In the Matter of the Special Magistrate Proceeding

SM-2018-007

SEIU – FLORIDA PUBLIC SERVICES UNION
NON-INSTRUCTIONAL, SUPERVISORY AND PROFESSIONAL UNITS

and

HILLSOROUGH COMMUNITY COLLEGE

Appearances

SEIU-Florida Public Service Union	:	Joseph Brenner
Hillsborough Community College	:	Mark E. Levitt, Esq.

The undersigned, serving as a Special Magistrate under the procedures of the Public Employees Relations Commission of the State of Florida, conducted a hearing on May 31, 2018 at which the SEIU – Florida Public Services Union and Hillsborough Community College presented testimony and documentary evidence in support of their respective positions regarding the terms for which they were at impasse in their negotiation of a collective bargaining agreement for the 2017-2018 contract year. The hearing was declared closed upon agreement of the parties on June 11, 2018 that they would not be submitting written closing arguments.

The findings and recommendations of the Special Magistrate are as set forth below. The Special Magistrate's statutory mandate is to achieve a prompt, peaceful and just settlement of the dispute, taking into account prescribed statutory criteria.

June 13, 2018

Mark Lurie, Special Magistrate

State of Texas
County of Dallas

The foregoing instrument was acknowledged before me this 13th day of June, 2018 by Mark Lurie, who is personally known to me.

REBECCA M YOUNG
Notary Public
STATE OF TEXAS
My Comm. Exp. 05-04-21
Notary ID # 12860287-7

Notary Public

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SEIU-Florida Public Service Union	:	Joseph Brenner
Hillsborough Community College	:	Mark E. Levitt, Esq.
Special Magistrate	:	Mark Lurie

PREFACE

This proceeding is conducted under the authority of Florida Statute §447.403 and §447.405. Its purpose is for the Special Magistrate to issue a recommended decision that will achieve a prompt, peaceful, and just settlement of the impasse issue(s) pertaining to the parties' collective bargaining agreements.

F.S. §447.403 Resolution of impasses states, in relevant part, the following:

(1) If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, a dispute exists between a public employer and a bargaining agent, an impasse shall be deemed to have

occurred when one of the parties so declares in writing to the other party and to the commission…

(2) (a) If no mediator is appointed, or upon the request of either party, the commission shall appoint, and submit all unresolved issues to, a special magistrate acceptable to both parties… If the parties are unable to agree on the appointment of a special magistrate, the commission shall appoint, in its discretion, a qualified special magistrate.

(3) The special magistrate shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved contract issues. The hearings shall be held at times, dates, and places to be established by the special magistrate in accordance with rules promulgated by the commission.

Under F.S. §447.405, the factors, among others, to be given weight by the special magistrate in arriving at his recommended decision are to include:

(1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

(2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.

(3) The interest and welfare of the public.

(4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to (skills, qualifications, hazards) and retirement plans, sick leave and job security.

(5) Availability of funds.

IMPASSE PERTAINING TO PAY GRADE RESTRUCTURING

The Union represents about 450 employees in three bargaining units, all three of which are covered by the single CBA. They will be referred to as Florida Public Services employees or, simply, "FPS employees." The job classifications covered by the CBA are diverse, as the following sampling illustrates:

<u>The Non-Instructional Bargaining Unit</u>
Academic Advisor
Cashier Clerk – Bookstore
HVAC Station Operator
Test Proctor

<u>The Professional Bargaining Unit</u>
Accountant
Dental Assistant Program Coordinator
Learning Disability Specialist
Grants Manager

<u>The Supervisory Bargaining Unit</u>
Supervisor of Academic Records
Supervisor of Campus Facilities
Supervisor of the Data Processing Lab
Supervisor of Textbooks

Notwithstanding the diversity of the classifications, all of the FPS employees are paid under a single salary schedule consisting of the following 8 grades, with each of the various job classifications assigned to one of those eight salary grades:[1]

TABLE A FY 2016-2017 PAY PLAN			
Grade	Min	Mid	Max
E	$55,477.12	$72,649.19	$89,821.25
F	$45,102.37	$59,063.94	$73,025.51
G	$38,971.67	$50,049.94	$61,128.20
H	$33,023.06	$42,931.25	$52,839.43
I	$27,973.06	$36,376.70	$44,780.33
J	$24,418.25	$31,103.53	$37,788.80
K	$20,862.84	$26,581.92	$32,301.00
L	$19,416.25	$23,502.98	$27,589.71

1 Source: Evergreen Report Exhibit A.

Last year, the College retained an independent consulting firm, Evergreen Solutions, LLC, to study the bargaining unit's compensation structure. Evergreen selected a representative cross-section of the College's job classifications, which it compared to the averages of eighteen external peer organizations (the "Comparators"). The results showed that job classifications in the College's most highly compensated salary grade – Grade E – were higher, on average, than those of the Comparators, but that the classifications within the descending paid grades were lower:[2]

