees and AFSCME, Florida Council 79 -
Recommendations for Resolving Issues at Impasse**

Dear UBOT Collective Bargaining Committee Members:

This is in reference to an impasse in collective bargaining negotiations between the University of South Florida Board of Trustees ("UBOT" of "University") and American Federation of State, County and Municipal Employees, Florida Council 79 ("AFSCME"). On July 16, 2020, AFSCME declared an impasse in negotiations over a successor agreement to the parties' 2016-2019 collective bargaining agreement which expired on June 30, 2019. Pursuant to Florida's bargaining statute, a Special Magistrate was appointed to conduct a hearing and to make recommendations on how the issues could be resolved. Florida law further provides that following receipt of the Special Magistrate's recommendations, if either party objects to the recommendations in whole or in part, the dispute in negotiations is to be resolved by the appropriate Legislative Body of the Public Employer following a public hearing in which the two parties express their positions. A public hearing on this matter before the UBOT Collective Bargaining Committee will be scheduled in the near future.

By statute, prior to the public hearing, the Chief Executive Officer of the University (i.e., the President of the University), and AFSCME, are required to submit their recommendations to the UBOT Collective Bargaining Committee for settling the disputed impasse issues. On behalf of President Steven C. Currall, Ph.D., please find enclosed, pursuant to Section 447.403(4)(a), Florida Statutes, a copy of the Special Magistrate's Report and Recommendations (See attached Exhibit B), and the University's May 12, 2021, Notice of Rejecting Special Magistrate's Recommendations filed with the

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Public Employees Relations Commission (See attached Exhibit C). Set forth below are President Currall’s recommendations for settling the disputed issues at impasse.

A. BACKGROUND

The parties are currently at impasse over the following issues which need to be resolved by the UBOT Collective Bargaining Committee:

1. Whether Article 5 should be amended to add a new provision that during planned orientation of new University employees, AFSCME will be able to distribute AFSCME informational packets.;
2. Whether Article 21 should be amended to require the University to increase base wages of bargaining unit employees by two and one-half (2 ½) percent on an effective date determined by the University in the 2021-22 fiscal year, with the employees receiving the increase in the form of a retroactive lump sum payment based on two and one-half (2 ½) percent of the employee’s wages calculated from April 1, 2020.;
3. Whether Article 21 should be amended to increase the entry level base hourly rate from the current hourly minimum rate of \$10.54 to \$12.00 on July 1, 2021, \$13.00 on July 1, 2022, and \$14.00 on July 1, 2023.;
4. Whether Article 21 should be amended to add a requirement that the University provide AFSCME at least thirty (30) days advance notice of discretionary wage increases granted beyond the negotiated amount; and
5. Whether Article 21 should be amended to add a new requirement that the University provide AFSCME with copies of all financial settlement with employees to settle grievances/lawsuits/or other disputes.

B. PRESIDENT’S SUMMARY OF RECOMMENDATIONS

President Currall recommends that the USBOT Collective Bargaining Committee take the following action:

ISSUE	President’s Recommended Action
1. Orientation Packets	Status Quo ¹

¹ “Status Quo” denotes no change to the collective bargaining agreement.

2. Base Wages Increase	Adopt the language of the University’s May 3, 2021, Compromise Proposal ² to amend Article 21, as set forth in attached <u>Exhibit A</u> .
3. Entry Level Base Hourly Wage Increase	Status Quo
4. Notice of Discretionary Wage Increases	Status Quo
5. Copies of Financial Settlements	Status Quo

C. RATIONALE FOR RECOMMENDATIONS

1. Orientation Packets.

AFSCME has proposed that during the time the University on-boards (i.e., orients) new employees that the union will have a new right to give the new employees AFSCME “informational packets.” The University has never distributed AFSCME materials (or any other union materials) during orientation. In fact, orientation is attended by new employees who are not in the AFSCME bargaining unit as well as by new employees who are in the AFSCME unit, and thus it could be very confusing to distribute AFSCME literature. Moreover, orientation is currently being conducted online and there is the possibility that it will continue to be held online. Per the collective bargaining agreement, the University already provides AFSCME with information concerning the hiring of new bargaining unit employees so as to permit AFSCME to communicate with the new employees. Moreover, the University provides a bulletin board on which AFSCME may post information about the union. All collective bargaining agreements between the University and the unions are also accessible on the University’s Human Resources website. President Currall does not recommend adding the obligation that informational packets be distributed at orientation, or that they be made available (as recommended by the Special Magistrate) at orientation.

2. Base Wages Increase

President Currall is recommending a compromise to resolve the dispute over wages that would amend Article 21 to provide bargaining unit employees with the following: (1) a one-time one (1) percent lump sum payment; and (2) a one (1) percent general wage increase (Exhibit A). This Compromise Proposal was offered to AFSCME on May 3, 2021, but has not been accepted by the

² After receiving the Special Magistrate’s recommendations, the University and AFSCME discussed possible solutions to resolve the impasse. The University provided written Compromise Proposals on May 3, 2021, which have not all been agreed upon by AFSCME. More specifically, the University provided AFSCME with Compromise Proposals to (1) add shift differential pay; (2) add a new anti-bullying provision; (3) add a new paid time off provision for AFSCME’s President to engage in representational duties; and (4) amend the lay-off Article. While these compromises, made in the spirit of good faith negotiations, were agreed upon and resolved these impasse matters, the University’s Compromise Proposal on amending Article 21 to provide for amendments to wages was not agreed to by AFSCME.

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Union. The Compromise Proposal would take effect on the first pay period following ratification by both parties (or on the first practicable pay period following the date the impasse is resolved by the UBOT). The Compromise Proposal would be effective for those eligible employees who were employed with the University as of July 1, 2020, and who continue to be employed by the University as of the date payment is made. The funding impact of the Compromise Proposal is approximately \$840,000 for the bonus, and \$840,000 in annual recurring cost for the general wage increase. Again, this Compromise Proposal is made despite the difficult economic circumstances being encountered by the University.

3. Entry Level Base Hourly Wage Increase

The President is not recommending any adjustment to the base minimum hourly rate set forth in the agreement, \$10.54. Notably, Florida's present minimum wage of \$8.65 is set to increase to \$10.00 per hour effective September 30, 2021, and each September 30 thereafter, minimum wage will increase by \$1.00 per hour until the minimum wage reaches \$15.00 per hour on September 30, 2026.

4. Notice of Discretionary Wage Increases

President Currall does not recommend that AFSCME's proposal to add a new requirement in Article 21 that the University provide AFSCME with thirty (30) days advance notice to meet and confer prior to exercising its long-recognized authority to make wage adjustments for market equity, compression/inversion or other reasons be implemented. AFSCME has provided no explanation or justification for this change.

5. Copies of Financial Settlements

It is not recommended that Article 21 of the Agreement be modified, as proposed by AFSCME, to require that the University provide copies of all financial settlements with employees in grievances, lawsuits and other disputes, as AFSCME has provided no explanation or justification for this change.

The above recommendations of the University's Chief Executive Officer are based upon careful consideration of the Special Magistrate's recommendations, the parties' bargaining proposals (including the Compromise Proposals advanced by the University following receipt of the recommendations), and are determined to be in the public interest, including the interest of the University employees involved.

Respectfully submitted,

/s/John F. Dickinson

John F. Dickinson

JFD/laz

cc: Mr. Hector Ramos
Cynthia S. Visot, Ph. D.

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bcc: Gerard D. Solis, Esquire

Exhibit A

Article 21

Wages

21.1 Wage Adjustment

1. (a) The University will provide a one percent (1%) increase to bargaining unit employees who are employed with the University in an established position on the date of ratification of the Agreement by the Board of Trustees and who are active employees at the time the base increase becomes effective, and who meet all of the following criteria:

- i. They do not have an overall rating of “Needs Improvement” or “Unsatisfactory” on their evaluation of record;
- ii. They do not have an open Performance Improvement Plan.

(b) The University will provide a one-time bonus of one percent (1%) of the employee’s base wages to bargaining unit employees who were employed with the University as of July 1, 2020, and who continue to be employed by the University as of the date of ratification of the Agreement by the Board of Trustees, and who are active employees on the pay period the bonus is paid out. The bonus will be based on the employee’s most recent base wage rate prior to the 1% wage increase in section (a) above. Additionally, employees must meet all criteria below at the time of payment:

- i. They do not have an overall rating of “Needs Improvement” or “Unsatisfactory” on their evaluation of record;
- ii. They have been employed by the University in an established position since on or before July 1, 2020, and continuously employed in an established position; and
- iii. They do not have an open Performance Improvement Plan.

2. Effective Date of Increase.

The one percent (1%) base wage increase, and the 1% bonus will be granted on the first pay period following the date of ratification by the Board of Trustees.

3. Proration. Eligible employees appointed less than full time will receive a prorated amount based on their FTE.

4. Wage Adjustments.

The University shall retain the authority to make wage adjustments for employees for market equity, compression/inversion or other reasons. Also, the University shall retain the authority to enter into financial settlements with employees in the settlement of grievances, lawsuits and other disputes.

5. Performance Based Funding (“PBF”) Contingency

1. The increases contained in this article are contingent upon no reduction in the University’s Performance Based Funding (“PBF”) as compared to the level of PBF on August 1, 2016. To avoid confusion, the PBF Model was approved at the January 2014 Board of Governors Meeting. The model includes 10 metrics that evaluate Florida Institutions on a range of issues. PBF levels will be calculated on August 1 in each year of the contract for the purposes of determining if there was a reduction in PBF.
2. In the event of a reduction in PBF funding the University shall have the sole discretion to determine whether to proceed with the increases described in this article. In the event the University does not proceed with the increases due to reduction in PBF, the University will notice AFSCME in writing of its decision (“Notice”). Within 30 (thirty) days of the University’s Notice, the parties will meet to bargain in good faith for an alternate salary article.

Exhibit B

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION
IN THE MATTER OF SPECIAL MAGISTRATE’S HEARING**

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,)	
)	
Public Employer)	
- and -)	
)	SM-2020-010
FLORIDA PUBLIC EMPLOYEES COUNCIL 79, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL 3342)	
)	
Employee Organization)	

SPECIAL MAGISTRATE’S REPORT AND RECOMMENDATIONS

I. Background

The University of South Florida (hereinafter “USF”) is a part of the state of Florida’s State University System (hereinafter “SUS”). The Florida Public Employees Council 79, Local 3342, American Federation of State, County and Municipal Employees (hereinafter “Union”) represents approximately 1,700 employees working in a variety of white and blue collar jobs at USF’s three campuses in Tampa, St. Petersburg and Sarasota, Florida.

The Union negotiated its first collective bargaining agreement (hereinafter “contract” or “agreement”) with USF in 2004. Since that time, the parties have agreed to a series of three year agreements with the most recent running from July 1, 2016 and expiring on June 30, 2019.

Negotiations for a successor agreement began in December 2018, and continued until the arrival of the Covid-19 pandemic in March 2020 led to the cessation of further in-person negotiating. The parties subsequently exchanged proposals via phone calls and emails but negotiations ultimately ended in impasse as USF’s finances deteriorated. At that time, the following eleven issues remained unresolved:

- 1 - Article 4 – Non-discrimination
- 2 - Article 5.1 – Release Time for Union Activities
- 3 - Article 5.2 – Quarterly Report

- 4 - Article 5.2 – Informational Orientation Packets
- 5 - Article 7.3 – Disciplinary Actions – Oral Reprimand
- 6 - Article 8.5 – Layoff Rights
- 7 - Article 15.3 – Shift Differential
- 8 - Article 15.3 -- Special Duty
- 9 - Article 17 – Donated Sick Leave
- 10 - Article 21 – Wages
- 11 - Proposed new article – Parking Fees

Pursuant to Section 447.403 of the Florida Statutes, and the Florida Administrative Code, Rule 60CC-3-004, Jared D. Simmer, Esq., was officially appointed to serve as Special Master by the Florida Public Employees Relations Commission.

During a subsequent conference call with the parties to discuss the case, an in-person Special Magistrate’s hearing was scheduled to be held on October 12, 2020, in Tampa, Florida. Unfortunately, shortly before the hearing, the Union’s primary witness became ill and the hearing had to be rescheduled. In light of the pandemic, it was agreed that the hearing would be rescheduled for December 12, 2020, and conducted remotely over Zoom.

With my encouragement, the parties continued to work on resolving as many of the 11 open issues as they could in advance of the hearing. At the time the hearing commenced, the parties were able to settle three additional issues - Quarterly Report, Special Duty Compensation, and Donated Sick Leave, leaving the following eight issues to be addressed at the hearing:

- 1 - Article 4 – Non-discrimination
- 2 - Article 5.1 – Release Time for Union Activities
- 3 - Article 5.2 – Informational Orientation Packets
- 4 – Article 7.3 – Disciplinary Actions – Oral Reprimand
- 5 - Article 8.5 – Layoff Rights
- 6 - Article 15.3 – Shift Differential
- 7 - Article 21 – Wages
- 8 – Proposed new article – Parking Fees

The hearing proceeded as scheduled, and was transcribed by Court Reporter Cynthia Cianciolo. At the conclusion of the proceedings, the parties elected to file post-hearing briefs in lieu of closing arguments. Upon subsequent receipt of those briefs, the record was officially closed.

Appearing for the Union

Hector Ramos, Coordinator, AFSCME Florida Region 2, Ozie Jackson, Union President, Rachel Sheets, AFSCME member, and Robert Chapman, Secretary Local 3342. Testifying as a witness was Marc Rodrigues.

Appearing for USF

John F. Dickinson, Esq., Liz Gierbolini, Senior Associate Counsel, and Craig Dawson, Associate General Counsel. Testifying as witnesses were Sheri Neisham, Director of Human Relations, Raymond Mensah, Director of Parking and Transportation Services, and Nick Trivunoich, CFO.

II. Special Magistrate's Jurisdiction and Charge

Special Magistrate's hearings are conducted pursuant to the Florida Public Employee Relations Act (PERA) and the administrative rules of practice as promulgated by Florida's Public Employee Relations Commission (PERC). The purpose of PERA is to provide an administrative mechanism to help resolve Florida public sector labor relations impasses.

After consideration of the evidence, the Special Magistrate is required to issue a report and recommendations regarding how these issues can be equitably resolved, after which the parties are then free to accept or reject the Special Magistrate's recommendations. Under Section 447.405 of the Florida Statutes, the Special Magistrate is charged as follows:

The Special Magistrate shall conduct the hearings and render recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special magistrate in arriving at a recommended decision shall include:

- (1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved. ("Factor 1").
- (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. ("Factor 2").
- (3) The interest and welfare of the public. ("Factor 3").
- (4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:
 - (a) Hazards of employment ("Factor 4-a").
 - (b) Physical qualifications ("Factor 4-b").

- (c) Educational qualifications (“Factor 4-c”).
 - (d) Intellectual qualifications (“Factor 4-d”).
 - (e) Job training and skills (“Factor 4-e”).
 - (f) Retirement plans (“Factor 4-f”).
 - (g) Sick leave (“Factor 4-g”).
 - (h) Job security (“Factor 4-h”).
- (5) Availability of funds (“Factor 5”).

60CC-3.007 Recommended Decision of Special Magistrate.

- (1) Following the close of the hearing(s), the special magistrate shall review and consider all of the relevant evidence which has been presented during the hearing(s) and any oral or written argument provided by the parties, and he shall prepare a recommended decision. In reaching a decision, the special magistrate shall consider only that evidence presented at the hearing(s) in light of those factors set forth in Section 447.405, F.S. The special magistrate’s recommended decision shall include findings of fact and recommendations for settlement of each issue in dispute.

