STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

IN THE MATTER OF IMPASSE BETWEEN

UNITED FACULTY OF FLORIDA,

and **Case No.: SM-2015-034**

UNIVERSITY OF FLORIDA,
BOARD OF TRUSTEES.
____/

REPORT AND RECOMMENDATIONS OF SPECIAL MAGISTRATE

Thomas W. Young, III

December 28, 2015

Appearances

For the United Faculty of Florida:
Candi Churchill
Service Unit Director
United Faculty of Florida
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For the University of Florida Board of Trustees:
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PRELIMINARY MATTERS

Pursuant to Section 447.403, Florida Statutes, and Florida Administrative Code Rule 60CC-3.004, the undersigned was appointed Special Magistrate in the above captioned proceedings by letter dated August 21, 2015, from Donna Maggert Poole, Commissioner, Florida Public Employees Relations Commission. On August 27, the parties were advised of the appointment by email and letter from the undersigned. The parties advised the undersigned by email of their agreement to schedule the evidentiary hearing in this matter on November 18, 2015. The hearing was conducted on that date at the following location:

University of Florida
Emerson Alumni Hall
Warrington Room A
1938 west University Ave
Gainesville, Florida

The hearing commenced at 9:00 AM, and continued on that date until conclusion.

United Faculty of Florida exhibits will be indicated as (UFF #___). University of Florida, Board of Trustees will be indicated by UFBOT # ___). Joint Exhibits will be indicated as (Jt # ___). References to the briefs of the parties will be indicated as (UFF Br. at p. ___), or (UFBOT Br. at p. ___), as appropriate. References the collective bargaining agreement will be indicated as CBA.

UFF presented testimony from Sumi Helal, the UFF Chief Negotiator, and Stephen Kattell, a local accountant that gave an overview of accounting terminology. The UFF also introduced nine (9) exhibits numbered "U-1" through "U-8". The UFBOT presented testimony from Alan West, Assistant Vice President and University Controller, and submitted two (2) composite exhibits numbered "UF-1" through "UF-2", which consisted of a copy of the University's impasse presentation providing information supporting its position at negotiations, and a reference binder containing materials in support of the University's representations. The Parties introduced the Collective Bargaining Agreement ("CBA") as Joint Exhibit 1.

After consideration of the testimony, the exhibits, and the post hearing briefs, the undersigned makes the following *Report and Recommendations.*

BACKGROUND

The UFF bargaining unit has 1631 members. In accordance with Article 24.4(c) of the collective bargaining agreement, and throughout the summer, 2015, the parties engaged in wage reopener negotiations. The UFBOT asserts that the only provision of the CBA reopened was Article 24.4, as it did not agree to reopen any other contract provision. While the University's stated position was that only gneral wage increases were the subject of the "reopened" negotiations, the UFF sought to reopen additional contract provisions. The Union declared impasse by letter to PERC dated August 8, 2015.

ISSUES

At hearing, it became apparent that the parties could not agree on the issues at impasse. This is somewhat problematic in that the Special Magistrate's authority, pursuant to Section 447.403(3), Florida Statutes, is limited to defining the area or areas of dispute, determining facts relating to the dispute, and rendering a decision on any and all unresolved contract issues. Thus, it is incumbent upon the special magistrate, when the parties cannot agree on the issues at impasse, to initially define the areas of dispute.

The testimony at hearing and the argument presented by the parties in their respective briefs did little to clarify the situation. UFF, in its letter to the Special Magistrate, dated August 31, 2015 *(UFF #2),* lists the following as unresolved issues, referring to the CBA, Article 24 - Salaries:

Section 24.2 - Effective date

Section 24.3 - Promotion Increases

Section 24.4 - General Salary Increases

Section 24.7 - Salary Increases for P.K. Yonge Faculty members

Section 24.x - Starting Salary

UFBOT, in its letter to the Special Magistrate delivered by email on August 31, 2015, addressed the impasse issues as follows:

Article 24.4(c) of the 2013-2016 Collective Bargaining Agreement between UFF and UFBOT states that the "parties agree to wage re-openers for 2015-2016 in accordance with the provisions of Article 33 at a time mutual agreed upon by the parties." Article 33.2 states that "[a]t any time during this contract, the parties may agree to re-open specific articles or sections of articles of the contract. Such re-opener negotiations shall be concluded within 90 days." The parties began wage re-opener bargaining pursuant to these provisions in early summer. On August 6, 2015, UFF declared impasse.