TABLE B Market Differential by Grade			
Grade	Min	Mid	Max
E	5%	4%	3%
F	-9%	-9%	-8%
G	-5%	-7%	-8%
H	-17%	-2%	-15%
I	-16%	-15%	-14%
J	-12%	-14%	-15%
K	-25%	-26%	-28%
L	-13%	-18%	-22%

2 Source: Evergreen Report Exhibit J.
Quoting the Evergreen Report,

> *The College's rates within its staff pay plan lag the market considerably, and a market adjustment is necessary to the current plan. …the College is currently behind the market; however, this gap is considerably larger at the lower grades of the pay plan.*

The disparity between job classifications' wage scales is shown in Table C below, sorted by the percentage of disparities between the average of the entry and top level pay rates.

TABLE C - COMPARISON OF THE COLLEGE'S WAGE SCALE TO THE AVERAGE OF EMPLOYERS IN THE EVERGREEN STUDY	Min	College Δ	Mid	College Δ	Max	College Δ
Health Sciences Program Coordinator	$52,169.14	-33.9%	$70,363.02	**-40.6%**	$88,556.89	-44.9%
Tradesworker Apprentice HVAC	$27,799.64	-33.2%	$37,090.08	**-39.5%**	$46,380.51	-43.6%
Accounting Specialist	$27,106.67	-29.9%	$36,176.07	**-36.1%**	$45,245.46	-40.1%
Public Safety Officer	$26,798.97	-32.3%	$34,363.57	**-30.8%**	$41,928.16	-29.8%
Business Intelligence Manager	$60,307.99	-33.7%	$76,302.28	**-29.2%**	$92,296.57	-26.4%
Academic Advisor	$35,154.15	-25.7%	$46,885.36	**-28.9%**	$58,616.56	-30.9%
Learning Disability Specialist	$44,049.71	-33.4%	$55,180.86	**-28.5%**	$66,312.01	-25.5%
Human Resources Specialist	$27,257.18	-30.6%	$33,934.29	**-27.7%**	$40,611.39	-25.7%
Assistant Dean, Student Services	$67,518.55	-21.7%	$90,202.10	**-24.2%**	$112,885.66	-25.7%
Warehouse Supervisor	$28,668.68	-17.4%	$38,252.54	**-23.0%**	$47,836.39	-26.6%
Administrative Clerk	$22,231.77	-14.5%	$28,665.13	**-22.0%**	$35,098.48	-27.2%
Records Specialist	$25,597.97	-22.7%	$32,441.59	**-22.0%**	$39,285.21	-21.6%
Audio Visual Technician	$29,263.42	-19.8%	$37,619.55	**-20.9%**	$45,975.69	-21.7%
Cashier Clerk/Finance	$22,551.67	-16.1%	$28,342.49	**-20.6%**	$34,133.30	-23.7%
Research Analyst	$39,572.12	-19.8%	$51,769.49	**-20.6%**	$63,966.87	-21.1%
Lab Supervisor	$40,065.71	-21.3%	$51,545.72	**-20.1%**	$63,025.73	-19.3%
Network Engineer	$53,781.77	3.1%	$86,082.26	**-18.5%**	$118,382.75	-31.8%
Maintenance Worker	$23,938.37	-14.7%	$31,276.40	**-17.7%**	$38,614.42	-19.5%
Financial Services Manager	$53,170.55	-17.9%	$69,497.72	**-17.7%**	$85,824.90	-17.5%
Senior Staff Assistant	$27,748.83	-13.6%	$36,024.73	**-15.8%**	$44,300.64	-17.2%
Executive Staff Assistant	$32,939.27	-17.8%	$41,840.23	**-15.0%**	$50,741.19	-13.3%
Public Relations Specialist	$33,468.25	-19.6%	$41,841.14	**-15.0%**	$50,214.03	-12.1%