It should be duly noted that I gave due consideration to all the above factors before making my recommendations.

III. Special Magistrate’s Findings and Recommendations

In writing this Report and Recommendations, I took note of the following:

- Since the parties’ last contract, there has been significant societal changes including agitation for economic and social justice. Given my obligation under the statute to consider the interest and welfare of the public, I took these recent developments into account.
- As a result of the Covid-19 pandemic, the budgets of state-sponsored institutions of higher education all around the country have been under severe duress, with an uncertain future going forward from declining enrollments, added costs of having to move to online instruction, the need to purchase personal protective equipment and offer testing, and a loss of revenue from diminished state support, underutilized dining halls and dormitories, empty campus parking garages and cancellation of athletic events. The impact of these developments on USF’s

“availability of funds” to pay for any improvements to the contract were neither underestimated nor ignored.¹

- The weight I have given to each statutory factor in making my recommendations is based on various considerations including the ability of USF to afford the proposed changes to the contract, the bargaining unit’s economic situation relative to other employee groups at USF, what contract enhancements other bargaining units at USF and non-unionized staff have received, and the credible evidence that each party has placed on the record in support of their respective positions.
- Lastly, I presume that the party proposing a change to the contract bears the burden of providing credible evidence in support of their proposal.

Impasse Issue #1

Article 4 – Nondiscrimination

Summary of the Union’s Proposal

The Union proposed adding the following anti-bullying language to Article 4:

“The University and AFSCME seek a work environment that is free from bullying and harassment. Bullying is included in this violation and refers to repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally, and are not protected by freedom of expression.”

Summary of the Union’s Justification for the Proposal

1. Without anti-bullying language, bargaining unit members will continue to be too afraid and intimidated to report bullying to management.
2. The parties need to emphasize the right to work in an environment free from fear and intimidation by adding anti-bullying language to the contract, a document that’s readily accessible to all employees, without them having to own or access a computer to look up the policy on USF’s intranet.
3. While USF contends that it’s unnecessary to add this language because it’s already addressed in USF policy there’s precedent to have it in both the contract and policy given that there’s already

¹ Florida reported revenue declines of 10% or more leading the SUS System to direct universities to reduce budgets by 8.5%. This led to, among other things, USF’s initial proposed elimination of the School of Education. While rescinded, USF must still find ways to reduce the budget by approximately \$7 million over the next two years.

a contract article (Article 4) as well as a USF policy that are labeled “Unlawful Discrimination and Harassment.”

4. The fact that other Florida Universities don’t have similar language in their contracts is immaterial as each SUS school negotiates their own contracts.

Summary of the USF’s Response

1. USF wishes to maintain the status quo, pointing out that the USF’s disciplinary action policy already expressly prohibits and recommends discipline for threatening and abusive language, as well as aggressive and violent behavior, and is readily accessible at the computer station in every department.

2. No other SUS school has this language in their contract.

3. The Union’s real motivation for this proposal is to involve itself in disciplinary actions against management employees who have been accused of bullying.

Special Magistrate’s Findings

At this moment in time there is increased sensitivity to, and less tolerance of, abusive or coercive behavior for any reason, including bullying which has become a frequent topic of discussion in the media.² Because bullying often involves power imbalances between the parties, organized labor has been one of the groups most vocal about bringing this issue to the forefront.

In recognition of these developments, and based on the evidence of record, the Special Magistrate finds as follows:

1. While it may be true that the USF has a policy prohibiting threatening or abusive behavior, bullying can involve a much broader scope of inappropriate behavior than just threats or abusive language.

2. Including language in collective bargaining agreements specifically prohibiting bullying is arguably the rule rather than the exception in most collective bargaining agreements.

3. While language prohibiting bullying is presently addressed in USF policy, it’s noted that the term “bullying” is not mentioned, and conduct specifically associated with bullying is not clearly spelled out.

² See New York Governor Mario Cuomo’s current situation as an example.

4. There's precedent in the parties' contract to include language on topics that are already addressed in policy.³

5. While it may be true that no other SUS labor agreement has language specifically prohibiting bullying, it's not determinative because each campus has the latitude to decide what issues are of sufficient import to include in their contract. And, just as these parties cannot dictate what other campuses include in their contracts, similarly, neither do the other SUS schools get to dictate what language USF elects to include in its contracts.

6. USF asserts that the Union's "real" motivation for this proposal is to involve itself in the disciplining of managerial employees found guilty of bullying. This is, of course, entirely speculative. To the contrary, while the Union has no formal role to play in disciplining management employees, they certainly have legitimate reasons to see that individuals are held accountable for engaging in proscribed behavior towards bargaining unit members.

7. It seems reasonable to presume that the best way to prevent bullying of bargaining unit members is to have language in the contract that speaks definitively to that obligation, and defines and specifically calls attention to and prohibits that conduct by name.

8. Because many of the Union's members either don't own a computer, lack easy access to one, and/or are not computer literate, it creates an unnecessary and unreasonable barrier for employees to have to research their rights online, something that clearly is not in either party's best interests.

9. Because the Union's proposal is de minimus, and the benefit it provides obvious, I find no good reason to maintain the status quo. And, in a balancing of the equities, the importance of educating employees on their rights, and to hold accountable those who engage in this prohibited conduct, clearly outweighs the rationale for upholding the status quo.

Special Magistrate's Recommendation

Including anti-bullying language in the contract is a timely topic, is a matter of mutual importance to both USF and bargaining unit members, involves nothing in terms of cost or inconvenience to add, does not conflict with any existing USF policy or practice, reflects behavior

³ It appears that the contract already contains language on issues that are already addressed in USF policy. Presumably these would include such issues as discipline, non-discrimination, personnel records, health and safety, performance evaluations, hours of work, benefits, and worker compensation, to name some examples.

that can never be condoned and is always improper and often illegal, reflects a preexisting practice to include in the contract issues already addressed in policy, and removes unnecessary and unreasonable impediments to employees knowing about, and insisting upon, their rights.

For all the above reasons, the Special Magistrate finds the Union's proposal reasonable and appropriate under the circumstances, and recommends that its proposed language be added to the contract.

Impasse Issue #2

Article 5.1 - Release Time for Union Activities

Summary of the Union's Proposal

The Union proposed adding additional limited release time for the Union President to conduct union business. Specifically, the Union's proposal reads as follows:

"USF agrees to provide a total of two (2) hours per week of release (sic) time to the President of AFSCME Local 3342 for the purpose of carrying out AFSCME obligations in representing and administering this Agreement."

Summary of the Union's Justification for the Proposal

1. This language is necessary in order to meet the Union's obligation to represent bargaining unit employees. While the contract currently provides paid release time for the President and stewards to represent employees in the grievance process, this only applies after a grievance has already been filed.

2. USF does not consider the many other factors involved in union representation such as investigating whether something is a grievance, travel to meet with a potential grievant, talking to other employees and management, and researching policy or past practice, etc.

3. The current 56 hours a year that must be shared by Union officials to negotiate a new contract is clearly insufficient because these hours must be shared by all the members of the bargaining committee, nor does it include the time it takes to meet with management to discuss changes in policy or working conditions.

4. USF is attempting to constrain the definition of union representation by limiting it to time spent in administering grievances and contract negotiations, in effect serving to limit the effectiveness of the Union in fulfilling their various other responsibilities.

5. While USF asserts that granting this additional two hours a week would constitute 25% of the President's work time, two hours out of a 40-hour work week amounts to only 5% of her work time. Thus, not only would the burden be minimal, but the full two hours may not even be needed every week. And, this additional time will be used to resolve issues which would be of mutual benefit to both bargaining unit as well as USF.

6. USF attempted to cite a PERC decision to support its resistance to the Union's proposal. However, PERC does not oppose Union release time, but rather, quoting this decision, "We have already adopted the private sector view that paid release time is negotiable and a valuable benefit for a bargaining unit as a whole." In fact PERC recently recognized that "(I)t has long held that contractual release time clauses, so long as they are negotiated at arm's length, are a legal and fundamental way in which employee organizations and public employers can help provide effective and harmonious labor relations."⁴

7. Florida Statute 447.405, Sections (3) and (4)(h) requires Special Magistrates to consider, "The interest and welfare of the general public." It's in the interest and welfare of the general public that USF, as a public employer, provides and promotes a good work environment. This additional release time would assure that the Union will provide a minimum amount of time per week to ensure that employees are adequately represented in grievance investigations, when policies are being proposed, and in all manner of discipline.

8. Section (4)(h) of that statute requires, "Comparisons of peculiarities of employment in regards to other trades or professions, specifically with respect to (h) Job security." The Union President should not have to exhaust her personal leave time to represent members of the bargaining unit. This two hours per week would be used to help resolve pending issues, and allow the President to use leave time for its original intention, i.e., rest and re-charge. As it stands now, this President has been denied time off because of the need to provide fourteen day advance notice and has had to use her annual leave time for representational activities.

⁴ Algeri v. Pinellas Suncoast Transit Authority, 42 FPER ¶129(2015).

Summary of USF's Response

1. USF proposes the status quo. Per Article 5.8, the 56 hours of paid leave per year for Union committee members to attend negotiating sessions with USF already provide sufficient time to discharge its representational duties.

2. Article 6.2 permitting the President or employee representative, "reasonable time off with pay to investigate the grievance and to represent the Grievant at any step of the grievance procedure which is held during regular work hours" already addresses the Union's request and is only limited by reasonableness and operational necessity.

3. The Union failed to produce any evidence regarding the amount of time the President spends attending meetings at all three campuses relating to employee grievances, and participating in negotiating sessions beyond the already-provided 56 hours of paid time each year.

4. The Union failed to prove why it has to be the Union President who attends meetings and conducts grievance investigations when other representatives are available.

5. It's the Union's choice to stop paying the President for time spent carrying out her representational duties.

6. Agreeing to the Union's proposal would violate Section 447.501(1)(e) because it would amount to USF impermissibly contributing financial support to the Union, an unfair labor practice. PERC has held that, "any paid release time for union officials must be strictly limited to time spent directly representing employees; for example, collective bargaining and grievance and discipline activities."⁵ This decision further provided that employers, "must ensure that employer funded release time is only used by unions for direct representational activities and that it has objective corroboration of a union's representational activities." Therefore, if the Union's release time proposal is implemented, the USF will be required to ensure that it could substantiate the President's use of such time off was proper or it could be in danger of committing an unfair labor practice.

7. If this proposed language was added, then when the President was engaged in administering the contract there would be no violation of the contract, but USF would be violating

⁵ Allen v. Miami-Dade College Board of Trustees. 43 FPER, 43 Florida Pub. Employee Rep. sec. 6, 2016 WL 3537513.

the contract if it didn't pay for this time. At that point, it would be faced with the untenable choice of either violating 447.501(1)(e) and committing an unfair labor practice, or violating the contract.

8. The Union failed to provide any comparison evidence in support of this proposal in contrast to USF which showed that of the four comparable State Universities that provide release time, two (FSU and FAMU), provide a "reasonable" amount of time to participate in grievances, one (UCF) does not provide any paid release time (and UCF requires the use of accrued annual leave) and one (FIU) provides release time for union-related activities.

9. The Union's proposal would require USF to pay an additional two hours of paid time each week to either the President if the release time is taken during non-work hours, or another employee to do the President's job while she is taking release time. And, the Union has not provided any evidence of the availability of funds to pay for this recurring expense.

Special Magistrate's Findings

This Union represents over 1700 bargaining unit members working on three geographically dispersed campuses, and working different shifts. By law, the Union is legally required to provide these employees with a variety of services, with negotiating the labor agreement being one of the most, if not the most, important. Contract negotiations involve a great deal of time and effort, including forming and meeting with the bargaining committee, researching issues, meeting with and surveying members regarding their priorities, drafting proposals, participating in multiple negotiating sessions over an extended period of time,⁶ and then after reaching a T.A., holding ratification meetings. And in many cases, many of these duties involve travel time for each Union negotiating committee member as well.

In order to fulfill these diverse and time-consuming obligations, the entire negotiating team receives a grand total of 56 hours/year total to share, i.e., 1.08 hours/week, or a grand total of about 6 minutes/week per individual.⁷

A second major responsibility of the Union is to investigate, and hopefully informally resolve, employee complaints, and/or represent employees in the grievance process should the dispute lead to a formal grievance. This process includes meeting with employees and management,

⁶ Almost two years of negotiations for the present contract.

⁷ Hypothetically, if there were ten members on the negotiating team, they would each receive a total of approximately six minutes/week per individual, or 5.6 hours/year, to discharge all their negotiation-related obligations.

investigating, interviewing potential witnesses, negotiating informal resolution of the dispute with management, and then should a grievance be filed, grievance preparation and write-up, attending each stage of the grievance process, including arbitration hearings should they be needed, and writing post-hearing briefs.

The current contract provides Union reps with a reasonable amount of paid time off to represent an employee, but only if a grievance has been filed.⁸ This approach would appear to be at odds with, and to defeat the purpose of, Article 6.1 (A) of the contract which reads:

The University and AFSCME encourage informal resolution of employee complaints. To that end, employees should present such complaints for review and discussion as soon as possible to the lowest level University representative who has authority to address the complaint. Such review and discussions should be held with a view to reaching an understanding which will resolve the complaint in a manner satisfactory to the employee, without need for recourse to the formal grievance procedure prescribed by this Article. If the complaint is not resolved by such informal discussion, the employee may proceed to file a grievance consistent with the provisions of this Article.

So, in other words, while the contract recognizes the importance of resolving employee complaints informally without the need to file a grievance,⁹ perversely, Union reps are only provided paid time off if disputes remain unresolved and a formal grievance is filed. In other words, to work with the employee and management to informally resolve disputes, which serves to benefit both parties, Union reps are expected to do that on their own time. But, if they refuse or are unsuccessful in resolving that same dispute informally, then they are granted paid time off to contest USF in the grievance process, and potentially in an expensive and time-consuming arbitration hearing. This outcome is not only clearly contrary to the spirit of 6.1(A), but not in the interests of either party.

And, were it true that the Union's only obligations involved contract negotiations and representing employees in the grievance process. To the contrary, the Union's duties are far more encompassing. They include counseling employees on their rights, briefing them on upcoming policy changes, answering questions of contract interpretation and policy, meeting with new Union members, attending USF meetings to discuss matters of import to the bargaining unit,¹⁰ visiting working conditions in the various work sites, resolving differences between bargaining unit

⁸ The language of 6.2 (B) is confusing. It seems to assume that the grievance is first filed, and then investigated. It's normally the other way around as the investigation should inform whether filing a formal grievance is even necessary.

⁹ Both good business practice, as well as serving to strengthen the relationship between management and labor.

¹⁰ Example a meeting to discuss potential layoffs, whether called by USF or the Union.

members, posting notices, attending meetings with management to discuss matters of import to the bargaining unit, among many other responsibilities.

The USF counters that the status quo should be maintained since the Union failed to provide substantiation for the hours it spends each year on Union duties. While this may be so, it should be apparent under the circumstances that 56 hours total for an entire negotiating team to negotiate a new contract doesn't come close to approximating the actual hours spent.¹¹

The USF also objects to the notion that the Union President has to be the one handling many of the Union responsibilities such as handling grievances. That decision is, of course, solely up to the Union, and in any event likely reflects the difficulty in getting other Union officers to agree to use their own limited accrued sick and vacation time to attend to Union matters.

USF also questioned why the state AFSCME doesn't pay the President to attend to Union matters at USF. The answer to that would appear to be that locals are responsible for the cost of running their own operations out of their membership dues.

