

**IN THE MATTERS OF IMPASSE
BETWEEN
THE DISTRICT SCHOOL BOARD OF TAYLOR COUNTY
AND
THE TAYLOR EDUCATION ASSOCIATION
NEA, AFT, AFL-CIO**

**SPECIAL MAGISTRATE CASE NO. 2009-005
SPECIAL MAGISTRATE RECOMMENDATIONS**

**RICHARD P. DEEM
SPECIAL MAGISTRATE**

**HEARING HELD ON APRIL 15, 2009
TAYLOR COUNTY SCHOOL BOARD OFFICES
PERRY, FLORIDA**

Appearances for the Employer:

Angela M. Ball, Esq. - Counsel for Taylor County School Board
Paul Dyal - Supt. of Schools
Vicki McManus - Chief Financial Officer

Appearances for the Union:

Paul T. Burdette, Sr. - Executive Director, Big Bend Service Unit
Barbara K. Bratcher - President, TEA
Marshall Ogletree - Legislative Advocacy, FEA
George Bowen - Suwannee River Service Unit Director, FEA
Richard McNeil - CPSU Service Unit Director, FEA

Witnesses for the Employer:

Paul Dyal - Supt. of Schools
Vicki McManus - Chief Financial Officer
Clyde Cruce - Personnel Director

Witnesses for the Union:

Marshall Ogletree - Legislative Advocacy, FEA

Exhibits (Joint):

1. Copy of Parties' Collective Bargaining Agreement
2. Report of Florida DOE re Dist. School Bd. Taylor County - Fiscal Year Ended 6/30/08
3. Summary of Taylor County School Dist. General Funds for Fiscal Year Ended 6/30/09
4. Study of Business and Financial Operations of Taylor County School District by the Florida Assoc. of Dist. School Superintendents Dated March 2008
5. Salary Information and Cost Analysis for Taylor County School Dist. for 2006-2007 School Year
6. Report for Joint Legislative Auditing Committee on March 23, 2009

Exhibits (Employer):

1. Notification Letter of Selection of Special Magistrate
2. Notice of Impasse
3. Notice of Selection of Special Magistrate
4. Notice of Date Selection for this Impasse Hearing
5. Memorandum of Understanding whereby the Parties Agree to Abate the Negotiations on Step Increases Until the February 2009 FTE Count is Received
6. Dist. Summary Budget for General Fund for Year Ending June 30, 2009
7. Resolution to Amend District School Budget for 2008-2009 School Year Dated 2/17/09

Exhibits (Union):

1. Union Proposal for Article III, Association and Employee Rights, Section L.
2. Union Proposal for Article V, Employee Conditions, Section C. 6. g.
3. Union Proposal for Article XXI, Professional Compensation
4. Required Letter to DOE Stating the Unreserved Fund Balance is Below the Required 3% Dated 3/10/09
5. Florida Statutes 218.503, Determination of Financial Emergency
6. Florida Senate Conference Committee Amendment Dated 1/11/09
7. Review of Financial Emergency Language in 5. B. 6. a.
8. TEA Membership by SLOT 2008-2009
9. District Summary Budget for Fiscal Year Ended June 30, 2009
10. Comparison of Total Funds and Funds per Unweighted FTE over 2008-2009
FEFP - Revised 3rd Calculation Dated 4/8/09

Hearing:

Pursuant to Florida Statutes, Chapter 447, the undersigned was selected by the parties and assigned by the Florida Public Employees Relations Commission to hear and make recommendations on issues at impasse between the District School Board of Taylor County and the Taylor Education Association, FEA. The issues at impasse involve a bargaining unit of professional instructional personnel employed by the District School Board of Taylor County, Florida. During the course of this hearing both parties had a full and fair opportunity to present their respective positions supported by testimony of witnesses and to offer such documents and other evidence deemed appropriate. Both parties stipulated they had no further evidence to present and requested to file a written summary of their respective arguments and position no later than midnight on April 29, 2009. The official record of this hearing was closed on May 4, 2009, following receipt of briefs from both parties.