Curriculum Coordinator	$45,466.46	-16.7%	$57,456.30	**-14.8%**	$69,446.14	-13.6%
Program Analyst	$39,056.02	-18.3%	$49,156.65	**-14.5%**	$59,257.28	-12.1%
Server Sterns Manager	$50,952.86	-13.0%	$66,864.52	**-13.2%**	$82,776.17	-13.4%
Campus Facilities Worker	$21,302.91	-9.7%	$26,490.31	**-12.7%**	$31,677.70	-14.8%
Testing Assistant	$31,418.23	-12.3%	$40,761.23	**-12.1%**	$50,104.23	-11.9%
Staff Assistant	$22,971.39	-10.1%	$29,637.31	**-11.5%**	$36,303.23	-12.4%
Applications Programmer/Analyst	$48,582.10	-7.7%	$65,821.77	**-11.4%**	$83,061.44	-13.7%
Accountant	$36,321.06	-10.0%	$47,563.60	**-10.8%**	$58,806.14	-11.3%
Tradesworker	$26,300.08	-7.7%	$34,117.57	**-9.7%**	$41,935.07	-11.0%
Financial Aid Technician	$26,459.85	-8.4%	$34,026.44	**-9.4%**	$41,593.03	-10.1%
Student Services Manager	$50,905.09	-12.9%	$64,591.86	**-9.4%**	$78,278.64	-7.2%
Information Security Analyst	$50,670.43	-12.3%	$64,381.50	**-9.0%**	$78,092.57	-6.9%
Grant Specialist	$35,467.85	-7.4%	$46,560.71	**-8.5%**	$57,653.58	-9.1%
Public Safety Dispatcher	$27,085.94	-10.9%	$33,707.68	**-8.4%**	$40,329.43	-6.7%
Grants Manager	$49,169.66	-9.0%	$63,977.76	**-8.3%**	$78,785.85	-7.9%
Learning Resources Technician / Library	$25,683.99	-5.2%	$33,400.11	**-7.4%**	$41,116.22	-8.8%
Construction Manager	$49,033.92	-8.7%	$63,285.68	**-7.1%**	$77,537.45	-6.2%
Information Technology Technician	$35,682.13	-8.1%	$45,845.19	**-6.8%**	$56,008.24	-6.0%
Web Developer/Analyst	$47,305.29	-4.9%	$61,332.78	**-3.8%**	$75,360.28	-3.2%
Facilities Manager	$47,410.88	-5.1%	$61,006.18	**-3.3%**	$74,601.48	-2.2%
Lab Assistant	$29,274.37	-4.7%	$37,298.29	**-2.5%**	$45,322.20	-1.2%
Project Manager	$43,844.16	2.8%	$60,098.46	**-1.8%**	$76,352.76	-4.6%
Chief of Public Safety	$54,839.28	1.1%	$73,803.95	**-1.6%**	$92,768.62	-3.3%
Human Resources Analyst	$38,290.18	1.7%	$50,722.14	**-1.3%**	$63,154.09	-3.3%
Instructional Designer	$44,766.50	0.7%	$59,213.99	**-0.3%**	$73,661.48	-0.9%
Payroll Manager	$44,301.23	1.8%	$57,417.62	**2.8%**	$70,534.01	3.4%
Server Systems Engineer	$54,146.89	2.4%	$70,411.83	**3.1%**	$86,676.78	3.5%
Executive Assistant	$37,041.97	5.0%	$48,381.71	**3.3%**	$59,721.45	2.3%
Institutional Research Officer	$55,251.79	0.4%	$70,083.88	**3.5%**	$84,915.97	5.5%
Student Activity Coordinator	$36,238.38	7.0%	$47,006.57	**6.1%**	$57,774.77	5.5%
Purchasing Officer	$52,646.33	5.1%	$66,997.67	**7.8%**	$81,349.02	9.4%
Buyer	$36,035.84	7.5%	$46,018.48	**8.1%**	$56,001.11	8.4%
Veteran Student Affairs Officer	$48,826.60	12.0%	$63,932.87	**12.0%**	$79,039.15	12.0%
Business Information Analyst	$42,679.53	23.1%	$55,074.11	**24.2%**	$67,468.69	24.9%
Academic Records Officer	$42,538.23	23.3%	$53,230.60	**26.7%**	$63,922.97	28.8%