Further, as PERC has recognized, paid time off to carry out union duties is not only of benefit to the bargaining unit, but can lead to improvements in the union-employer relationship as the parties partner to defuse workplace conflict.

USF also believes that adopting the Union's proposal would cause it to violate Section 447.501(1)(e) in that it would constitute contributing financial support to the Union, creating exposure to an unfair labor practice charge. However, that position seems odd given that USF currently provides the Union paid time off without a similar concern. And, PERC has previously recognized that paid time off is permissible as long as it's for any direct representational activity, a ruling not at all at odds with the Union's proposal.¹²

Finally, USF points out that agreeing to this proposal would force it to incur additional costs because when the Union president is on leave, another employee must be scheduled to take her place. While this is so, USF would remain free to deny a requested time off for good cause, and even if granted, at the President's current rate of pay, if securing a substitute became necessary, given the limited additional paid time being requested, the financial outlay of, at most, two hours

¹¹ And, it only covers time spent attending negotiating sessions (Article 6.2 (B)).

¹² The parties would certainly be free to negotiate a mutually acceptable list of permissible uses.

a week, would be negligible.¹³ And, perhaps the issue should be reframed as not one of cost, but as one of investment in good labor relations which pays dividends for both parties.

Special Magistrate's Recommendation

For all the above reasons, the Special Magistrate finds the Union's proposal reasonable and appropriate under the circumstances and supported by the evidence, given the necessity of helping to provide coverage to a very large group of employees working at three disparate campuses, and consistent with what many labor agreements already provide. Therefore, I recommend adoption of the proposal in principle. However, in the interests of clarity, I propose the following alternative language:

"USF agrees to provide up to two (2) hours per week of paid release time to the President of AFSCME Local 3342 for the purpose of attending to on-campus union duties. The President agrees to provide the supervisor with written justification for the meeting, and sufficient advance notice where practical to facilitate the securing of a replacement employee should that be necessary. Such leave shall not impede the operations of the University or be unreasonably denied, and when delayed or denied, the supervisor shall provide the reasons to the President in writing."

Impasse Issue #3

Article 5.2 Informational Orientation Packets

Summary of the Union's Proposal

The Union proposed adding the following language to Article 5.2:

"New Employee Orientation: During planned orientation [sic] the Union shall provide informational packets to be distributed to the new employees of the AFSCME bargaining unit."¹⁴

Summary of the Union's Justification for the Proposal

1. It is critically important that employees be informed about their terms and conditions of employment during their new employee orientation. The proposed information packet would include a copy of the Union contract to be given to new hires into the bargaining unit. And, USF would have the right to review and approve in advance the material that would be included in the Union's information packet.

¹³ And, all the more so if she were keeping employee complaints out of the grievance procedure.

¹⁴ I assume that the Union meant the proposal to read as follows: "New Employee Orientation: During planned orientation of the Union shall provide informational packets to be distributed to the new employees of the AFSCME bargaining unit."

2. The contract is a document that contains pertinent information for employees such as their rights and benefits and satisfies the purpose of a new employee orientation.

3. Section 447.405 requires that the Special Magistrate consider, in Section (3), “The interest and welfare of the general public,” and it’s in the interest and welfare of the general public that employees of USF, as one of the largest public employers in the community, know their rights and benefits. The contract reflects what USF has agreed to live up to and uphold, and providing a copy of the labor agreement to new bargaining unit hires helps earn the trust of the community, while denying crucial information sends a strong message that USF’s interests supersede its employee’s right to be informed.

4. Having the contract available on USF’s intranet is insufficient because many employees lack access to computers, don’t have time during their work hours to locate a terminal, and are not necessarily computer savvy enough to navigate the intranet. The Union’s proposal would address those impediments.

5. Handing out these packets would not violate Florida Statute 447.501 Section 1(e) inasmuch as distribution would in no way constitute assisting or contributing to the support of the Union but rather be for informational purposes only, and to suggest otherwise is false and misleading and for which there is no legal precedent.

6. USF argues that the orientation session is too brief to allow time to distribute packets, no other SUS school provides these kinds of packets, and that new employee orientations include both bargaining unit and non-bargaining unit employees. However, because the Orientation Master Schedule provides a half-hour break from 10:00 am to 10:30 am, a restroom break from 11:15 am to 11:30 am, a lunch and tour from 11:30 am to 1:30 pm, and a 10-minute break from 3:25 pm to 3:35 pm, there is more than sufficient time to hand out the contract.

Summary of the USF’s Response

1. No representatives from any of USF’s five unions are permitted to attend orientation.
2. USF already provides the Union a quarterly report of new hires, and if it wants a more up-to-date list it can submit a public records request.
3. USF provides a bulletin board in the same building as the Human Resources office where the Union is free to post Union literature.

4. The contract is posted and accessible to any employee by simply logging on to the Human Resources intranet on one of the USF-provided terminals.

5. The Union was unable to show that a change in the status quo is necessary.

Special Magistrate's Findings

Included in the purpose of new employee orientation (onboarding) is to educate new hires on the employer's policies and practices, review benefits, answer questions, and explain expectations. While all USF employees share the need to know certain information (e.g., significant policies, practices and expectations), those employed in specific professions, e.g., law enforcement, medical and allied healthcare, the legal department, bus drivers, counselors, etc., need to be made aware of additional legal responsibilities and expectations germane to their line of work. In addition to this, however, and equally important, employees covered by collective bargaining agreements must also be made aware that a legal document, known as a labor contract, exists, covers terms and conditions of their employment, and provides them certain legal and contractual rights.¹⁵

While policies, procedures and benefits applicable to all employees can be covered in new employee orientation, discussion of those that are unique to particular jobs, such as the ones referenced above, are generally left up to the new hire's department. However, employees hired into bargaining unit positions have a third, distinct body of knowledge they need to know – the terms and conditions negotiated into their respective collective bargaining agreements which can differ in important respects from general USF policies and practices. And apparently, for this bargaining unit, under current practice, awareness of the existence of the contract is intentionally not shared with them.

And, so, this raises the question - how, under current practice, with no mention of the Union at orientation, and no distribution of the contract, does USF expect represented employees to acquire this right to know when they hire into the university? While this responsibility clearly lies with the Union, because these employees work multiple shifts, in multiple on-campus locations, and in three different cities, it would not only be logistically difficult for Union reps to introduce

¹⁵ The Union president testified at the hearing that she wasn't aware there even was a Union until a year after she was hired at USF. One, therefore, has to surmise from that that she also, then, wouldn't have been aware that there was a labor contract that covered her, either.

themselves, but under the current contract, the Union is not even required to be made aware of who these new bargaining unit members are for at least three months after they're hires.^{16,17}

While USF understandably considers it essential that all new hires be informed about their general rights and responsibilities, for some unexplained reason it apparently doesn't see the urgency that individuals be similarly informed of their rights and responsibilities under their collective bargaining agreement which seems odd given that that document sets forth their terms and conditions of employment, along with their rights under that document.

While recognizing that Florida law prohibits USF from encouraging membership in, assisting in the formation of, or financially supporting, a union, it's unpersuasive that ensuring that new hires are made aware of both their general rights and responsibilities as well as their contractual rights and responsibilities (i.e., for informational purposes), would violate that prohibition. And, this is all the more so when at the same time that USF asserts that handing out a hardcopy of the contract would violate the statute, it assumes that making the contract available electronically does not.

In short, while handing out a hard copy of the contract to new bargaining unit members does not in any way appear to constitute active encouragement/assistance/support of a union, on the other hand, a case could be made that intentionally withholding all mention of the contract from these same employees does appear to constitute active discouragement, rather than the neutrality the law presumes.¹⁸

Special Magistrate's Recommendation

For all the above reasons, the Special Magistrate finds that in order to carry out its legal obligations to bargaining unit members which commences immediately upon their hire, and the importance of new bargaining unit members knowing their legal rights and responsibilities under the contract, as a general principle the Union's proposal is warranted under the circumstances. Therefore, while I recommend its adoption, I would also suggest the following additional recommendations that could be memorialized in the appendix, side letter or agreement, or MOA.

¹⁶ Even though the contract requires USF to provide the Union quarterly with the names of new hires, at the hearing USF admitted at the hearing that it doesn't always meet its deadline. In other words, even as USF withholds knowledge of the contract from new hires, it apparently doesn't find the need to honor the quarterly disclosure deadline in the contract with any sense of urgency, either.

¹⁷ USF points out that the Union can file a records request if they wish to know. This position not only strikes me as unnecessarily confrontational, but it avoids the issue.

¹⁸ Particularly the suggestion that if the Union wishes to know who's been added to the bargaining unit, it can file a formal records request in court.

- The parties would agree on the advance notice USF would provide the Union regarding the number of contracts it would need based on the number of new bargaining unit hires scheduled to attend each session, so that it can prepare the requisite number of packets.¹⁹
- The Union would assume all costs associated with assembling those packets.
- Packets would at a minimum contain a copy of the current collective bargaining agreement, as well as any other informational material the parties would mutually agree upon.
- Packets would be subject to the USF's prior review and approval before their distribution.
- Instead of being handed out, the packets would be stacked and made available at a side table with a sign so that any new bargaining unit hire who wished could avail themselves of one. Arrangements would then be made for the Union to pick up any uncollected contracts.

Impasse Issue #4

Article 7.3 – Disciplinary Actions – Oral Reprimand

Summary of the Union's Proposal

The Union proposes adding the following [italicized/bolded] phrase to Article 7.3(B):

“Oral reprimands shall have no impact upon the substantial interest of the employee other than as a first step in progressive discipline ***for the same subject/issue*** [emphasis added]. Oral reprimands shall not be grievable under the provisions of this Agreement. Documentation of an oral reprimand shall be limited to date of the reprimand and the subject of the reprimand. Oral reprimands shall not be used as a basis for later disciplinary actions against an employee provided the employee has maintained a discipline-free work record for at least one (1) year subsequent to the reprimand. Such oral reprimands shall be placed in a sealed envelope and marked “Expired” in accordance with Section 7.3(B) any time after that one (1) year upon written request of the employee.”

Summary of the Union's Justification for the Proposal

1. This proposal addresses an issue that has increasingly become a sense of disenfranchisement among members of the bargaining unit because too often an employee receives a written reprimand or suspension without first receiving the opportunity to correct their behavior.

¹⁹ Whether or not these new hires elect to join the Union, nonetheless these individuals are subject to the provisions of the contract.

2. The Union does not oppose progressive discipline and supports the USF in continuing to progressively discipline, but when it comes to disciplining an employee in the second step of the progressive disciplinary process, USF should first make sure that the employee has received an oral reprimand for the same offence.

3. Both parties agree that progressive discipline is the best course of action to correct conduct. And, since an oral warning is the lowest level of discipline, there is no harm in requiring that before proceeding to a more severe discipline employees first be given the opportunity to correct their behavior.

4. The following provision of Section 447.405 applies here: “The interest and welfare of the general public.” The Union believes that it’s in the interest and welfare of the general public that USF, one of the area’s largest employers, have a reputation of fairness and opportunity. One way to accomplish that is to have the disciplinary process provide employees an opportunity to correct mistakes when they commit offenses that don’t rise to the level of a serious infraction that requires skipping steps in the progressive disciplinary process.

Summary of USF’s Response

1. USF’s ability to progressively discipline an employee is not limited to an employee repeatedly committing the same infraction. Nevertheless, the level of discipline and progressive steps are not rigid and based on the facts of the specific situation, extenuating circumstances, the severity of the misconduct, the employee’s previous record, and whether the employee is employed in a staff or administrative role.

2. President Jackson testified that the reason for the Union’s proposal is that currently, employees can be terminated for a combination of a more severe infraction followed by a lesser infraction, e.g., in her case her crashing her bus followed six months later by an unauthorized absence for excessive tardiness. The progressive disciplinary process in the contract is the procedure used for every employee at USF. If management and Human Resources were required to use a different disciplinary procedure for AFSCME bargaining unit employees then it would be confusing, perceived as unfair, and likely result in discrimination claims against USF.

3. Moreover, it would be irresponsible to allow employees to commit dozens of infractions with little to no consequences as long as they commit a different type of infraction on each occasion.

4. The Union failed to present any comparison evidence relating to this proposal. All the comparable universities in the SUS have progressive discipline policies similar to this one wherein the progression of discipline is not contingent on the infraction being for the same subject or issue.

5. Accordingly, the Union was unable to meet its burden of proving that a change to the existing language is necessary.

Special Magistrate's Findings

Having disciplinary process uniformity across different employee groups, union and non-union, is a significant consideration for an employer and this being the case, the burden of supporting the need for such a change becomes higher.

Because an individual's work performance encompasses such a wide range of intertwined responsibilities, e.g., attitude, decorum, interpersonal relations, attendance, punctuality, quality of work, safe work practices, etc., employers are resistant to put performance deficiencies into silos whereby each individual transgression warrants its own progressive disciplinary track, more or less what the Union's proposal attempts to accomplish here.

People are hired to do a job, and the responsibilities of that job are both multiple and interrelated. This means that the expected standard of performance is to satisfactorily discharge all of one's job responsibilities, all the time. And, so, to be deficient in any one area (e.g., attendance) constitutes, to some degree, failure to satisfactorily perform in the other areas.

While the Union concedes that certain conduct is so egregious that it warrants skipping the oral reprimand stage, its proposal makes no mention or recognition of that fact. Further, Article 7.3 (B) currently provides a sunset provision that removes any mention of an oral reprimand after twelve months which is more generous than what is found in other many labor agreements.

Finally, it's noted that under Article 7 of the contract, the parties agree that an employee can only be disciplined for "just cause." This provision already provides the Union with a sufficient level of protection against unjust discipline. As a result of this provision, should the Union feel that an employee has been unfairly disciplined without just cause, including the examples it provided in support of this proposal, then it has the right to challenge the propriety of that action through the grievance process.

Special Magistrate's Recommendation

After considering the Union's proposal, the Special Magistrate recommends maintaining the status quo by leaving current contract language unchanged. At the same time, that's not to say that the Union hasn't raised a valid concern. To address the lack of notice to employees improve their performance, as well as USF's concerns about allowing too many bites at the apple, I recommend a solution that would appear to address both parties' concerns - adding language making non-disciplinary counseling a step precedent to an oral reprimand. This approach is not only common practice in labor agreements, but in most non-union disciplinary policies as well.²⁰ This would serve to preserve the uniformity of practice that USF feels important to maintain, while at the same time help address the Union's concerns that under current contract language, the first step in addressing performance deficiencies appears to be disciplinary/punitive, rather than corrective/preventative, in nature.

Impasse Issue #5

Article 8.5 – Layoff Rights

Summary of the Union's Proposal

The Union proposes adding the following italicized/bolded language to Article 8.5 to bring it into conformity with existing USF policy:

*“Recall. **For a period of one (1) year following layoff**, laid off employees shall be recalled in accordance with the USF Regulation 10.211 (2) (a) – (i). When a vacant position exists at the USF in the same class in which the employee was laid off, the employee who has been laid off and who is not otherwise employed in an equivalent position shall be offered re-employment if the employee meets the special qualifications and relevant experience required for the vacant position. If the employee held regular (permanent) status in the class at the time of the layoff, the re-employment shall be with regular (permanent) status and the total retention points computed at the time of the layoff shall be restored to the employee.”²¹*

Summary of the Union's Justification for the Proposal

1. This impasse issue does not represent a change in University policy or an expansion of rights for employees of the bargaining unit, rather the proposed language mirrors recall rights already found in University policy.²²

²⁰ It serves the additional function of reminding management that in the event of an infraction, discipline doesn't always have to be the first response. In other words, the opportunity for the employee to correct behavior rather than the opportunity for management to punish the behavior.