Positions, Opinions and Recommendations:

The recommendations on the issues at impasse have been made following a careful and thorough review of all the proof and evidence offered by the parties in accordance with the guidelines and factors specified in Chapter 447.407, Florida Statutes. When there was insufficient evidence as described above, I followed the criteria of what is normal, reasonable and customary for similarly situated employees and employers.

Issues at Impasse:

1. Article III, Association and Employee Rights, Section L.
2. Article V, Employee Conditions, Section C. 6. g.
3. Article XXI, Professional Compensation

Issue Number 1, ARTICLE III, Association and Employee Rights, Section L., states: "When it is necessary for the Association President or his/her designee to engage in Association activities directly relating to the Association's duties as representative of the certificated professional personnel, which cannot be performed other than during normal school hours, or as the result of an emergency situation, the Association's representative shall be given such time without loss of pay, as is necessary to perform any such activities, upon approval of the immediate supervisor."

Union's Position: The Union is proposing to add the following language to Section L: "The Association President will be given ten union leave days at a rate of one per month during the school year without loss of pay to visit school buildings/sites, meet with members and potential members, update bulletin boards, schedule after-school meetings and for training related membership development and organizing."

District's Position: The District is proposing to leave Section L as it is currently written in the collective bargaining agreement.

Union's Arguments:

1. Argues that the current language would allow the Local President to utilize more than ten days.
2. The Local President would make arrangements with the Principal to utilize these days well in advance of the event in order for a substitute to be obtained.
3. This new language would limit the Local President to ten days at the rate of one per month. This would not be disruptive to the education of the children in the Taylor County School District.

District's Arguments:

1. Argues that the additional language proposed by the Union would result in ten more days of paid Union leave. They argue that these ten days would be over and above the time the Local President needed for Union activities related to the representation of the certificated professional personnel as the result of a situation that could not be conducted after normal work hours.
2. The addition of these ten days would result in an additional payment of ten days of substitute pay. The financial situation of the School District does not allow for any unnecessary additional salary expenses.

Discussion and Opinion:

The Union's proposal of ten days at the rate of one each month would be in addition to the paid Union leave provided in the current contract language. The Union is proposing that this additional time will be used for visiting school buildings/sites to meet with members or potential members, update bulletin boards, to schedule after-school meetings and for training related to membership development and organizing. The paid Union leave in the current language must be for representational activities of an emergency nature or cannot be delayed to after normal school hours.

In many of the school districts throughout the state, the Local Union will designate or elect a member at each building to serve as the building representative for the Union. These representatives would be responsible for updating the bulletin boards, meeting with the members and potential members, and performing other representational activities related to their specific building or site.

The Union has failed to produce adequate relevant evidence that the additional language they propose is necessary at this time.

Recommendation:

For the reasons stated above, I hereby recommend that the language of Article 3, Association and Employee Rights, Section L., remain unchanged.

Issue Number 2: ARTICLE V, Employee Conditions, Section C. 6. g., which states: "6. The following is a list of activities for which compensation time can be earned, but is not limited to these.

g. In-service/workshop committees for which no in-service points or remuneration is received and that are requested by the administration."

Union's Position: The Union is proposing to change the language in Article V, Section 6. g. to read as follows: "In-service/workshop/committees that are requested by the administration."

District's Position: The District is proposing to leave Article V, Section C. 6. g. as it is currently written in the collective bargaining agreement.

Union's Arguments:

1. When workshops or committee meetings are held outside an employee's regular school year of 196 days, the employee should receive compensatory time at their regular rate of pay.

2. The District often schedules workshops during the summer period requiring employees to take time away from their families when their children are home. The District admitted that after duty training sessions could involve as many as one hundred employees. They also indicate much of this training could be funded through Title I funding.