The disparity between job classifications' wage scales is shown in Table D below, sorted by the dollar amount disparities between the average of the entry and top level pay rates.

TABLE D - COMPARISON OF THE COLLEGE'S WAGE SCALE TO THE AVERAGE OF EMPLOYERS IN THE EVERGREEN STUDY	Min	College Δ	Mid	College Δ	Max	College Δ
Campus Facilities Worker	$21,302.91	-9.7%	**$26,490.31**	-12.7%	$31,677.70	-14.8%
Cashier Clerk/Finance	$22,551.67	-16.1%	**$28,342.49**	-20.6%	$34,133.30	-23.7%
Administrative Clerk	$22,231.77	-14.5%	**$28,665.13**	-22.0%	$35,098.48	-27.2%
Staff Assistant	$22,971.39	-10.1%	**$29,637.31**	-11.5%	$36,303.23	-12.4%
Maintenance Worker	$23,938.37	-14.7%	**$31,276.40**	-17.7%	$38,614.42	-19.5%
Records Specialist	$25,597.97	-22.7%	**$32,441.59**	-22.0%	$39,285.21	-21.6%
Learning Resources Technician / Library	$25,683.99	-5.2%	**$33,400.11**	-7.4%	$41,116.22	-8.8%
Public Safety Dispatcher	$27,085.94	-10.9%	**$33,707.68**	-8.4%	$40,329.43	-6.7%
Human Resources Specialist	$27,257.18	-30.6%	**$33,934.29**	-27.7%	$40,611.39	-25.7%
Financial Aid Technician	$26,459.85	-8.4%	**$34,026.44**	-9.4%	$41,593.03	-10.1%
Tradesworker	$26,300.08	-7.7%	**$34,117.57**	-9.7%	$41,935.07	-11.0%
Public Safety Officer	$26,798.97	-32.3%	**$34,363.57**	-30.8%	$41,928.16	-29.8%
Senior Staff Assistant	$27,748.83	-13.6%	**$36,024.73**	-15.8%	$44,300.64	-17.2%
Accounting Specialist	$27,106.67	-29.9%	**$36,176.07**	-36.1%	$45,245.46	-40.1%
Tradesworker Apprentice HVAC	$27,799.64	-33.2%	**$37,090.08**	-39.5%	$46,380.51	-43.6%
Lab Assistant	$29,274.37	-4.7%	**$37,298.29**	-2.5%	$45,322.20	-1.2%
Audio Visual Technician	$29,263.42	-19.8%	**$37,619.55**	-20.9%	$45,975.69	-21.7%
Warehouse Supervisor	$28,668.68	-17.4%	**$38,252.54**	-23.0%	$47,836.39	-26.6%
Testing Assistant	$31,418.23	-12.3%	**$40,761.23**	-12.1%	$50,104.23	-11.9%
Executive Staff Assistant	$32,939.27	-17.8%	**$41,840.23**	-15.0%	$50,741.19	-13.3%
Public Relations Specialist	$33,468.25	-19.6%	**$41,841.14**	-15.0%	$50,214.03	-12.1%
Information Technology Technician	$35,682.13	-8.1%	**$45,845.19**	-6.8%	$56,008.24	-6.0%
Buyer	$36,035.84	7.5%	**$46,018.48**	8.1%	$56,001.11	8.4%
Grant Specialist	$35,467.85	-7.4%	**$46,560.71**	-8.5%	$57,653.58	-9.1%
Academic Advisor	$35,154.15	-25.7%	**$46,885.36**	-28.9%	$58,616.56	-30.9%
Student Activity Coordinator	$36,238.38	7.0%	**$47,006.57**	6.1%	$57,774.77	5.5%
Accountant	$36,321.06	-10.0%	**$47,563.60**	-10.8%	$58,806.14	-11.3%
Executive Assistant	$37,041.97	5.0%	**$48,381.71**	3.3%	$59,721.45	2.3%
Program Analyst	$39,056.02	-18.3%	**$49,156.65**	-14.5%	$59,257.28	-12.1%
Human Resources Analyst	$38,290.18	1.7%	**$50,722.14**	-1.3%	$63,154.09	-3.3%
Lab Supervisor	$40,065.71	-21.3%	**$51,545.72**	-20.1%	$63,025.73	-19.3%
Research Analyst	$39,572.12	-19.8%	**$51,769.49**	-20.6%	$63,966.87	-21.1%
Academic Records Officer	$42,538.23	23.3%	**$53,230.60**	26.7%	$63,922.97	28.8%
Business Information Analyst	$42,679.53	23.1%	**$55,074.11**	24.2%	$67,468.69	24.9%
Learning Disability Specialist	$44,049.71	-33.4%	**$55,180.86**	-28.5%	$66,312.01	-25.5%
Payroll Manager	$44,301.23	1.8%	**$57,417.62**	2.8%	$70,534.01	3.4%
Curriculum Coordinator	$45,466.46	-16.7%	**$57,456.30**	-14.8%	$69,446.14	-13.6%
Instructional Designer	$44,766.50	0.7%	**$59,213.99**	-0.3%	$73,661.48	-0.9%
Project Manager	$43,844.16	2.8%	**$60,098.46**	-1.8%	$76,352.76	-4.6%
Facilities Manager	$47,410.88	-5.1%	**$61,006.18**	-3.3%	$74,601.48	-2.2%
Web Developer/Analyst	$47,305.29	-4.9%	**$61,332.78**	-3.8%	$75,360.28	-3.2%
Construction Manager	$49,033.92	-8.7%	**$63,285.68**	-7.1%	$77,537.45	-6.2%
Veteran Student Affairs Officer	$48,826.60	12.0%	**$63,932.87**	12.0%	$79,039.15	12.0%
Grants Manager	$49,169.66	-9.0%	**$63,977.76**	-8.3%	$78,785.85	-7.9%
Information Security Analyst	$50,670.43	-12.3%	**$64,381.50**	-9.0%	$78,092.57	-6.9%
Student Services Manager	$50,905.09	-12.9%	**$64,591.86**	-9.4%	$78,278.64	-7.2%
Applications Programmer/Analyst	$48,582.10	-7.7%	**$65,821.77**	-11.4%	$83,061.44	-13.7%
Server Sterns Manager	$50,952.86	-13.0%	**$66,864.52**	-13.2%	$82,776.17	-13.4%
Purchasing Officer	$52,646.33	5.1%	**$66,997.67**	7.8%	$81,349.02	9.4%
Financial Services Manager	$53,170.55	-17.9%	**$69,497.72**	-17.7%	$85,824.90	-17.5%
Institutional Research Officer	$55,251.79	0.4%	**$70,083.88**	3.5%	$84,915.97	5.5%
Health Sciences Program Coordinator	$52,169.14	-33.9%	**$70,363.02**	-40.6%	$88,556.89	-44.9%
Server Systems Engineer	$54,146.89	2.4%	**$70,411.83**	3.1%	$86,676.78	3.5%
Chief of Public Safety	$54,839.28	1.1%	**$73,803.95**	-1.6%	$92,768.62	-3.3%
Business Intelligence Manager	$60,307.99	-33.7%	**$76,302.28**	-29.2%	$92,296.57	-26.4%
Network Engineer	$53,781.77	3.1%	**$86,082.26**	-18.5%	$118,382.75	-31.8%
Assistant Dean, Student Services	$67,518.55	-21.7%	**$90,202.10**	-24.2%	$112,885.66	-25.7%