²¹ Article 8.5.

²² USF Ex. Tab 5, pg. 5: “Staff employees have recall rights for one year following layoff.”

2. President Jackson best expressed the need for this language - “most staff employees..., our bargaining unit employees...they don’t know. That procedure basically is USF policy and procedure...most staff employees would not go to USF intranet to pull up the one major policy and procedure to look that up. But if we had it in our bargaining contract, they will go to our bargaining contract and look it up ... which is less complex than USF policy and procedure.”

3. USF’s argument against this proposal is that it’s already accessible on the USF intranet. The Union counters, as before, that most employees do not use or are unable to use the intranet to review policies; the Union contract is readily available to those employees in hardcopy; and, just because a policy can be found on the intranet does not mean it cannot be in the collective bargaining agreement, just as language mirroring other USF policies already are.

4. USF’s argument that this proposed change “isn’t necessary” is a subjective opinion that’s refuted by our surveys, as well as what we hear at our membership meetings.

5. Again, Section 447.405, Section (3) is applicable – “The interest and welfare of the general public.” It’s in the interest and welfare of the general public that USF be transparent with employees and the general public regarding recall rights at the USF.

Summary of USF’s Response

1. Several USF regulations are referenced throughout the contract in order to avoid having to duplicate everything within the contract.

2. USF Regulation 10.211 is accessible to all employees on USF’s intranet. President Jackson inexplicably testified that “most of the staff employees would not go to USF intranet to pull up the one major policy and procedure to look that up.” Not only is Jackson’s assertion unsupported, but an employee’s unwillingness to look up a regulation, even if true, would not justify a change to the status quo.

3. Therefore, the Union has not met its burden of proving that a change to the status quo is necessary.

4. The Union failed to present any comparison evidence relating to this proposal.

Special Magistrate’s Findings

Article 8.5 (to which the Union proposes to add “For a period of one (1) year following layoff”) directly refers to University Regulation 10.211(2)(i), which in turn states that, “Staff employees

have recall rights for one year following layoff.” In other words, what the Union is proposing is to bring contract language into conformity with what the policy already states.

By continuing to leave the recall rights language out of the contract, it unnecessarily creates potential confusion for bargaining unit employees, particularly since Article 8.1(A) states that laid off employees shall be recalled in accordance with the policy and this contract article, confused and without clarifying if and how the contract and the policy differ, or how the policy and contract are to interact. I will speak to what’s involved were the status quo to be maintained:

(1) While USF posits that there’s no need to adopt the proposal because all university employees are covered by the same policy, the reality is that laid-off employees reading the policy learn of their guaranteed 1-year recall rights, while laid-off bargaining unit members reading just the contract do not. In other words, while the policies are intended to be the same, bargaining unit doesn’t necessarily know that. In fact, one could argue that the contract language is “incorrect.”

(2) And, if a laid-off bargaining unit member does read both, then there’s an unexplained conflict between the two.

(3) Whether it be recall rights, or any other term and condition of employment, as a general rule, individuals covered by the provisions of a contract shouldn’t be forced to have to search outside the four corners of that document in order to learn what their rights are, particularly where, as appears to be the case here, a significant portion of those individuals lack the time or wherewithal to search out the policy on their own.

(4) And, when there’s a conflict between contract language and USF policy, I can find no good reason not to correct the contract to bring it into conformity with the policy, particularly when the fix is so simple, and the opportunity to do so (i.e., in the process of negotiating a new contract) presents itself.

Special Magistrate’s Recommendation

For all the above reasons, I recommend adoption of the Union’s proposal.

Economic Issues

The following proposals deal primarily with economic issues, and as such, involve USF’s availability of funds. Because of that imperative, I take notice of the following, very recent developments that have occurred since the record in this case was closed.

On January 8, while the USF announced no tenured faculty layoffs, it did announce loss of vacancies resulting from early retirements, and cuts in temporary visiting instructors and contingent faculty (adjuncts and graduate teaching assistants). And, then, on January 13, 2021, the Board of Trustees approved cutting recurring costs by \$36.7 million in anticipation of the upcoming legislative session where SUS budgets are expected to tighten even further.

In addition, because the Union attempted to suss out the state of USF's finances via a variety of second-hand and inaccurate sources, rather than rigorous accounting principles, its analysis of the state of USF's ability to pay was underwhelming. As a consequence, its approach compromised the degree to which it was able to accurately cost out its proposals, as well as its projections regarding USF's funding ability to pay for its proposals.

Impasse Issue #6

Article 15.3 – Shift Differential

Summary of the Union's Proposal

In recognition of those employees who work the non-daylight shift, the Union proposed adding the following language to Article 15.3:

“Commencing the beginning of the pay period, employees (sic) in the bargaining unit will be paid a shift differential of five percent (5%), for all hours worked between the hours of 7:00 p.m. to 7:00 a.m.”

Summary of the Union's Justification for the Proposal

1. Employees who sacrifice by working an evening shift have to live an altered lifestyle because of their work hours, their family life is affected, and their late-night travels expose them to more perils than the average person.

2. It's common for second and third shift employees to receive a shift differential in recognition of the inconvenience, and so most employers recognize the need to pay an hourly premium, unlike USF which does not.

3. Even though job applicants are told upfront that they won't be paid a shift differential, but are willing to accept the job regardless, doesn't mean they don't think they deserve one.

4. The Union adamantly objects to an argument that would deny it the right to negotiate this issue. The fact that USF has never paid a shift premium, or that no other USF unions are paid shift differentials, is not relevant to this contract.

5. Even though employees come to work for USF knowing in advance that they aren't going to receive a shift differential, they've expressed their need for one now. However, not offering a differential before, or disclosing that fact before hire, does not negate the Union's current need to negotiate for one now.

6. In Section 447.40, Section (3), the Special Magistrate is to consider, "The interest and welfare of the general public." It's in the best interests of the community that USF, one of the largest employers in the area, adopts the common practice of paying a shift differential.

Summary of USF's Response

1. USF has never offered shift differential pay to bargaining unit employees.
2. USF and has never had an issue filling vacancies for positions with work shifts between 7:00 p.m. and 7:00 a.m. without offering a shift differential.
3. The Union failed to present any evidence regarding its proposed change to the status quo. Accordingly, it's not met its burden of proving that changing the status quo is even necessary.
4. The Union failed to present any comparative evidence in support of this proposal.
5. There are 180 AFSCME bargaining unit employees employed in seven different departments who work between the hours of 7 p.m. and 7 a.m. At their current rate of pay, it's projected that the cost to implement this proposal would be \$309,122.82/year.
6. The Union has presented no evidence regarding the availability of funds to pay for the recurring expense of this proposal, and Union witness Rodrigues admitted on cross-examination that he did not even know the cost of implementing this proposal.

Special Magistrate's Findings

Because the FLSA doesn't require the payment of shift differentials or premium pay for employees who work swing, midnight, weekend or holiday shifts, employers are free to establish their own shift differential pay practices as long as they continue to satisfy minimum wage and overtime laws. However, while not required to do so, employers who don't provide shift differential pay are now very rare²³ because most have come to recognize the significant impact

²³ A 2008 Culpepper Pay Practices & Policies Survey revealed that 92% of companies paid shift differentials - <https://shrm.org/ResourcesAndTools/hr-topics/compensation/Pages/ShiftDifferentialPayPractices.aspx>.

on a person's quality of life,²⁴ health²⁵ and home life, as well as employee retention, and so are willing to pay a premium in recognition of those factors.²⁶ In fact, a significant number of states have now even mandated these premiums. And, for most employers, shift differential pay gives a sense of recognition to employees willing to go above and beyond that their efforts are acknowledged and appreciated.

USF points out that about 10% of this bargaining unit work the 7 pm to 7 am shift, a not insignificant number. And, it points out that no other bargaining unit receives shift differential pay. While these both may be true, it's circular reasoning to argue that because no other unit receives this pay premium that this one shouldn't, either. And, in response to USF's assertion that they don't need to offer the premium because they've not had difficulty filling vacancies, not only is this arguably more a reflection of economic necessity than satisfaction with the status quo, but it also ignores the very real issues of fairness that are involved.

Special Magistrate's Recommendation

Costs aside, the equities involved in this proposal are almost universally in the Union's favor, as are historical trends. So, from the standpoint of community standards, as well as considerations of fairness, adopting the Union's proposal clearly would be the right thing to do. And, it should be noted, they are only asking for evening shift differential pay when the great majority of employers pay other shift premiums as well, even for employees working daylight hours (e.g., weekend and afternoon work premiums).

However, while I find adoption of the Union's proposal to be a matter of both fairness and best practices, due to the current budget uncertainties I'm not in a position to recommend implementation at the present time, particularly because of the additional costs that would arise as other employee groups sought out the same benefit.

Given these considerations, I cannot in good conscience, however, recommend that this bargaining unit go another three years without this shift premium, either – to inordinately delay would not in my mind be fair, nor would it be sound employment practice. Therefore, given how

²⁴ E.g., hard on families, relationships, child rearing, and increased costs for childcare.

²⁵ The literature is replete with examples of how shift work has a deleterious impact on health, e.g., higher rate of sleep disturbances, gastrointestinal and cardiovascular diseases, and accidents.

²⁶ These differentials include additional pay for working evening shifts, overnight shifts, weekend shifts, holiday shifts, shifts outside an employee's typical schedule and ongoing coverage of an undesirable shift.

long this Union has been without a contract, the position of its members at the bottom of the USF pay hierarchy, the sacrifices that employees make to work evening and night shifts, and the reality that shift premiums have become almost universal, I can, however, recommend adopting the Union's proposal beginning in the second year of the new contract.

Impasse Issue #7

Article 21 – Wages

Summary of the Union's Proposal

The Union's proposed changes to Article 21 encompasses a number of disparate issues. These can be summarized as follows:

2019-2020 Academic Year²⁷

1. Raise the minimum hourly rate from \$10.33/hour to \$15.00/hour for all bargaining unit employees who, on the date of ratification of the new contract by the Board of Trustees, are being paid \$15.00/hour or less.

2. Provide a 6% wage increase to all bargaining unit employees who, on the date of ratification of the Agreement by the Board of Trustees, meet all of the following criteria:

A. Eliminate the language restricting the increase to those employees making more than \$10.33/hour (\$21,569.04).

B. Instead of saying employees who don't have an overall rating of "Needs Improvement" or "Unsatisfactory" on their evaluation, say, "These employees shall receive the increase on the first pay period once they meet a satisfactory rating."

C. They've been employed by USF in an established position since on or before July 1, 2018.

3. Don't set wage increases for the 2020-2021 and 2021-2022 years now, but instead schedule wage reopeners to negotiate wage increases by the beginning of years two and three of the new agreement.²⁸

²⁷ Again, an incorrect date.

²⁸ The wording of the proposal implies that years two and three of the new contract would become effective on October 1, 2020 and October 1, 2021. Not correcting these dates to reflect that a new contract was not reached by October 1, 2019 appears to be an oversight.

4. Wage Adjustments.

While recognizing USF's discretion to provide wage increases beyond the negotiated levels for any reason, the Union proposes that before any changes are made that USF provide the Union with thirty days advance notice during which time the parties would meet and confer, as well as adding language that grants USF permission to make wage adjustments for reasons of market equity, compression/inversion or other reasons.

And, while USF would still have the right to enter into financial settlements with employees to settle grievances, lawsuits and other disputes, it would be required to provide copies of those settlements to the designated officer of the Union.

5. Performance-based funding ("PBF") contingency.

Current language would be retained, with the added requirement that the results of the PBF determination process would be shared with the Union. And, were PBF funding to be reduced, the Union proposes removing the language giving the USF the sole discretion whether to proceed with negotiated wage increases.

Summary of the Union's Justification for the Proposal

1. Five different factors must be considered by a special magistrate when determining whether a pay increase is merited, i.e., a "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"; a "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"; the interest and welfare of the public"; "comparison of peculiarities of employment in regard to other trades or professions"; and "availability of funds." The Union believes that all five of these considerations provide justification for its proposal.

2. The first negotiating session was held in December of 2018 with the intention to negotiate a three-year agreement beginning July 1, 2019 and ending June 30, 2022, along with wage increases in 2019 and wage re-openers in both 2020 and 2021, and a proposal to raise the minimum hourly rate for bargaining unit members to \$15.00 per hour. However, in response to the subsequent unexpected inability to hold in-person negotiating sessions because of the

pandemic, negotiations for the 2019 contract year ended up including wage negotiations for both the 2019 and 2020 contract years.

3. The Union's financial expert witness analyzed USF's budget, and based on an analysis of information found on the USF intranet (including budgets and financial audits), agendas and minutes from USF Board of Trustees' meetings, information gleaned from the Board of Governors intranet, as well as various publications, reports and articles from news outlets including the Oracle, WUSF, and the Tampa Bay Times, he testified that it was his opinion that USF could afford the Union's proposal.

4. USF witness Trivunovich admitted that while USF's practice is to allocate monies carried over from the previous fiscal year to help cover anticipated expenses in the following year's budget, they neglected to set aside monies to fund wage increases for this bargaining unit even though they knew that the parties were in the process of negotiating a new labor agreement. In other words, the USF did not prioritize, consider, or care that bargaining unit members were in the process of negotiating a general wage increase, a new minimum wage, a shift differential and enhanced parking discounts for lower paid employees. Bargaining unit members should not be penalized simply because USF failed to budget for a wage increase.

5. While higher costs and lower revenues resulting from the pandemic will present a significant challenge to USF, the Union is not currently negotiating wage rates for 2021 or 2022 but instead proposes to deal with those in two subsequent wage reopeners.

6. USF funding for 2019-2020 increased by 1% (\$18.765 million) which explains the growth in carry-forward funds of \$16 million. In an article in Florida Today, Magistrate Thomas Young in the impasse case of SM-2018-030, Brevard Federation of Teachers v. School District of Brevard County, noted;

"There are always funds available to provide for increases such as the ones proposed by (the Union). It is a question of priorities...of choices. It would be feasible to fund the BFT proposals if the School Board changed its priorities, i.e., if it made different 'choices'."

Similarly in this case, while USF did not prioritize employees it can change those priorities.

7. Witness Trivunovich testified that USF has been asked to find 8.5% in savings in 2021 and to prepare for an additional 10% budget cut in 2022. He also stated that a reduction in enrollment would lead to lower tuition revenue, higher costs associated with the pandemic, and lower State

appropriations in the next state budget year. While that may be so, the current budget was approved by the Board of Trustees before July 1, 2020.²⁹

8. USF Exhibit, Tab 8, Pages 55 through 57 reveals that of the 123 listed job positions, in only 24 categories was USF's average pay rate market value or above, or viewed another way, in 99 of the 123 listed positions USF average pay was below the market average. And, a detailed look at USF Exhibit Tab 8, Pages 59 through 62 shows that of the 127 job positions the USF listed, only 23 job classifications paid at or above the market average, with 104 positions below.

9. USF Exhibit Tab 8, Page 63, further illustrates how USF's pay compares to the local labor market (Hillsborough County). Comparing pay bands for different job classifications employed by both, of the 46 jobs surveyed in only two cases is USF's minimum starting pay higher than the County's (custodian and groundskeeper). In short, pay for USF employees, as compared to similar public employers in the local labor market, clearly lags behind.

10. Also, other Florida Universities, facing similar financial constraints as USF, operating under the same State laws, with a Board of Governors, and following the same Governor's mandates, still found a way to pay their employees a one-time bonus.