District's Arguments:

1. It would increase the cost of training employees to a point where fewer persons could be trained.
2. In many cases the employees involved in training outside their regular work hours receive the benefit of in-service points for certificate renewal along with a ten dollar per hour stipend for attending the training.

Discussion and Opinion:

I assume that most instructional training would occur during in-service training days scheduled throughout the regular school year. Thus there would be no compensatory time involved in these training sessions. It is my understanding that training which is funded under Title 1 funds would not affect the District's general fund. Any other training or committee meetings that would occur outside the regular school year of 196 days could only occur when the District determines such training is necessary. I find the Union's argument that any such training should involve compensation time at the employee's regular rate is justified.

Recommendation:

For the reasons stated above, I hereby recommend that the language of Article V, Section C. 6. g. be modified as proposed by the Union.

Issue Number 3. ARTICLE XXI, Professional Compensation

The District unilaterally implemented a 5% across-the-board pay reduction effective February 1, 2009.

Union's Position: Proposes that the 5% pay reduction was unnecessary and improper. They are proposing that the 5% pay cut be removed and the employees be made whole for the lost wages from February 1, 2009, forward.

District's Position: The District stated it was necessary to unilaterally implement a 5% pay cut retroactive to February 1, 2009, to avoid a drop in their unreserved fund balance to below the 3% level required under Florida Statute 1011.051.

Union's Arguments:

1. The Union argues that the unilateral implementation of a 5% pay cut for the rest of the year was a punitive measure that was never the intention of the new State Statute 1011.051.
2. The Union argues that the Statute 1011.051 was intended to only provide notice to the Department of Education and the School Board if their fund balance fell below 3 % and again if it fell below 2%. It was not intended to create any changes in the existing Statute 218.503 which has existed for several years.
3. The projected budget of the District School Board of Taylor County for the fiscal year ended June 30, 2009, shows an ending fund balance of \$9,190.00. This data was projected based upon a beginning balance of negative (-\$1,136,989.86).
4. The "Cost Recovery Table" recommended by the Florida Association of School Superintendents indicates the Taylor County School District would need to cut 41 + 6 teacher units in order to meet the budget targets for the school year ending June 30, 2009. However, the TCSD cut only 18 teaching units during this school year. The TCSD states it intends to cut an additional 24 teacher units in the 2009-2010 school year. The Union fails to see the wisdom in making salary cuts for the last five months of the school year so the District would not be required to give notice to the State DOE and be required to remain another year under the state advisory board from the FADSS.

District's Arguments:

1. Testimony and budget presentations conclusively prove the Taylor County School District has been suffering from a serious financial crisis. It became obvious that the District could not meet the minimum requirement for the unreserved fund balance for the school year without taking some serious actions.
2. The District and the TEA signed a Memorandum of Understanding on August 14, 2008, agreeing that step increases would not be paid effective July 1, 2008, and negotiations on this issue would cease until after the results of the February 2009 FTE count is received by the District.
3. In early March it appeared certain that the District would not be able to obtain an unreserved fund balance of more than 3%. At this point the District unilaterally implemented a 5% pay cut on all salaries retroactive to February 1, 2009, through the end of the school year.
4. On March 17, 2009, the District was required to serve notice per Florida Statute 1011.051 to the School Board and Florida Department of Education that the unreserved fund balance for the Taylor County School District was below the required 3%.

5. The Union was unable to present any evidence indicating where the District could find the funds necessary to replace the 5% salary pay cut.

Discussion and Opinion:

The Taylor County School District has endured a severe economic crisis since the 2005-2006 school year. That year they not only did not have a fund balance in their unreserved fund, they had spent \$180,114.00 more than their total revenues for that year. In the 2006-2007 school year the District spent \$1,033,808.00 more than their total revenues for that period. In the school year 2007-2008 the District spent \$1,405,151.00 more than their total revenues for that year.