To bring the bargaining unit to comparability, Evergreen proposed, *inter alia*, to

- reclassify some positions
- increase the eight-grade schedule to one with twelve grades, and
- change the salary range for each grade so that the classifications associated with them will more closely comport with the ranges of the Comparator's classifications.

The proposed 12-grade schedule is set forth below, with both the numeric grade numbers proposed by Evergreen, and the alphabetical designators that the College assigned in its proposal. The Proposed Pay Plan would consist of 30 steps of equal amount between the Minimum and the Maximum Level.

NEW PAY PLAN					
Grade	Grade	Min	Mid	Max	Step Amnt
12	E	$58,678.19	$76,281.64	$93,885.10	$1,173.56
11	E&F	$54,007.50	$70,209.75	$86,412.00	$1,080.15
10	F	$49,336.81	$64,137.86	$78,938.90	$986.74
9	F&G	$44,880.88	$58,345.14	$71,809.41	$897.62
8	G	$40,424.95	$52,552.43	$64,679.92	$808.50
7	G&H	$39,312.60	$51,106.37	$62,900.15	$786.25
6	H	$38,200.24	$49,660.32	$61,120.39	$764.01
5	H&I	$35,148.29	$45,692.78	$56,237.27	$702.97
4	I	$32,096.35	$41,725.25	$51,354.15	$641.93
3	J	$27,159.19	$35,306.95	$43,454.71	$543.18
2	K	$25,858.97	$33,616.66	$41,374.35	$517.18
1	L	$21,409.72	$27,832.64	$34,255.56	$428.19

Both parties agree to the adoption of the Evergreen twelve-grade salary schedule (the "New Pay Plan"). And they also agree to the College's proposal to implement it incrementally in three phases over three successive contract years. The substance of the first year's implementation agreed to by the parties consists of two parts which, in this decision, will be referred to as the Bring-to-Minimum part and the One-Time Supplement part:

Bring-to-Minimum

During the 2017-2018 contract year, employees whose salaries are lower than the New Pay Plan's minimum step for their classification grade will have their salary increased to that of the New Plan's grade minimum. For example, an employee whose job classification is associated with Grade 2/K and who has been earning the minimum for that grade under the existing pay plan – $20,862.84 – will have their annual salary increased to the minimum under the New Plan's Grade 2/K;

i.e., $25,858.97.[3] The amount of the increase will thus be $4,996.13 (a 24% increase). Employees who are being paid more than the grade minimum for their classification under the existing pay plan, but whose salary is nonetheless lower than the grade minimum under the New Plan will also have their salary raised to the New Plan's minimum. Employees whose current salaries are at or above the New Plan minimums will receive no Bring-to-Minimum increase.[4]

One-Time Supplement

Employees whose current salaries are at or above the New Plan grade minimums for their classification and who therefore will receive no increase under the Bring-to-Minimum provision will receive a one-time payment of $1,000. One Hundred and sixty of the 450 bargaining unit members will receive that supplement, at a cost to the College of $160,000.[5] Those employees whose salaries are increased to the New Pay Plan minimum for their classification will receive a one-time payment of the difference between $1,000 and the amount of their Bring-to-Minimum increase.[6] The aggregate cost of that supplement for those 290 employees will be $18,000, or average of about $62 for each of those 290 persons. The aggregate amount of the One-Time Supplement will therefore be $178,000.