Summary of USF's Response

1. While the Union's written proposal states that the proposed wage increases, "shall be granted on the first pay period following the date of ratification by the Board of Trustees," USF's understanding is that the Union is proposing that wage increases be effective retroactively to July 1, 2019. Witness Neshiem testified that USF has never agreed to a retroactive wage increase.

2. The Union failed to present any evidence regarding its proposed changes to the contract status quo. Therefore, the Union has not met its burden of proving that those changes are necessary.

3. Based on reductions in state funding and tuition/fees associated with the pandemic, increased expenses associated with the pandemic, USF's desire to avoid or minimize additional layoffs/furloughs, and the uncertainty regarding when economic conditions will improve, USF

²⁹ Again, this date appears to be an oversight.

proposed on October 23, 2020 that there be no increase to wages and that the minimum hourly rate of pay remain at \$10.54 for the time being.

4. Two important statutory factors within Section 447.405 that the Special Magistrate must consider in making his recommendation are:

- (1) Comparison of annual income 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; and
- (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 governmental bodies of comparable size within the state.

However, the Union failed to present any income comparison evidence to support either its proposed 6% wage increase or proposed minimum wage increase. The only testimony by the Union relating to the market occurred on cross-examination when witness Rodrigues admitted that the Union's proposed 6% wage increase is six times higher than the Consumer Price Index, which he testified had been less than 1% in 2020.

5. On the other hand, USF presented a large amount of market comparison data regarding the annual pay of AFSCME positions at USF and the same or comparable positions in the particular markets from which AFSCME employees are recruited. Every two to three years, USF conducts market research in order to compare pay at USF to other employers in the market utilizing several prominent salary surveys. USF strives to be 75% of the market or above, and compensation at USF is very competitive in the geographic area (Hillsborough County) and with the most comparably-sized SUS university (UCF). With respect to the other employee groups at USF:

- (1) Wage increases received by some of the other bargaining unit and non-bargaining unit employees in FY 2020, agreed to before the pandemic, were 1.5% to PBA agreed to in February 2020; 1.5% to UFF agreed to in 2019; Fall Stipend to GAU agreed to in 2016; and 1% to non-bargaining unit employees effective January 3, 2020.
- (2) USF has not had any issues with employees resigning because of their compensation, nor does USF not have trouble filling job vacancies.

(3) While the Union testified that the minimum hourly wage was raised to \$15/hour for employees of the City of Tampa on October 1, 2019, recently for employees of Hillsborough County, for employees of the City of St. Petersburg on December 30, 2019, and for all employees in Florida as passed by Florida voters on November 3, 2020, these are not valid comparisons.

6. Rodrigues admitted that the increase to Florida's minimum hourly wage will not reach \$15.00 until September 2026 and USF's current minimum hourly wage for the AFSCME bargaining unit (\$10.54) is substantially higher than both the federal minimum wage (\$7.25) and Florida's current minimum wage (\$8.56 as of January 1, 2021), and is not scheduled to be surpassed by Florida's minimum hourly wage until September 30, 2022 when it increases to \$11.00/hour.

7. The Union admits that it does not know and cannot compare the benefits provided by USF to the benefits provided by the City of Tampa or Hillsborough County.

8. The Union admitted that it doesn't know how the pandemic has financially affected the City of Tampa or Hillsborough County compared to USF.

9. The Union failed to present any evidence comparing "the annual income of [AFSCME employees] 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 City of Tampa, Hillsborough County, or St. Petersburg]." Fla. Stat. §447.405(1).

10. With respect to the other universities in the SUS, Neshiem testified that none has a minimum hourly rate of \$15.00.

11. Witnesses Neshiem and Trivunovich testified that the Union's proposed wage increases would cost USF \$5,483,709 annually (i.e., a recurring cost), and \$7,768,587 immediately as a retroactive payment from July 1, 2019 to November 30, 2020. On the other hand, Rodrigues testified that neither he nor the Union attempted to calculate the cost of the Union's wage proposals.

12. Nearly two-thirds of USF's budgeted revenue is non-fungible (there is no flexibility in how it is spent), and state appropriations and tuition revenue (which together make up the Education & General ("E&G") budget) account for most of USF's fungible revenue. Thus, Ramos's argument at the hearing that USF has the funds available within its "billion dollar budget" for the proposed wage increases is not supported by the facts.

13. There was a reduction in state appropriations and tuition authority to USF in FY 2020 and FY 2021, and the Governor held back 6% of state appropriations for FY 2021 from all universities in the SUS (\$25.9 million from USF), with that holdback likely permanent. And, the Florida Board of Governors is requiring all state universities to plan for an 8.5% reduction in the state's appropriations in FY 2021 (\$36.7 million loss to USF) and a further 10% reduction in FY 2022 (an approximately \$43 million loss to USF).

14. USF has lost about \$2.5 million in tuition revenue since the pandemic primarily due to a decrease in enrollment by international and out-of-state students, along with a substantial loss in revenue from student room and board since many students have not returned to campus.

15. USF has incurred another \$31 million in unforeseen additional expenses associated with the pandemic, including \$5.8 million related to remote learning. And, while USF has received about \$19 million in COVID relief from the federal government to help offset those expenses, additional federal funds are uncertain.

16. USF's past use of reserves to pay for recurring expenses (with the hope that its revenue would increase in the future) has placed USF in a "very, very uncertain" position, so USF is currently attempting to align all recurring expenses with recurring revenues by cutting USF department budgets between 10% and 15% over the next two fiscal years.

17. And, Florida has passed a new law (FLBOG Regulation 9.007) providing that universities may only use E&G carry forwards to pay for non-recurring expenses. Not only is it now prohibited as of July 1, 2020, but using reserves to pay for recurring expenses is neither fiscally prudent nor sustainable.

18. USF has taken additional steps to confront the economic problems associated with the pandemic. With the exception of some critical positions, USF has implemented a "pause", reduced the salaries of USF's senior leadership between 6% and 15% (62 employees), laid off and non-reappointed employees (25 AFSCME employees, 56 out-of-unit employees), and temporally reduced employees' hours through furlough (3 AFSCME employees, 58 administrative or faculty employees). And, this is an ongoing process.

19. The Union has presented no evidence regarding the availability of funds to pay for the recurring expense of the its proposed wage increases. And, Rodrigues admitted that USF did not in fact receive any preeminent funding during the previous two fiscal years (FY 2019 and FY 2020)

nor the current fiscal year (FY 2021). He also provided no evidence that USF's revenue will exceed its expenditures in FY 2021 or in any upcoming year.

20. Finally, none of the fiscal constraints raised by USF were factored into his analysis or opinions which renders them incomplete and untrustworthy.

Special Magistrate's Findings

At the same time that Covid-19 has wreaked economic damage on the U.S. economy in general, and higher education in particular, the pandemic is also helping to foment significant cultural unrest including the "Black Lives Matter," "Me, too," and the "Fight for Fifteen" movements. Because these developments have had such a significant impact on employees' evolving perceptions of fairness and justice, they are impossible to ignore when I consider, among the other statutory factors I'm required to, the "interest and welfare of the public." With that, the Union's proposals will now be addressed in turn.

1. Raise the minimum hourly rate for bargaining unit employees to \$15/hour.

The current minimum hourly rate for bargaining unit members is \$10.54/hour, unchanged since 2016. Accounting for the rate of inflation, in 2021 the current hourly rate would have to be raised to \$11.55/hour in order to maintain the same purchasing power that \$10.54/hour had in 2016.³⁰

And, while the contract clearly does not state that the minimum hourly rate is predicated on providing a "living wage," it's not irrelevant to the discussion, either, particularly in light of the "Fight for fifteen" movement which is predicated on that principle. In order to consider the current minimum hourly rate in context, it's illustrative to look at the Massachusetts Institute of Technology (MIT) Living Wage Calculator which shows the hourly rate an individual would have to earn in order to support themselves and their family.³¹

The following chart is based on the cost of living in USF's local labor market, the Tampa-St. Petersburg-Clearwater metropolitan area where its campuses are primarily situated. According to their calculations, a bargaining unit member with no children would have to be earning \$15/hour

³⁰ In2013dollars.com. The dollar had an average inflation rate of 1.85% per year between 2016 and today, for a total cumulative increase of 9.59% over that time.

³¹ <https://livingwage.mit.edu/metros/45300>. The assumption is the sole provider is working full-time (2080 hours per year). In the case of households with two working adults, all values are per working adult, single or in a family unless otherwise noted.

in order to earn a living wage in this part of the state. In other words, the same minimum hourly rate of pay the Union is proposing.

	1 ADULT				2 ADULTS (1 WORKING)				2 ADULTS (BOTH WORKING)			
	0 Children	1 Child	2 Children	3 Children	0 Children	1 Child	2 Children	3 Children	0 Children	1 Child	2 Children	3 Children
Living Wage	\$15.08	\$30.93	\$38.34	\$49.28	\$23.79	\$28.60	\$31.99	\$34.63	\$11.74	\$16.77	\$20.94	\$24.72
Poverty Wage	\$6.13	\$8.29	\$10.44	\$12.60	\$8.29	\$10.44	\$12.60	\$14.75	\$4.14	\$5.22	\$6.30	\$7.38
Minimum Wage	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56

In response to the emergence of the “Fight for Fifteen” movement, many employers, including municipalities, across the country have either raised their minimum wage to \$15/hour or are in the process of doing so., and, many states, like Florida, have even mandated it.³² The citizens of Florida recently passed Amendment 2 to amend the State constitution. That initiative raises the state’s current minimum wage to \$10/hour by 9-30-21, and by \$1/hour increments each year thereafter until it reaches \$15/hour by end of September 2026. As the Union points out, the cities of Tampa and St. Petersburg, as well as Hillsborough County, have already passed ordinances raising their minimum pay to \$15/hour, years in advance of the State’s deadline.³³

USF counters that the other universities in the SUS, not county and municipal employers, are the appropriate comparables. To the contrary, the statute requires me to consider similarly situated public employers within the state which would clearly include the cities of Tampa and St. Petersburg, as well as Hillsborough County, comparably large public sector employers, and all hiring out of the same local labor pool as USF.

USF also emphasizes that its current minimum hourly rate is not only higher than the State’s current minimum wage, but even left unchanged, will remain higher than the mandatory state minimum until September 2022. However, while this may technically be true, leaving the current rate unchanged, or inordinately delaying raising it, will not only serve to erode the existing pay differential between the state’s minimum wage and the bargaining unit’s minimum hourly rate, as

³² This has most recently spawned the “Living Wage Pledge” for companies (www.wonolo.com/livingwagepledge).

³³ Per USF, the minimum hourly rate for City of Tampa employees was increased to \$15.00 on October 1, 2019, the minimum hourly rate for employees of Hillsborough County was recently increased to \$15.00, and the minimum hourly rate for the city of St. Petersburg employees was increased to \$15.00 on December 30, 2019.

well as with Tampa, St. Petersburg and Hillsborough County, but the narrowing of the differential would send the message to the general public, as well as USF's bargaining unit employees, that USF's pay philosophy was in essence, "Paying just a tad above the lowest rate allowed by law."

So, while USF may be correct in pointing out that its current rate may be comparable to what other SUS schools are paying, what's more important in my mind is that it's significantly below a living wage in one of the highest cost areas in the state, runs counter to state-wide and national trends, and is substantially behind the starting pay of what other similarly large public sector entry-level employees in USF's primary labor markets have begun paying, in some cases since as far back as 2019.

And, there is an additional reference point - USF exhibit Tab 8, page 55. An analysis of that chart, comparing USF's average pay for each position in the bargaining unit, with market average, reveals 20 positions whose average pay is currently less than the new state mandated minimum that's being phased in (\$15/hour).

Finally, I would like to point out two other important considerations. Delaying an increase in the minimum hourly rate now will only complicate the transition to the state-mandated minimum starting pay of \$15/hour by the September 2026 deadline, a little over five years away.^{34,35} To illustrate, the current rate of \$10.54/hour is \$4.46/hour (or 30%) below \$15/hour. Therefore, between now and the deadline, remaining at its current level, USF will need to increase the minimum hourly rate by 30% just to reach the \$15/hour minimum by the 2026 deadline, requiring average increases in that wage of approximately 5.54% every year between now and 9-26.³⁶

Further, if USF wanted to maintain the current differential between the state minimum (\$8.56/hour) and USF's current minimum (\$10.54/hour), which I might add USF puts forward as one of the reasons in support of the status quo, by September 2026 USF would have to raise the rate an additional \$2/hour to (\$17/hour) in order to maintain the same differential.³⁷ That is,

³⁴ While this may sound like a considerable period of time, one must keep in mind that it's actually of shorter duration than the span of time covered by the next two 3-year contracts.

³⁵ And, one would think it more prudent to make the move voluntarily rather than being required to do so, if for no other reason than the optics.

³⁶ Slight lower if the effects of compounding are factored in.

³⁷ \$10.54-\$8.56 = \$1.98.

\$6.46/hour, necessitating a 38% increase in the rate between now and 2026, and requiring annual raises of 7.6%/year between now and then.³⁸

2. Provide a 6% wage increase to all bargaining unit employees who, on the date of ratification of the Agreement by the Board of Trustees, meet all of the following criteria:

A. Eliminate the language restricting the increase to those employees making more than \$10.33/hour (\$21,569.04).

B. Instead of saying employees who don't have an overall rating of "Needs Improvement" or "Unsatisfactory" on their evaluation, say, "These employees shall receive the increase on the first pay period once they meet a satisfactory rating."

C. They've been employed by USF in an established position since on or before July 1, 2018.

D. Remove the reference to having an open Performance Improvement Plan.

Since the Union did not address its proposals for A-D, supra, either during the hearing or in its post-hearing brief, and it bears the burden to offer evidence in support of these proposals, I must conclude that there's insufficient evidence to be in a position to recommend their adoption.

As for its 6% wage proposal, according to the Union it covers the wage adjustment for not one, but two contract years (2018-2019 and 2019-2020), to account for the negotiating year lost due to the pandemic. UFS's counter proposal, in response, is to continue to maintain the current pay rates for some indeterminate period of time. However, to do so would have the following consequences:

A. Leaving the rate unchanged "for the time being" lacks the necessary specificity to settle the wage issue, and so, to settle the contract as well.³⁹ In other words, to accept that proposal either means that a new contract for this Union, already two years late, gets even further delayed, or the Union signs a new agreement and runs the risk that its current wages could be frozen for an additional three years (or five years total from the last increase in July 2018).

³⁸ According to USF Ex. Tab 8, pgs. 7-18: 443 bargaining unit employees (approximately 26%, or ¼) currently earn less than \$15/hour.

³⁹ Indeed, in response to the pandemic, USF's approach appears to be either to make this Union wait another year for a new contract by delaying agreement until 2022, or agree to a new contract provided there's no further changes other than what's already been agreed to.

B. It would leave this bargaining unit as perhaps be the sole group of USF employees who have not been the beneficiaries of at least one pay increase since the 2018-2019 academic year.

C. Because other employees have received pay increases over the past few years while this unit has not, the pay differential between this group (already, presumably, among the lowest paid full-time employees at USF, if not the lowest) and other USF employees, widening since 2019, would only grow larger.

D. It would serve to unfairly penalize a group of employees who had the singular misfortune of negotiating a new contract while a once-in-a-lifetime pandemic struck, complicating efforts to reach an new deal.⁴⁰

Also, I assume that a number of this bargaining unit were deemed “essential workers,” expected to report to work in spite of the health risks arising from the pandemic, which for many employers (but not USF), would have entitled them to a hazard pay premium.⁴¹

USF also contends that the wage comparables it presented documented that it offered higher average pay for similar positions than other SUS schools. However, in response to that, I’d like to return to the overall market survey USF presented into evidence.