The Superintendent of Taylor County School District and the Florida Department of Education requested technical assistance from the Florida Association of District School Superintendents to conduct a focus study of the business and financial operations for the Taylor County School District. The emphasis of the study was to locate and describe the economic problems that exist and to recommend sound solutions to the problems and improvement in systems alignment, human resources deployment and management practices.

The report completed in March 2005 indicated the TCSD had been experiencing a declining enrollment from 1999-2000 through the present. The unweighted full-time equivalent (FTE) students declined from 3611 in 1999-2000 to 3079 in 2007-2008. During this period of declining FTE's the non-instructional staff had increased from 219 to a level of 246. The report recommended that TCSD should eliminate 47 teacher units and 23 classroom instructional aides. It also recommended that the Sternhatchee School and the Taylor Learning Center should be closed in preference to other means of assigning and serving these affected students.

Unrebutted testimony indicated that the TCSD had eliminated only 18 teacher units prior to the start of the 2008-2009 school year. The report also stated the TCSD should always maintain an unreserved fund balance of at least 3% and preferable 5% of the general fund.

A new State Statute 1011.051 provides guidelines for school districts to maintain an unreserved fund balance that is sufficient to address normal contingencies. It also states that anytime the unreserved general fund balance in the District's approved budget is projected to fall below 3% of projected revenues, the Superintendent shall provide written notification to the District School Board and the Commissioner of Education. Such a notice was required and filed for Taylor County School District on March 17, 2009.

The evidence presented in the hearing clearly confirms that the District has suffered from severe financial problems and still has significant financial problems. It is obvious that the current status of the 2008-2009 TCSD budget was responsible for the District's unilateral implementation of the 5% pay cut to be retroactive to February 1, 2009, and to continue through June 30, 2009. I want to make it clear that the issue of the legality of the District's unilateral implementation of this pay cut was not presented as an issue at impasse in this hearing, therefore I cannot respond to this issue.

The evidence indicates that the District did not properly adjust their staff levels in accordance with the reduction in FTE units over the last six years. It was also noted that for a period of two years the negative balances in the previous budget year were not incorporated into the beginning balance for the subsequent year. There is no evidence that the members of this bargaining unit are in any way responsible for this financial problem. The same is probably true for the non-instructional bargaining unit.

It would appear that a larger number of deleted positions would be preferable to implementing a 5% pay cut to all employees in terms of the morale and productivity of the remaining employees. The punishment to these bargaining unit members was exacerbated by the denial of their scheduled experience-based step increases at the beginning of this school year. I recognize it appears to be a benevolent act to retain more employees and spread the pain over the entire work force. The fact is you are operating in an inefficient manner because you are employing a larger number of employees than are needed to perform the necessary work.

It would not be reasonable for me to recommend that more positions be deleted as recommended by the FADSS report and return the 5% pay cut wages to the employees. The non-availability of funds prohibits me from making any type of costly relief. The only reasonable and proper relief I can recommend is to place these bargaining unit employees on their proper rate of pay on June 30, 2009. This would mean removing the 5% pay cut and increase their rate of pay to the additional step increase if they were eligible for such step increase this year. This would involve a relatively small amount of cost and would place these employees in the same position on July 1, 2009, that would have occurred if the employees had received their step increase and no salary increase for the 2008-2009 school year.

Recommendation:

For the reasons stated above, I hereby recommend that the pay rate of all the employees in this bargaining unit be returned to their regular rate of pay including their proper step increase, if applicable, effective June 30, 2009.

I hereby certify that these recommendations represent my best judgement based upon the serious consideration of all relevant evidence presented by the parties following the guidelines set forth in Florida Statutes, Section 447.405.

Signed this 11th day of May 2009,

A handwritten signature in cursive script that reads "Richard P. Deem". The signature is written in black ink and is positioned above a solid horizontal line.

Richard P. Deem, Special Magistrate