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3 Assuming no reclassification.

4 Here, except for the words in bold font, is the agreed-upon language:

The College will implement the Evergreen study over a three year period, implement the Evergreen recommendation for 30 year class parity.

In year one:

*All changes will be effective [**the parties differ as to the effective date**]:*

A. All affected employees will be reclassified per the Evergreen Study. In some cases, where Evergreen was not able to substantiate the classification changes, the College may not implement the reclassification. In addition, the College reserves the right to review the position if the incumbent and/or duties have changes since the last JAT collection. In addition, the public safety positions will not be automatically reclassified. The new recommended classifications will be created, but there will be a competitive process to fill the new classes.

B. The salary schedule recommended by Evergreen will be implemented… **[See above]**

C. All employees will be brought to the new minimum of the paygrades and classifications. If an employee is already at or above the minimum of the paygrade, no increase will be given in year one. …

E. As a result of reclassification, some positions will no longer be in the bargaining unit based on the current status of the classification in relation to the bargaining unit. In addition, new job titles will not automatically be added to one of the bargaining units and will be reviewed based on job duties.

5 Unless stated otherwise, all compensation figures given in this report exclude Florida Retirement System ("FRS"), which adds 18.5%.

6 The College's proposal, continued:

D. Employees who do not receive an increase in year one will receive a one-time payment of $1,000. This will not be added to the base salary. In addition, employees who are between $1 and $1,000 from the new minimum will be given a one-time payment (not added to base) of the difference between $1,000 and the amount of their distance from base.

Most employees within a classification will remain below comparability after implementation of the first phase of the College's tripartite proposal. The second and third year of the wage proposal provide for further movement within the New Pay Plan, but any such further movements will be "contingent upon funding availability."[7]

The first matter at impasse is whether the date of implementation of the Bring-to-Minimum should be July 1, 2017 (the start of the contract year) as advocated by the Union, or January 4, 2018 (mid contract year) as advocated by the College. The One-Time Supplement paid to each bargaining unit member will not vary in amount by reason of the effective date of the Bring-to-Minimum. The College's rationale for the mid-year date of implementation of the Bring-to-Minimum is the non-availability of the funds. The aggregate cost of the Bring-to-Minimum will be $832,000 if retroactive to July 1, 2017 but will be half of that sum, or $416,000, if made retroactive to January 4, 2018. For the 290 FPS employees for whom the Bring-to-Minimum will result in increases, the difference between the two proposals averages about $1,700 including FRS.[8] The aggregate cost of the College's Bring-to-Minimum and One-Time Supplement proposals, including 18.5% for FRS, will be about $700,000; the cost of the Union's about $1,200,000, a difference of about $500,000.[9] The Union submitted data showing that the pay scales of some of the Evergreen Comparators have increased since the Evergreen Report was released. The Union did so not for the purpose of arguing that the New Pay Plan itself was too

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7 The following are the agreed-upon wage terms for the second and third year of the CBA:

***In year two**:*

A. *Utilizing the Evergreen Solution File, 1/2 of the remaining amount to achieve 30-year class parity will be granted. Employees with no recommended increase from Evergreen will receive no change in salary.*

In year three

B. *Utilizing the Evergreen Solution File, the final 1/2 of the remaining amount to achieve 30-year class parity will be granted. Employees with no recommended increase from Evergreen will receive no change in salary.*

Limitations:

Some or all of the year two and three salary increases are contingent upon funding availability. The availability of funding could be limited by unforeseen circumstances, including but not limited to natural or man-made disaster, significant funding cuts or enrollment declines, or any other catastrophic event that cannot be reasonably foreseen.

8 Of the 450 represented employees, 160 are above their classification minimum under the New Pay Plan, leaving 290 employees who will share in the Bring-to-Minimum aggregate of either $832,000 or $416,000. The difference - $416,000 divided by the 290 employees equals an average of $1,434. That, increased by 18.5% equals $1,700.

9

	Move to Minimum	One-Time Supplement	Subtotal	Taxes & Benefits 18.5%	Total
College proposal	$832,200	$178,000	$1,010,200	$186,887	$1,197,087
Union proposal	$416,100	$178,000	$594,100	$109,909	$704,009
				Difference	$493,079

low, but as an additional reason why the Special Magistrate should recommend retroactivity to July 1, 2017. The Union proffered intervening increases in the CPI for the same reason.

Availability of Funds

One measure of the financial health of a public entity is the amount of its money it has at fiscal year-end that is not committed to any purpose; to wit, its Unrestricted Fund Balance (the "Fund Balance"). The State considers a Fund Balance of 5.1% of revenues to be the minimum level required for reasonable solvency. At June 30, 2017, the Fund Balance was $6.7 million or about 4.4%.