Again, Tab 8, page 55-58 indicates USF’s average pay per position compared to the market average. What it shows is revealing. For instance, USF pays below market average wages in 99 out of 123 jobs listed, or about 80% of the time. And, in 11 of those jobs, 20-25% less. And, there’s also an interesting segmentation as well – the less the position pays, the more frequently USF pays undermarket wages.⁴²

3. In lieu of determining wage increases for the 2020-2021 and 2021-2022 academic years now, schedule two contract wage reopeners instead, beginning no later than October 1 in 2020 and 2021.⁴³

⁴⁰ While at the same time this group of employees absorbed more than 30% of the pandemic-related layoffs at USF (of the 56 employees laid off, 25 were from this bargaining unit).

⁴¹ E.g., Costco, Target, Walmart, Pesico, CVS, Kroger, Amazon, Whole Foods, the California State University, etc.

⁴² For USF jobs that pay up to average \$34,000/year USF’s pays more than market in only 3/44 (7%). In jobs that pay between \$35,000-\$46,000 USF pays more than market in 7/58 (12%), in jobs that pay \$46,000-\$52,000 more than market 4/10 (40%), and for jobs paying more than \$52,000 more than market in 10/16 (62%).

⁴³ Which for our purposes mean the second and third year of the new contract.

On July 1, 2018, the beginning of the final year of the parties' current 3-year agreement, the Union received its last general wage increase, 2%. Then, at the time the parties began negotiating for a successor agreement in December 2018, USF's finances were sound. The parties continued to negotiate throughout 2019 and 2020 when, in March of that year, the pandemic struck bringing a halt to face-to-face negotiating. While further negotiations conducted over the phone and via emails, USF's deteriorating finances and budget uncertainty complicated efforts to get a deal done, leading to impasse. The inability to negotiate a new agreement in 2019 and into 2020 led the Union to propose a general wage increase (6%) that would serve to cover missed wage increases for both the 2018-2019 and 2019-2020 contract years.⁴⁴

For a variety of reasons, generally due to uncertainty, it's not unusual for parties to agree on a new contract that defers negotiating certain issues to some late date via a contract reopener.⁴⁵ Given that USF's finances may remain unsettled for some period of time into the future, making it difficult to determine what if any wage increases are feasible in the second and third year of the new contract, reopeners appear to be the most prudent approach to address wages for those years.

4. While the USF would retain sole discretion to provide wage increases beyond negotiated amounts, it would be required to provide the Union at least 30 days advance notice during which the parties would meet and confer; and, it proposed adding that increases could be for market equity, compression/inversion or other reasons.

Even though the Union, as the bargaining unit's agent, has the legal duty to negotiate bargaining unit members' terms and conditions of employment, arguably first among them wages, the current agreement contains the unusual proviso that not only grants USF the right to raise wage rates on its own volition, for any reason, and without any input from the Union, it's not even required to provide the Union with advance notice before doing so.⁴⁶ This kind of

⁴⁴ In the process giving up any contract improvements from 7-1-19 up through the present. And, technically not a request for retroactivity.

⁴⁵ In fact, USF has proposed a variation of this approach by suggested that the parties defer talking about wages, "for the time being."

⁴⁶ Whether by intent or not, clearly this serves to undercut the Union's authority, discourages non-members from seeing a need to join the Union, and erodes the trust between the parties.

unilateralism I find to be at odds with the ability to create a healthy working relationship between the parties.

To the contrary, this authority smacks of a power play, and most assuredly fosters mistrust, anger, and embarrassment across the table, certainly not helpful in creating the kind of healthy working relationship that would help the parties settle contracts at the negotiating table.

5. While USF would retain the right to enter into financial settlements with employees to settle grievances/lawsuits/other disputes, the Union proposes adding a provision requiring USF to provide the designated officer of the Union with copies of the settlements.

Even though I am required to arrive at findings to lend support to my recommendations, in this case my task is complicated by the fact that I remain unsure what the parties even intended by this provision of the contract. More particularly, does this provision apply to any grievance, or only grievances filed by individual employees who are not Union members and have filed on their own? Does it involve any lawsuit, or only lawsuits arising from the employment relationship? What other kinds of “disputes” would be covered by this provision? Does “copies of the settlements” mean the actual settlement document, or just a summary? If a settlement addresses both financial and non-financial matters, does the Union’s proposed language require USF to share all the details, or only the financial provisions? What makes a settlement “financial” - what’s actually in the document or what USF chooses to label it? Does modifying or applying a different interpretation to a provision of the contract render it inconsistent with its terms?⁴⁷ Would doing so threaten an existing past practice? Does the meaning of the term “financial settlement” include, for example, an award of back pay, an extra paid holiday off, or the granting of funeral leave with pay, all of which would be the Union’s singular role to negotiate? And, could a settlement with a non-union member create a new practice that impacts the entire bargaining unit going forward? And, could USF agree to a settlement that permitted a non-member of the Union to be treated better than a Union member who filed a similar grievance?

Those questions aside, continuing the practice of allowing USF to keep settlements with non-Union bargaining unit members confidential is problematic for any number of very good reasons:

- (1) In the last sentence of Florida Statutes Title XXXI, Labor Sec. 447.301 (4), members of the bargaining unit are permitted to settle grievances on their own without Union

⁴⁷ Florida Statutes Title XXXI, Section 447.301.

representation, **“(I)f the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect, and if the bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of such grievances.”**

In other words, to paraphrase the statute, while bargaining unit members are allowed to file and negotiate resolution of a grievance without Union representation, the Union has the right to be present while that settlement is being discussed which would allow it to ensure that its terms do not violate the contract. To the extent that this reading of the statute is accurate, it’s consistent with the Union’s proposal that it’s entitled to receive a copy of any settlement. But, that aside, I have other concerns with existing practice:

(1) It’s both concerning and puzzling that given the Union’s far-reaching legal obligations to represent members of the bargaining unit, and its duty to ensure that the collective bargaining agreement is being honored, that an employer would argue that, in essence, settlements with bargaining unit members involving alleged violations of the contract are none of the Union’s business.

(2) By insisting on keeping the details of a settlement from the Union, it’s not hard to imagine a scenario where an employer could use confidential settlements to send the signal to employees that individuals are better off negotiating without getting the Union involved.

(3) With grievance settlements remaining confidential, how would the Union know whether non-union bargaining unit members were being offered better settlement terms than members who chose to have the Union represent them in the grievance process?

(4) How can the Union effectively resolve grievances knowing that under this language USF is free to label a dispute “financial,” thereby moving it out of the grievance process by asserting that it’s a confidential settlement discussion outside the purview of the Union?

(5) And, without knowing how a particular practice or interpretation of the contract had been resolved, how would the Union know to assert over time that a past practice had been created or violated?

6. Performance-based funding contingency: retain current language with the added requirement that the results of the PBF determination process would be shared with the Union.

As this proposal was not sufficiently developed or explained on the record, I’m not in a position to make any findings or reach any conclusions.

7. And, were PBF to be reduced, remove the language granting the USF the sole discretion whether or not to proceed with the negotiated wage increases.

Again, as this proposal was not sufficiently developed or explained on the record, I’m not in a position to make any findings or reach any conclusions.

Special Magistrate’s Recommendations

After a thorough and careful review of the record, the Special Magistrate makes the following recommendations:

A. Raise the minimum hourly rate for bargaining unit employees to \$15/hour.

Based on previously discussed considerations, i.e., no increase in the current minimum hourly rate for four going on five years and counting, the erosion of the purchasing power of the current rate over that period of time, a pay rate that doesn’t come close to a living wage, the previous decision of comparably large public employers in USF’s labor market to raise their minimum rate to \$15/hour, the nationwide agitation for the “fight-for-fifteen” movement, the decision by the citizens of Florida to begin raising the state’s minimum wage, the projected narrowing of the differential between the State’s minimum wage and USF’s, and the degree to which average pay for this bargaining unit already lags the market, I conclude that a general increase in USF’s minimum hour wage rate is both appropriate and overdue - but not immediately to \$15/hour as the Union has proposed. The following chart will be used to illustrate and explain my recommendation:

	Current hourly rate [As of 4-1-21]	Proposed hourly rate - 1 st year of new contract [7-1-21 to 6-30-22] ⁴⁸	Proposed hourly rate - 2 nd year of new contract [7-1-22 to 6-30-23]	Proposed hourly rate - 3 rd year of new contract [7-1-23 to 6-30-24]	USF minimum hourly rate eff. 7-1-24	USF minimum hourly rate eff. 7-1-25	USF minimum hourly rate eff. 7-1-26
USF minimum hourly rate	\$10.54	\$12.00 ⁴⁹	\$13.00	\$14.00 ⁵⁰		TBD	TBD

⁴⁸ Presumed date.

⁴⁹ Effective 1-1-22, with subsequent \$1/hour increases effective on Jan. 1 of each of the next two contract years.

⁵⁰ Even if USF’s minimum hourly rate continued to increase by \$1/hour each year for the next six years, the current 18% pay differential between its rate and the State’s would shrink by half to just 9%.

					TBD ⁵¹		
State minimum hourly wage	\$8.56	\$10 (eff. 9-30-21)	\$11 (eff. 9-30-22)	\$12 (eff. 9-30-23)	\$13 (eff. 9-30-24)	\$14 (eff. 9-30-25)	\$15 (eff. 9-30-26)
Differential between USF and State minimums	\$1.98/hr. (18.6%)	\$2.00/hr. (17%)	\$2.00/hr. (15.5%)	\$2.00 /hr. (14.5%)	TBD (?)	TBD (?)	TBD (?)

As reflected on the chart, my recommendations, then, are as follows:

(1) Increase USF’s current minimum hourly rate for this bargaining unit to \$12/hour, but with a delayed effective date of 1-1-22 to provide time for USF to improve its budgetary outlook (the 1-1-22 date is based on the presumption that the parties’ next contract will become effective 7-1-21 in order to return to their usual 3-year cycle).

(2) Then, continue to increase the rate in \$1/hour increments in the second and third year of the contract, i.e., effective 1-1-23 and 1-1-24.

In light of the scheduled \$1/hour annual increase in Florida’s minimum wage between September 2021 and September 2026, USF must begin increasing its rate now if it wishes to maintain any semblance of a differential between the two, as well as to avoid the need for more drastic increases in advance of 2026 that would be necessary by either delaying the increase, or making only a modest increase in the first year of this contract. I therefore recommend that the minimum hourly rate be increased to \$12/hour effective 1-1-22, \$13/hour effective 1-1-23, and \$14/hour effective 1-1-24.

Further, I propose that wage tables be adjusted so that employees receiving this minimum hourly rate hike would not also be eligible for my recommended general wage increases to follow.⁵²

2. Give all employees a 6% raise upon ratification of the new contract.

⁵¹ Even if USF continued to increase its minimum hour rate \$1/year as I recommend, it would take until 2024 for it to reach the \$15/hour that Tampa, St. Petersburg and Hillsborough County already pay their employees, with the pay differential between those employers and USF continuing to narrow.

⁵² While I’m aware that increasing the minimum hourly rate will result in wage compression with higher-paid employees, this is an unavoidable result of the need to address the current under market hourly minimum, along with the need to account for the substantial increase in the state’s minimum wage beginning this year.

USF's last offer was to propose that the parties not discuss wages "for the time being." While it's understandable that USF would not want to discuss a wage increase when other employees had been asked to take a wage freeze (in 2020),⁵³ we must not forget that this bargaining unit has had a wage freeze since July of 2018.

Asking the Union to maintain the status quo on wages "for the time being" means that it's being asked to agree to continuing their current 2½ year wage freeze, for some indeterminate period of time, assume the risk that USF's finances would recover within the not too distant future to the point where it feels that it can afford an increase, and then, when all is said and done, without any guarantee that USF would propose or agree to an acceptable increase, or any increase at all for that matter.⁵⁴

And, there are other considerations, previously discussed - while USF's finances were sound when negotiations for a new contract began, in a stroke of bad luck, the pandemic disrupted negotiations and USF's finances deteriorated. Then, USF admitted to not once but twice failing to set aside sufficient reserves to fund anticipated cost increases in a new agreement.⁵⁵ Further, the record reveals that USF's average pay lags both the market generally, as well as the local labor market particularly.^{56, 57}

All that said, the ongoing pandemic creates the following dilemma – how does one balance the equities that are so strongly supportive of giving this bargaining unit a wage increase, with the budget realities and uncertainties making a wage increase at the present time both financially and politically unpalatable?

In response, I believe that there's a fair solution that takes into account the needs of both parties, i.e., the Union to receive a long-overdue wage increase, and USF for additional time to allow its finances to stabilize. I would recommend granting the Union a general wage increase, but

⁵³ To be clear, in spite of the general wage freeze, there have been many employees at USF who because of labor agreements, employment contracts, research grants, and job promotions, have actually received one or more pay increases since July 2018.

⁵⁴ Particularly where, as the Union correctly points out, negotiations for a new contract had already begun months before the pandemic struck when USF's budget was in much better shape.

⁵⁵ To help pay for the general wage increases that other employees received?

⁵⁶ And, with Tampa, St. Petersburg and Hillsborough County all having moved to a \$15/hour minimum pay, it's probably reasonable to assume that the average pay for this unit also now lags behind these employers.

⁵⁷ In trying to compare USF's average pay with other SUS schools, I find USF's exhibit, Tab 8, page 63, of minimal value. It's simply not possible to compare USF's average pay with UCF's min/mid/max pay and come to any educated conclusion because these statistical calculations measure two different things.

delaying implementation until some future date based on USF's budget situation. And in light of the additional delay asked of the Union which is currently 2+ years and counting, and the interruption of negotiations resulting from the pandemic,⁵⁸ to grant retroactivity in light of the extenuating circumstances.⁵⁹

More particularly, to cover the contract years 2019-present I would recommend that the Union receive a 2.5% increase technically effective on the start date of the first year of the new contract (that would cover 2019, 2020 and into 2021), but with employee's wage rates not reflecting the increase until a date of USF's choosing sometime during the first year of the agreement. However, once the implementation date was selected, the 2.5% increase would go into effect for the remainder of the first year of the agreement, and with the bargaining unit receiving a retroactive lump sum payment based on 2.5% of individual's wages, calculated from 4-1-2020.⁶⁰

3. In lieu of determining wage increases for the 2020-2021 and 2021-2022 academic years now, schedule two wage reopeners instead, beginning on or before October 1 of 2020 and 2021.

Finding that USF's finances remain too uncertain to support a pay increase for this unit at this time, and in consideration of the fact that USF's workforce has been asked to accept a wage freeze for the time being, I recommend adoption of the Union's proposal to schedule wage reopeners for years two and three of the new 3-year agreement, negotiations for said reopeners beginning six months in advance of the start of each upcoming contract year.

4. While the USF would retain sole discretion to provide wage increases beyond negotiated amounts, it would be required to provide the Union at least 30 days advance notice during which the parties would meet and confer; and, it proposed adding that increases could be for market equity, compression/inversion or other reasons.

Finding it harmful to the relationship when USF decides to unilaterally raise bargaining unit wages while at the same time not providing the bargaining unit's representative the courtesy of

⁵⁸ Even if negotiations, which began back in December 2018, had resulted in impasse, but for the pandemic this matter would have proceeded to Special Magistrate's hearing back in 2019, and at a time when USF's budget was in sound fiscal condition.

⁵⁹ While apparently USF has never before agreed to retroactivity of wages, these are, to say the least, extraordinary times.

⁶⁰ For all practical purposes, the date the pandemic brought a halt to face-to-face negotiations, and USF's budget began to implode.

any advance notice, nor any reasons behind the increase, I recommend adoption of the Union's proposal that it be afforded 30 days advance notice to meet and confer prior to implementation.

However, I do not recommend adding the Union's proposed language limiting that discretion to reasons of market equity, compression and inversion in light of the current contract giving USF unilateral discretion to increase pay for any reason. While there may or may not be sound reasons for limiting USF's discretion, the Union failed to offer support on the record for this proposal.

5. While the USF would still have the right to enter into financial settlements with employees to settle grievances/lawsuits/other disputes, it would be required to provide the designated officer of the Union with copies of the settlements.

For all the reasons discussed in the Findings section, supra, both legal and practical, I recommend adoption of the Union's proposal as more consistent with the law, as well as more beneficial to the overall working relationship.

6. Performance-based funding contingency: retain current language with the added requirement that the results of the PBF determination process would be shared with the Union.

After careful re-review of the record, I believe that this issue was not developed with sufficient specificity to permit me to offer a recommendation regarding adoption of the proposed language.

7. And, were PBF to be reduced, remove the language granting the USF the sole discretion whether or not to proceed with the negotiated wage increases.

For the same reasons as discussed above, after careful re-review of the record, I believe that this issue was not developed with sufficient specificity to permit me to offer a recommendation regarding adoption of the proposed language.

Impasse Issue #8

New Article – Parking Fees

Summary of the Union's Proposal

The Union proposed a discount parking fee for bargaining unit members paid less than \$15.00 dollars per hour. Specifically:

- A. Each bargaining unit employee with an annual base pay or \$31,200.00 or less shall receive a discount of twenty-five percent (25%) on the cost (exclusive of sales tax) of the annual registration fee for an annual faculty/staff decal.

B. This benefit would be effective upon joint ratification of the agreement.

Summary of the Union's Justification for the Proposal

1. This proposal would provide financial assistance to those employees at the low end of the pay scale should the employer not grant the Union's proposal to raise the bargaining unit's minimum wage to \$15.00/hour (\$31,200/year).

2. The Union is at the low end of the pay scale for USF employees and this proposal is in response to employee requests for relief from having to pay regular parking fees in order to go to work, particularly since, except for the St. Pete campus, public parking is not otherwise readily available.

3. Neither the current discount of \$8.00/year nor the Park 'N Ride option is sufficient to meet employees' needs - the current discount is not enough, and the Park 'N Ride is impractical for many employees, forcing them to arrive extra-early for their shifts and extending the end of their work day. And, for those working the second shift, buses servicing the Park 'N Ride stop running at 10:30 p.m., well before most employees working the night shift have gotten off work.

4. While USF testified that employees can park in the Park 'N Ride for only \$59/year, and after 9:00 p.m. can move their cars from the Park 'N Ride to campus parking which is free then, this is not practical given that many employees don't have time to leave work and move their cars before the buses stop running.

5. While USF opposed the proposal because the Board of Trustees requires parking facilities to be funded solely through parking fees and fines, and so offering any additional discounts would make it more difficult to balance the budget, this does not prohibit adopting this proposal given that the current discount attests to the fact that this issue was recognized in the past when the current two-tiered system was adopted.

6. Adopting this proposed discount would not threaten the Board of Trustees' authority to establish parking fees since the Board has to vote on any proposed contract.

7. The Parking and Transportation Services Department had an unrestricted budget surplus of over \$14 million dollars for fiscal year of 2019 which not only supported their AA credit rating, but supports the funding of the proposed discount.

8. USF objected to this proposal based on a Special Magistrate recommending against it in 2106, and also because only one other SUS school provides a similar a discount. The Union finds these arguments unpersuasive since what other Universities in the system elect to do, and what a prior Special Magistrate previously recommended, have no bearing on what the Union and the USF agree to in this contract.

9. Given that Special Magistrates are to take into consideration “The interest and welfare of the general public,” it is in the interests of the community that the USF be identified as an institution that gives consideration to needs of its employees at the lower end of the pay scale since most come from surrounding communities.

Summary of USF’s Response

1. Parking permit fees are determined by operational costs, debt service, and future planned expenditures, and are approved by the Board of Trustees based on analysis done by the Department. Parking permit fees have not been increased since the Fall of 2013, and did not include any increase to the cost of Park-n-Ride permits.

2. USF staff, which includes AFSCME bargaining unit members, with an annual salary less than \$25,000, receive a small discount on parking permits for staff parking lots – \$262 annually versus \$270. More importantly, USF staff have a Park-n-Ride option that costs only \$59 annually where employees may park and take a shuttle free of charge to anywhere on campus, and in some cases, these lots are close enough to staff work areas to for them to walk to work. Also, Park-n-Ride permit holders may park anywhere on campus after 9:00 p.m. on weekdays, and anytime on weekends, at no cost.

3. The Union failed to present any evidence supporting its proposed change to the status quo, including a failure to present any comparison evidence in support of this proposal.

4. Human Resources Director Neshiem testified that with the exception of FIU, none of the comparable universities in the SUS offer discounted parking to AFSCME bargaining unit employees.

5. Parking and Transportation Services Department Director Mensah testified that USF parking and transportation operations at USF (including salaries, repairs, maintenance, debt services on USF’s garages, and utilities) are funded entirely by parking fees and fines and transportation access fees, with no funding coming from the state or USF as required by law. Board of Governors Regulation 1.001 requires that USF parking facilities be “funded through parking fees

or parking fines imposed by the USF,” which is in turn authorized by Section 1009.24, Florida Statutes. Mensah testified that implementing the Union’s proposal would not be prudent because the department has already experienced substantial revenue losses (estimated to be a 55% loss of revenue by the end of this fiscal year) due to the pandemic.

6. Apart from Union witness Rodrigues’s testimony and report regarding USF’s reserves, which are non-recurring funds and admittedly should not be used to pay for recurring expenses, the Union has presented no evidence regarding the availability of funds to pay for the recurring expense of this proposal. Further, he also admitted that “[s]ome indicators do not bode well for the Parking and Transportation Services budget with the shift to distance learning and working from home.”

Special Magistrate’s Findings

The Special Magistrate has taken into consideration the following:

1. This Department is required to be self-funding and so parking fees must be sufficient to cover any expected expenses, along with an allowance for maintaining adequate reserves and funding new projects.

2. The pandemic, and the structural changes it has brought to parking habits, the number of students taking in-person classes, and the uncertainty surrounding how long employees will continue to work remotely, make long-term financial forecasting for this department extremely difficult. According to the Department, it expects to end the year with a net revenue loss.⁶¹

3. While bargaining unit employees who drive to work have a variety of lower-cost parking options on or near campus, for many these locations are not practical, particularly when the pandemic has forced USF to stop some bus service earlier.

4. By making on-campus parking unaffordable for bargaining unit members, it forces many of them to park far from their work stations, and is particularly inconvenient for those employees who work the night shift.

5. USF previously recognized that in the interests of fairness, lower-paid staff should be charged less to park on campus than higher-compensated employees.

⁶¹ Excluding reserves.

While USF does currently charge lower-paid employees less to park on campus than the more highly compensated, the current annual parking charges differential between the higher tier and lower tiers is so minimal as to be meaningless. To illustrate, a hypothetical bargaining unit member being paid \$22,880/year (\$11/hour) is only charged \$.15/week (\$8.00/year) less for their annual parking permit than USF employees who earn in excess of \$100,000/year. In order to balance the budget, the practical effect of this miniscule difference between the rates is to require the lowest paid employees, i.e., those who have the least ability to pay, to subsidize the highest paid employees, i.e., those who have the greatest ability to pay, in order to balance the budget.

Special Magistrate's Recommendation

The equities clearly favor the Union's very modest proposal which would reduce the annual cost of a permit for eligible bargaining unit employees by just \$65.50/year. In response to the argument that reducing the cost for bargaining unit members would result in a significant hit to the department's budget, it's probably safe to assume that most members currently find it unaffordable to park on campus and so lowering the rate may even result in more people purchasing a permit, and hence, resulting in more revenue.

While lowering the cost of parking to bargaining unit members, in the process increasing the differential, appears to be the fairest way to address the situation, cutting the rates for one group of employees runs the risk of having to raise the rates of other employees to make up for any potential revenue loss, and may put pressure on USF to offer the same or similar benefit to other employees.

So, while increasing the current differential between what the lowest paid employees pay to park and the higher paid is the "fair" thing to do, the various potential unintended consequences warrant a more measured, deliberate approach, perhaps through something like a campus-wide committee to explore the most appropriate way to reduce costs for employees based on their income level.⁶²

⁶² Were the USF to consider changes to the current two-tiered system to make it more equitable, some approaches that other employers have implemented include charging highly compensated employees a higher annual fee, adding additional tiers of charges, or adopting a sliding scale based on percentage of pay.

So, while I favor the Union's proposal, I cannot recommend adoption at this time. In the short term, however, USF might want to consider ways to address the legitimate concerns of the bargaining unit, including lack of shuttle service, and the inability to leave their work station to move their vehicles to take advantage of free, closer parking. And, of course, the de minimus current rate differential between the two tiers.

Tentative Agreements

During the course of the parties' negotiations, the parties reached a number of tentative agreements (TA's). I recommend that those TA's be incorporated into my above recommendations and included in the new contract.

Successor Agreement

Because of the disruption and delay resulting from the pandemic, ordinary negotiations for a successor agreement have not been feasible, leading to the current situation – a contract that expired over two years ago. The Union's proposals appeared predicated on the mistaken assumption that the new 3-year agreement would become effective as of July 1, 2020, but, of course, that ship has sailed. Because it's unclear what date the parties' want the successor agreement to become effective, I am not in a position to recommend a definitive start date, although July 1, 2021 might be in order as a way to maintain the parties' historical three-year pattern. In any event, I recommend that its duration remain three years in length.

Conclusion

This Report summarizes my findings and recommendations which are based on my honest and impartial review of the record, and with fidelity to my statutory duty as Special Magistrate. While I'm required to consider the employer's availability of funds in making my recommendations, I am of the opinion that for a large public employer like USF, with the benefits of a large, multimillion dollar budget, that it is not really a matter of ability to pay, but rather a matter of moving money around based on priorities to fund any economic enhancements to the contract. I leave it up to the parties to make that determination.

In closing, I respectfully recommend these recommendations for adoption in order to resolve the current negotiating impasse between the parties. I will retain jurisdiction of this matter in the event that any questions arise about this report.

Jared D. Simmer

Jared D. Simmer

Special Magistrate

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Exhibit C

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

In the Matter of Impasse Between)	
)	
UNIVERSITY OF SOUTH FLORIDA)	
BOARD OF TRUSTEES,)	
)	
Public Employer,)	PERC Case No. SM-2020-010
)	
and)	
)	
FLORIDA PUBLIC EMPLOYEES COUNCIL 79,)	
AMERICAN FEDERATION OF STATE, COUNTY)	
AND MUNICIPAL EMPLOYEES, AFL-CIO,)	
)	
Employee Organization.)	
<hr/>		

NOTICE OF REJECTING SPECIAL MAGISTRATE’S RECOMMENDATIONS

COMES NOW Public Employer, University of South Florida Board of Trustees (“USF”), by and through its undersigned attorneys, pursuant to Section 447.403(3), Florida Statutes, and files its Notice of Rejecting specific recommendations set forth in Special Magistrate’s Report and Recommendations (“R&R”)¹, as follows:

Impasse Issue #1: Article 4 – Nondiscrimination

USF rejects the recommendation that the Union’s proposed language modifying Article 4 of the CBA be adopted.

First, in making his findings and recommendation, the Special Magistrate considered extrinsic evidence that was not presented at the hearing, in contravention of Rule 60CC-3.007² of

¹ Notably, the Special Magistrate disregarded the time frame specified in Section 447.403, Florida Statutes, for transmitting his recommended decision. Briefs were submitted by the parties on January 20, 2021, and the undated recommended decision was not transmitted until three months later, on the late evening of April 22, 2021.

² Rule 60CC-3.007 directs that the Special Magistrate shall review and consider evidence: “presented during the hearing(s).... In reaching a decision the Special Magistrate shall consider only that evidence presented at the hearing....”

the Florida Administrative Code. Specifically, the Special Magistrate improperly considered the following evidence that was not presented at the hearing:

1. “At this moment in time there is increased sensitivity to, and less tolerance of, abusive or coercive behavior for any reason, including bullying which has become a frequent topic of discussion in the media,” citing “New York Governor Mario Cuomo’s current situation as an example.” (R&R at p. 6 and fn. 2).
2. “Including language in collective bargaining agreements specifically prohibiting bullying is arguably the rule rather than the exception in most collective bargaining agreements.” (R&R at p. 6).

Indeed, the Special Magistrate expressly admitted at the outset of his R&R that he considered extrinsic evidence that was not presented at the hearing, stating that there has recently been “significant societal changes including agitation for economic and social justice” and that he “took these recent developments into account” in making his recommendations. (R&R at p. 4)³.

Second, the Special Magistrate made the following findings upon which he based his recommendation without any supporting evidence presented at the hearing:

1. “It seems reasonable to presume that the best way to prevent bullying of bargaining unit members is to have language in the contract that speaks definitively to that obligation, and defines and specifically calls attention to and prohibits that conduct by name.” (R&R at p. 7).
2. “[M]any of the Union’s members either don’t own a computer, lack easy access to one, and/or are not computer literate.” (R&R at p. 7). Not only is this finding unsupported by the evidence, but it ignores the uncontroverted evidence that was presented at the hearing – that every employee in every department has access to a computer during the workday.
3. The effect of adopting “the Union’s proposal is de minimus.” (R&R at p. 7). Not only is this finding unsupported by the evidence, but the Special Magistrate separately found that “[w]hile it may be true that the USF has a policy prohibiting threatening or abusive behavior, bullying can involve a much broader scope of inappropriate behavior than just threats or abusive language,” which demonstrates that there would be an expansion

³ The parties provided and paid for a court reporter to transcribe the testimony of the December 12, 2020 hearing before the Special Magistrate so as to make it easy for the Special Magistrate to base his decision only on evidence presented at the hearing. Despite this the Special Magistrate chose to go outside the record in making his recommendations.

of prohibited conduct, which in turn belies his finding that adopting the Union's proposal would have a *de minimus* effect.

Third, the Union did not meet its burden of proving that a change to the status quo is necessary. The USF Progressive Steps for Disciplinary Action policy, which is applicable to all employees (including AFSCME bargaining unit employees) and readily accessible on USF's website and at the computer station located in every department, expressly prohibits threatening language, abusive language, aggressive behavior, and violent behavior. Indeed, the policy is stricter than the Union's proposal, as such behaviors need not be "repeated and/or severe" to be actionable under the policy.

Impasse Issue #2: Article 5.1 – Release Time for Union Activities

USF rejects the recommendation that the Union's proposed language modifying Article 5.1 of the CBA be adopted, as modified by the Special Magistrate.

First, the Union did not meet its burden of proving that a change to the status quo is necessary. USF already provides the Union President with: (1) 56 paid hours per year for attending negotiation sessions (which the Union decides to whom and in what amounts it will be allocated among the Union Negotiations Committee members); and (2) paid time off during working hours for the representation of bargaining unit employees who have filed a grievance, which is only limited by reasonableness and by operational necessity. The Union did not present evidence regarding the amount of time the Union President spends on direct representational activities beyond the amount of time that is already provided.