The following recent events have reduced or may further reduce the College's Fund Balance to an extent greater than would have the customary factors of changes in enrollment and operating costs:

- Between fiscal 2011 and 2016, the College maintained Unrestricted Fund Balances of between 9% and 14%. The College's annual operating budget is about $125 million. Over the past two fiscal years, the College has been required to recognize (under Standard 68 of the Government Accounting Standards Board or GASB") an underfunded pension liability of $31.4 million.[10] Non-pension benefits, although not yet quantified, will likely be capitalized at about $2 million during the next fiscal year.
- The College is dependent on State funding for 50% of its revenues. This fiscal year, the State cut the College's general funding by $2.6 million and, with little advance notice, cut another $1.7million in performance funding.

Personnel costs consume 73% of the College's operating budget, and the College's capacity to change compensation rates is constrained by several factors:

- The College has chosen to not cut or lay off personnel as a means of reducing expenses, and would prefer to not do so in the future. This means that the money required for pay increases will have to be found in the 20% of the College budget allotted for discretionary spending.
- Tuition fee increases are at the discretion of the State which, for the past 8 years and again this year, has refused the College's requests for such. While enrollment

10 The Union asserts that the $31.4 million figure is unreasonably high; the Special Magistrate accepts that it is the number that, according to GASB standards, fairly represents the capitalized liability.

has increased in each of the last three semesters and may do so again, the prevalence of tuition waivers and exemptions, the magnitude of which are unpredictable, will result in substantially less than a proportional revenue increase.

- The College's facilities are old and, if subjected to extraordinary damage, will need to be repaired using Fund Balance reserves. Deferred maintenance and the replacement cost of such items as air conditioning units and the telephone system will reduce the Fund Balance.
- Increases in operating expenses, such as health insurance, can be unpredictable.
- According to College Vice President for Administration/Chief Financial Officer Al Erdman, the State has floated the idea of clawing back College fund balances in excess of 5.1% in order to balance the State budget.[11] Mr. Erdman also described how the State now funds new College buildings; to wit, piecemeal, in three tranches with no commitment at any stage that the next tranche will be funded.
- The College employs three general categories of persons: the SEIU employees who are covered by this CBA; College faculty who are covered by a different collective bargaining agreement; and about 200 managerial staff who are non-represented. The faculty unit reached agreement over the terms of their contract before July 1, 2017, and their salary increases took effect as of that date. The non-represented personnel have agreed to have their new wage scale take effect on January 4, 2018. However, if the Union obtains retroactivity to July 1st, the College will be constrained to grant the same retroactivity to the 200 non-represented personnel.

11 The Special Magistrate assumes that such a foolish and self-defeating measure would not be adopted.

Recommendation on Retroactivity

There is no bright line as to when the Fund Balance level warrants the conclusion that an employer lacks funds availability with which to pay a wage increase. A low Fund Balance in any year caused by non-recurring events such as the implementation of accounting rule changes or catastrophic events is not a reflection of the general solvency of the employer.

The one-time, 6-month retroactive payments that are the subject of this impasse (aggregating $500,000 with FRS) are non-recurring and will have little impact on the College's long-term solvency. (The negotiated item that will affect solvency is a *fait accompli*: i.e., the College has agreed to the Bring-to-Minimum increase in base compensation. In future years, that increase in the *status quo* base compensation will recurrently impact the Fund Balance.)[12]

As noted, between fiscal 2011 and 2016, the College maintained Fund Balances of between 9% and 14%. The College achieved those Fund Balances through conservative management but mostly by paying lower than comparable compensation (again, employee compensation is 73% of the budget) to its employees.[13] Those at the bottom of the pay scales were especially disadvantaged.

The College has asserted that it will be obliged to provide the same Bring-to-Minimum pay retroactivity to its non-represented managerial personnel. No cost numbers were furnished to the Special Magistrate but, given that those personnel are managerial and that they likely fall within Grades E and F of the current Pay Plan, the cost of their Bring-to-Minimum should be relatively small.

Applying the statutory criteria of comparability, the Special Magistrate recommends that the underpayment of the FPS employees be mitigated as soon as possible. The Special Magistrate therefore recommends retroactivity to July 1, 2017.

Some of the *FPS employees* may currently be compensated at rates in excess of those that will pertain under the fully-implemented New Pay Plan for their classification and tenure. In other words, their pay may currently exceed comparability. Those employees should not be paid any portion of the $1,000 Supplement that would result in their exceeding such comparability under the New Pay Plan.

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12 The College has stated that it is averse to spending the Fund Balance on a recurring payroll expense. But, in agreeing to the Bring-to-Minimum concept, it has already agreed to the payment of those minimums into the future. However, the $500,000 July 1st retroactivity expense is not a recurring expense. It is a one-time expense that the College will incur in 2017-2018 and not thereafter.