Second, although the Special Magistrate concedes that "the Union failed to provide substantiation for the hours it spends each year on Union duties," he concluded, without any supporting evidence presented at the hearing, that "it should be apparent under the circumstances that 56 hours total for an entire negotiating team to negotiate a new contract doesn't come close to

approximating the actual hours spent.” (R&R at p. 13). In addition, while addressing USF’s argument that the Union failed to present evidence as to why it needs to be the Union President who attends these meetings and conducts the grievance investigations when other representatives designated by the Union President under Article 5.2 could do so (particularly when such meetings and investigations take place at USF’s Sarasota or St. Petersburg campuses), the Special Magistrate speculates, without any supporting evidence presented at the hearing, that that decision “likely reflects the difficulty in getting other Union officers to agree to use their own limited accrued sick and vacation time to attend to Union matters. (R&R at p. 13).

Third, the Special Magistrate’s modification of the Union’s proposal from providing release time to the Union President “for the purpose of carrying out AFSCME obligations in representing and administering this Agreement” to “for the purpose of attending to on-campus union duties” does nothing to alleviate USF’s risk of violating Florida law. Pursuant to Section 447.501(1)(e), “any paid release time for union officials *must be strictly limited to time spent directly representing employees*; for example, collective bargaining and grievance and discipline activities.” Allen v. Miami-Dade College Board of Trustees, 43 FPER ¶ 6 (2016) (emphasis added) (finding that the college violated Section 447.501(1)(e), where the negotiated contract article allowed the union “to decide how to spend the paid release time without any limitation on the type of union activity to be performed” and the employer-paid union activities performed by the President included activities that did not “constitute the direct representation of employee in the bargaining unit”). In its order, PERC warned public employers that they “must ensure that employer funded release time is only used by unions for direct representational activities and that it has objective corroboration of a union’s direct representational activities.” Id. Thus, if the Union’s release time proposal is adopted – even as modified by the Special Magistrate – USF will

be required to ensure that the “employer funded release time is only used by [the AFSCME President] for direct representational activities and that it has objective corroboration of [the AFSCME President’s] direct representational activities.” Having “objective corroboration” of the Union President’s direct representational activities each week would require USF to not only obtain an accounting of those activities from the Union President each week, but USF would also need to obtain third-party corroborating evidence that the Union President’s accounting is accurate. Otherwise, USF would risk committing an unfair labor practice in violation of Section 447.501(1)(e). That is simply not a reasonable burden to place upon USF. On the other hand, the Union bears no risk whatsoever for its actions in this regard.

Fourth, the Special Magistrate improperly modified the fifth statutory factor while addressing the financial cost of the Union’s proposal, positing that “perhaps the issue should be reframed as not one of cost, but as one of investment in good labor relations which pays dividends for both parties.” (R&R at p. 14).

Impasse Issue #3: Article 5.2 – Informational Orientation Packets

USF rejects the recommendation that the Union’s proposed language modifying Article 5.2 of the CBA be adopted, as modified by the Special Magistrate.

First, it could be an unfair labor practice under Section 447.509(1)(b), Florida Statutes, for USF to distribute the Union’s informational packet to employees at orientation. Section 447.509(1)(b) prohibits the Union and *any person acting on behalf of the Union* from “[d]istributing literature during working hours in areas where the actual work of public employees is performed, such as offices, warehouses, schools, police stations, fire stations, and any similar public installations.” Because orientation is held during working hours and on campus, it could be an unfair labor practice and violation of Florida law for either the Union or USF to distribute the

Union's literature during orientation by either physically handing them out or by stacking them on a table with a sign as the Special Magistrate has recommended.

Second, the Union did not meet its burden of proving that a change to the status quo is necessary. USF provides a quarterly report to the Union with the contact information of every recently hired employee whose position is in the Union's bargaining unit, and provides a bulletin board in the same building as the Human Resources office, on which the Union may post information about the Union and its meetings. In addition, all the collective bargaining agreements between USF and the unions are accessible on the USF Human Resources website.

Third, the Special Magistrate went beyond the scope of the impasse and, quite frankly, beyond the authority of a Special Magistrate when opining that "apparently, for this bargaining unit, under current practice, awareness of the existence of the contract is intentionally not shared with them" and "a case could be made that intentionally withholding all mention of the contract from these same employees does appear to constitute active discouragement, rather than the neutrality the law presumes." (R&R at pp. 16 and 17).

Fourth, the Special Magistrate materially misstates the evidence presented at the hearing when noting that USF "suggest[ed] that if the Union wishes to know who's been added to the bargaining unit, it can file a formal records request in court." (R&R at fn. 18). The testimony actually presented at the hearing was that USF provides, as negotiated by the parties, a quarterly report to the Union with the contact information of every recently hired employee whose position is in the Union's bargaining unit, and that the Union can get that information sooner by submitting a public records request to USF (not a court). The Special Magistrate further misstates the evidence presented at the hearing when finding that "the Union is not even required to be made aware of who these new bargaining unit members are for at least three months after they're hires (sic)."

(R&R at p. 17). Three months would be the maximum, not the minimum, amount of time between an employee's hire date and the quarterly report (i.e., only bargaining unit employees hired immediately after a quarterly report are reported to the Union three months later).

Impasse Issue #4: Article 7.3 – Disciplinary Actions – Oral Reprimand

USF accepts the Special Magistrate's recommendation to maintain the status quo with respect to Article 7.3 of the CBA. USF rejects, however, the Special Magistrate's recommendation to add "language making non-disciplinary counseling a step precedent to an oral reprimand." It is unclear to which document the Special Magistrate recommends the language be added. If the Special Magistrate is recommending such language be added to the CBA, then the recommendation goes beyond the scope of the impasse and would cause the same problems with "disciplinary process uniformity across different employee groups" that the Special Magistrate recognized as a significant consideration in his findings. (R&R at p. 20). If, on the other hand, the Special Magistrate is recommending that USF add the language to its Progressive Steps of Disciplinary Action Policy (which applies to all employees), then the recommendation goes beyond the scope of the impasse, encroaches on USF's management rights, and exceeds his authority by making a recommendation that would expand the rights of all USF employees, not just to employees in the AFSCME bargaining unit. Moreover, the Special Magistrate appears to have made an assumption – without supporting evidence presented at the hearing – that USF does not employ non-disciplinary counseling, when appropriate, before resorting to progressive discipline.

Impasse Issue #6: Article 15.3 – Shift Differential

USF rejects the recommendations that the Union's proposed language modifying Article 15.3 of the CBA be adopted, as modified by the Special Magistrate.

First, the Special Magistrate improperly considered and based his findings and recommendation on extrinsic evidence that was not presented at the hearing. Significantly, the Union presented absolutely no evidence at the hearing regarding this proposal. Nevertheless, the “Summary of the Union’s Justification for the Proposal” section of Special Magistrate’s R&R includes the following “facts” that were presented *for the first time in the Union’s post-hearing brief*:

1. “Employees who sacrifice by working an evening shift have to live an altered lifestyle because of their work hours, their family life is affected, and their late-night travels expose them to more perils than the average person.” (R&R at p. 24).
2. “It’s common for second and third shift employees to receive a shift differential in recognition of the inconvenience, and so most employers recognize the need to pay an hourly premium.” (R&R at p. 24).
3. “Even though employees come to work for USF knowing in advance that they aren’t going to receive a shift differential, they’ve expressed their need for one now.” (R&R at p. 25).
4. It is a “common practice” to pay a shift differential. (R&R at p. 25).

Moreover, in making his findings and recommendation, the Special Magistrate considered the following additional extrinsic evidence:

1. “[E]mployers who don’t provide shift differential pay are now very rare because most have come to recognize the significant impact on a person’s quality of life (E.g., hard on families, relationships, child rearing, and increased costs for childcare), health and home life, as well as employee retention, and so are willing to pay a premium in recognition of those factors,” citing “A 2008 Culpepper Pay Practices & Policies Survey revealed that 92% of companies paid shift differentials – <https://shrm.org/ResourcesAndTools/hrtopics/compensation/Pages/ShiftDifferentialPayPractices.aspx>,” and noting that: “The literature is replete with examples of how shift work has a deleterious impact on health, e.g., higher rate of sleep disturbances, gastrointestinal and cardiovascular diseases, and accidents” and “These differentials include additional pay for working evening shifts, overnight shifts, weekend shifts, holiday shifts, shifts outside an employee’s typical schedule and ongoing coverage of an undesirable shift.” (R&R at pp. 25-26 and fn. 23, 24, 25, and 26).
2. “In fact, a significant number of states have now even mandated these premiums.” (R&R at p. 26).

3. “And, for most employers, shift differential pay gives a sense of recognition to employees willing to go above and beyond that their efforts are acknowledged and appreciated.” (R&R at p. 26).
4. “[T]he great majority of employers pay other shift premiums as well, even for employees working daylight hours (e.g., weekend and afternoon work premiums).” (R&R at p. 26).

Second, adopting the Union’s proposed shift differential would cost USF a projected \$309,122 annually at the current rate of pay of the AFSCME bargaining unit employees who work between 7 p.m. and 7 a.m. The Union did not present any evidence at the hearing regarding the availability of recurring funds to pay for the recurring expense of this proposal. FLBOG Regulation 9.007, effective July 1, 2020, prohibits a university from using its non-recurring reserves to pay for recurring expenses.

Impasse Issue #7: Article 21 – Wages⁴

USF rejects the recommendation that the Union’s proposed language modifying Article 21 of the CBA be adopted, as modified by the Special Magistrate.

First, in making his findings and recommendation, the Special Magistrate improperly considered the following evidence that was not presented at the hearing:

1. “[T]he pandemic is also helping to foment significant cultural unrest including the **‘Black Lives Matter,’ ‘Me, too,’ and the ‘Fight for Fifteen’ movements**. Because these developments have had such a significant impact on employees’ evolving perceptions of fairness and justice, they are impossible to ignore when I consider, among the other statutory factors I’m required to, the “interest and welfare of the public.” (R&R at p. 34).
2. “Accounting for the rate of inflation, in 2021 the current hourly rate would have to be raised to \$11.55/hour in order to maintain the same purchasing power that \$10.54/hour had in 2016,” citing “In2013dollars.com. The dollar had an average inflation rate of 1.85% per year between 2016 and today, for a total cumulative increase of 9.59% over that time.” (R&R at p. 34 and fn. 30).

⁴ In his R&R, the Special Magistrate reversed the order that Issue #7 and Issue #8 were presented at the hearing.

3. “And, while the contract clearly does not state that the minimum hourly rate is predicated on providing a ‘living wage,’ it’s not irrelevant to the discussion, either, particularly in light of the “Fight for fifteen” movement which is predicated on that principle.” (R&R at p. 34).
4. “In order to consider the current minimum hourly rate in context, it’s illustrative to look at the Massachusetts Institute of Technology (MIT) Living Wage Calculator which shows the hourly rate an individual would have to earn in order to support themselves and their family,” citing “<https://livingwage.mit.edu/metros/45300>. The assumption is the sole provider is working full-time (2080 hours per year). In the case of households with two working adults, all values are per working adult, single or in a family unless otherwise noted.” (R&R at p. 34 and fn. 31).
5. “The following chart is based on the cost of living in USF’s local labor market, the Tampa-St. Petersburg-Clearwater metropolitan area where its campuses are primarily situated. According to their calculations, a bargaining unit member with no children would have to be earning \$15/hour in order to earn a living wage in this part of the state. In other words, the same minimum hourly rate of pay the Union is proposing.” (R&R at pp. 34-35).

	1 ADULT				2 ADULTS (1 WORKING)			
	0 Children	1 Child	2 Children	3 Children	0 Children	1 Child	2 Children	3 Children
Living Wage	\$15.00	\$30.93	\$38.34	\$49.28	\$23.79	\$28.60	\$31.99	\$34.63
Poverty Wage	\$6.13	\$8.29	\$10.44	\$12.60	\$8.29	\$10.44	\$12.60	\$14.75
Minimum Wage	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56	\$8.56

2 ADULTS (BOTH WORKING)			
0 Children	1 Child	2 Children	3 Children
\$11.74	\$16.77	\$20.94	\$24.72
\$4.14	\$5.22	\$6.30	\$7.38
\$8.56	\$8.56	\$8.56	\$8.56

6. “In response to the emergence of the ‘Fight for Fifteen’ movement, many employers, including municipalities, across the country have either raised their minimum wage to \$15/hour or are in the process of doing so., and, many states, like Florida, have even mandated it,” noting and citing “This has most recently spawned the ‘Living Wage Pledge’ for companies (www.wonolo.com/livingwagepledge).” (R&R at p. 35 and fn. 32).
7. “So, while USF may be correct in pointing out that its current rate may be comparable to what other SUS schools are paying, what’s more important in my mind is that it’s significantly below a living wage in one of the highest cost areas in the state, runs counter to state-wide and national trends.” (R&R at p. 36).
8. “Also, I assume that a number of this bargaining unit were deemed ‘essential workers,’ expected to report to work in spite of the health risks arising from the pandemic, which for many employers (but not USF), would have entitled them to a hazard pay premium,” providing examples “Costco, Target, Walmart, Pesico, CVS, Kroger, Amazon, Whole Foods, the California State University, etc.” (R&R at p. 38 and fn. 41).

Second, without any supporting evidence presented at the hearing, the Special Magistrate found that the negotiated right of USF to unilaterally raise wage rates for any reason and without advance notice to the Union “clearly [] serves to undercut the Union’s authority, discourages non-members from seeing a need to join the Union, and erodes the trust between the parties.” (R&R at p. 39 and fn. 46).

Third, with respect to the Union’s proposal requiring USF to provide it copies of financial settlements of grievances, lawsuits, and other disputes, the Special Magistrate poses 14 questions

about the proposal. (R&R at pp. 40-41). However, the Special Magistrate did not ask any of those questions during the hearing.

Fourth, the Special Magistrate made findings and recommendations regarding the Union's proposals requiring (1) wage reopeners before years two and three of the contract; (2) 30 days' advance notice by USF to the Union of unilateral wage increases to meet and confer before implementation; and (3) USF to provide the Union with copies of financial settlements of grievances, lawsuits, and other disputes, even though the Union presented absolutely no evidence at the hearing regarding those proposed changes to the status quo.

Fifth, in his recommendation regarding the Union's proposed 6% wage increase, the Special Magistrate: (1) makes an unsupported assumption that "with Tampa, St. Petersburg and Hillsborough County all having moved to a \$15/hour minimum pay, it's probably reasonable to assume that the average pay for this unit also now lags behind these employers;" and (2) improperly shifts the burden of proof to USF, stating:

Further, the record reveals that USF's average pay lags both the market generally, as well as the local labor market particularly. In trying to compare USF's average pay with other SUS schools, I find USF's exhibit, Tab 8, page 63, of minimal value. It's simply not possible to compare USF's average pay with UCF's min/mid/max pay and come to any educated conclusion because these statistical calculations measure two different things.

(R&R at p. 44 and fn. 56 and 57).

Sixth, adopting the Union's proposed wage increases would cost USF a projected \$5,483,709 annually, which does not include additional costs to USF resulting from the wage increases, including employer-paid taxes and retirement contributions. The Special Magistrate's modifications to the proposed minimum wage increase and 6% wage increase, while not calculated, would result in a substantial recurring cost to USF. The Union did not present any evidence at the hearing regarding the availability of recurring funds to pay for the recurring

expense of the Union's proposed wage increases. FLBOG Regulation 9.007, effective July 1, 2020, prohibits a university from using its non-recurring reserves to pay for recurring expenses. On the other hand, USF has presented substantial evidence at the hearing that it does not have available recurring funds (i.e., from state appropriations or tuition) to pay for the additional expenses required by the Union's proposals, due to the severe economic impact of the global coronavirus pandemic.

Respectfully submitted this 12th day of May, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of May, 2021, a copy of the foregoing has been served via U.S. Mail on the following:

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