13 Per the Evergreen Report

IMPASSE PERTAINING TO EXEMPT EMPLOYEES OVERTIME

Of the College's 450 FPS employees, 180 are FLSA exempt personnel, meaning that they are managerial professional or administrative personnel who, under the Fair Labor Standards Act, need not be paid for working overtime. Nonetheless, CBA Article 13.6 provides for the payment of overtime or granting of compensatory time off for FLSA exempt FPS employees for work they perform in excess of 45 hours in a work week.[14] The annual benefit for the 180 exempt FPS employees aggregates about $50,000 a year, or about $280 per person. The College proposes deleting the provision

- because it is inimical to the nature of the managerial, administrative and professional positions those exempt personnel hold,
- because Article 13.6 is inconsistently enforced, and
- because it is excessively record-keeping and bookkeeping burdensome.

The Union proposes retaining Section 13.6 because work in excess of 45 hours per week is onerous and warrants additional compensation, even for a manager, professional or administrator.[15]

Recommendation on FLSA Exempt Overtime

The Special Magistrate recommends deleting the provision. The additional compensation is inconsistent with the concept of an exempt employee, and the average benefit per employee does not warrant the time and effort required to track and account for it.

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14 CBA Article 13, WAGES, HOURS OF WORK AND OVERTIME, Section 13.6 - Overtime (Exempt Employees)

The salary of an exempt employee is intended as compensation for all hours worked. However, recognizing that there are times, such as registration, when exempt employees may be required to work substantial hours beyond the hours normally required to perform the employee's job, exempt employees will be entitled to receive additional compensation as follows:

A. When the employee is required to work in excess of forty-five (45) hours in the work week.

B. When the employee's non-bargaining unit supervisor approves of the extra hours worked.

C. When given, the extra compensation shall be one (1) hour of pay or compensatory time off (at the College's option) for each hour actually worked in excess of forty-five (45) hours per work week. The exempt employee will be given an opportunity to express a preference to earn compensatory pay or compensatory time. Compensatory time must be used by the employee; it is not payable upon termination, nor can it be used in coordination with termination.

D. Academic Advisors will be classified as exempt employees. Academic Advisors may be assigned additional duties which will include, but not be limited to job fairs, catalogue preparation, club sponsorship, recruiting, high school visitation, college nights, and other academic-related duties. It is recognized that the addition of duties to Academic Advisors may require a more flexible work schedule.

15 Under the Fair Labor Standards Act, exempt status is determined by the level of pay, which must exceed a prescribed minimum, and by the nature of the substance, as opposed to the title, of the job.

IMPASSE PERTAINING TO UNION PARTICIPATION IN ORIENTATION

The Union proposes a new CBA provision: to have one Union designee attend all orientation meetings for new FPS employees for the purpose of introducing the merits of Union membership to those employees.[16] The College asserts that, during the negotiating process, the Union dropped the proposal and that it should no longer be deemed an issue at impasse.[17] On the merits, the College argues that Union organizing is Union business, not College business, and that new employee orientation should be a purely College function.

Recommendation on Union Participation in Orientation

The Special Magistrate finds the Union's participation in new employee orientation will impede the College's informational objectives, and that the attendance of the Union designee will provide opportunities for misunderstandings and mischief. The Union's proposal leaves open these questions:

When does a meeting constitute orientation?

When during the orientation meeting may the Union interaction take place, and who makes that decision?

How much time should the Union designee be granted and who makes that decision? If the Union interaction is to be for a prescribed duration, is the designee to remain throughout the orientation? If so, why?

Will the designee communicate with employees individually or as a group?

Can the designee interrupt or comment upon statements made by the persons conducting the orientation?

The Special Magistrate recommends that the Union's proposal not be adopted. Having so recommended, the Special Magistrate will not make a factual determination of whether, during negotiations, the Union had dropped the provision without reserving the right to re-present it.

The College has agreed to a new Article 7.2.H., to which the Union voices no objection. The Special Magistrate recommends that it be adopted:

H. New employee information- Upon hire, the College will furnish the union with the names, titles, work location, personal phone numbers, and work email addresses of all new employees.

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16 CBA Article 7, UNION RIGHTS, Section 7.5 - Conduct of Union Business

D. New Employee Orientations: The Union shall be permitted one representative in attendance at all new employee orientation meetings involving Bargaining Unit personnel. Such attendance shall be for the sole purpose of introducing the merits of Union membership to eligible employees. Human Resources will notify the union in advance of upcoming new employee orientations via email announcing the dates, times, and locations of said orientations.

17 The Union included Section 7.4.D. among its November 7, 2017 written proposals but then omitted it from its December 1, 2017 and February 21, 2018 proposals. The College asserts that the Union did not reserve it.