(It is noted by the Special Magistrate that <u>*Article 24.4(e)*</u> *provides that "parties agree to wage re-openers for 2014-2015 and 2015-2016 in accordance with the provisions of Article 33 at a time mutually agreeable to the parties" - not Article 24.4(c) as indicated by UFBOT above.)*

UFBOT takes the position that only wages (Article 24.4 (c) and (e)) were subject to bargaining during the re-opener. UFF takes position that the entire Article 24 was subject to bargaining. The following are the parties' final wage proposals:

	UF	UFF
Raises:		
Merit	2.50%	2.50%

Across the Board	0.00%	2.75%
Market Equity	NA*	0.75%
Total	2.50%	6.00%
Effective Date of Raises:	1/1/2016	8/15/2015

Below are UFF proposals regarding portions of Article 24 that UFBOT did not agree were subject to re-opener bargaining. In each case, the University stated that the topic was not open, but if it were, the University's response would have been not to accept the Union proposal. *UFBOT takes the position that UFF's 0.75% market equity proposal listed above also falls into this category.

- Raise promotion percent from 9% to 15% Article 24.3

- If departments do not have merit criteria in their bylaws, the merit portion of the raise would be across the board Article 24.4 (g)

- Reduce Administrative Discretionary Increases limit from 1.0% to .5% Article 24.5

- Strike Language that limits grievances on raises to process issues only Article 24.11

Thus, UFBOT concedes that Article 24.4 (c) and (e) were part of the reopener and that they are at impasse. Other than these two sections of Article 24, UFBOT maintains that it did not agree to re-open the additional articles cited by UFF, and states further that, "in each case the University stated that the topic was not open." *(See, UFBOT letter of August 31, referred to above).* The pertinent contract language in Article 33.2, as indicated above, states, " . . . [a]t any time during this contract, the parties may agree to re-open specific articles ***or sections*** of articles of the contract." *(Emphasis added).* The UFBOT position is that it never agreed to re-open articles or sections other than 24.4(c) and (e).

Testimony and argument by UFF seem to support this position. Describing the UFBOT's response to their proposals, the UFF states,

> Unfortunately, the Administration's representatives were dismissive, unprepared, and either unable or unwilling to make arguments supporting their assertions, which they merely repeated. When pressed, the only substantive response we got was that they might need to set aside funds because "a boiler might go out" (the kind of contingency for which UF receives a separate allocation). When we discussed problems of retention and low morale, we were told by the UF Administration's representatives that perhaps it was "a good thing" if disgruntled faculty left UF.

(UFF Br. at p. 2). The UFBOT's response, as described by the UFF, reinforces UFBOT's position that it refused to re-open those provisions.

Thus, to reiterate, perhaps unnecessarily, it is UFBOT's position that only general wage increases were the subject of the “reopened” negotiations, and that it did not agree to reopen any other contract provision. (UFBOT Br. at p. 2). Article 24.4(c) states in its entirety as follows:

> (c) In each year of this agreement the University shall provide a raise pool allocated between merit and across-the-board as follows:

	Merit	Across-the-board
2013-2014	3.85%	0%
2014-2015	TBD	TBD
2015-2016	TBD	TBD

Article 24.4(e), states in its entirety as follows:

> The parties agree to wage re-openers for 2014-2015 and 2015-2016 in accordance with the provisions of Article 33, at a time mutually agreeable to the parties.

Consequently, based upon the applicable contract language, and the testimony of the parties at the table and their respective arguments contained in their briefs, it is concluded that the issues at impasse involve only Article 24.4, sections (c) and (e) of the CBA.

POSITIONS OF THE PARTIES

With regard to the issues determined to be at impasse as described above, the parties take the following positions:

UFF

The UFF proposes a 2.5% merit increase and a 2.75% across-the-board wage increase, effective retroactively to August 15, 2015. In addition, it is UFF's position that all salary raises and promotional increases are effective at the beginning of faculty members’ annual appointment.

(It is noted that the UFBOT asserts UFF has also included a ".75% market equity increase" in its impasse demands. However, there is no mention of this .75% market equity increase in the UFF brief as being part of the UFF's proposals for the resolution of the impasse. Consequently, there will be no recommendation regarding a market equity increase.)

Comparability

In support of its argument for the wage increases, UFF offered testimony at the hearing regarding UF's intent to improve its national status among its peer universities, arguing that by its own admission, UF competes nationally, not locally or regionally. In this regard, UFF provided quotations of recent remarks by Past UF President Bernie Machen and current President Kent Fuchs. President Machen stated, on March 18, 2014,

> "Our highest priority is securing funds for raises for our excellent faculty and staff."
>
> "This is important in part to make up lost ground in rewarding employees for their performance - performance that remained at a high level during the prolonged economic downturn despite years without raises and added workloads due to attrition and hiring freezes."
>
> "Boosting our employee compensation will also help ensure that we pay salaries that are *more competitive with our peer universities nationally*. This is key as we emphasize attracting accomplished faculty as part of our Preeminence Plan to *rise among the nation's top public universities.*"

(UFF #8 at p.22, Emphasis added). Quoting current UF President Kent Fuchs in his State of the University Address to the Faculty Senate on September 24, 2015,

> "We also appreciate that competitive salaries and support are critical in attracting and retaining the world's best faculty and graduate students. We are committed to achieving employee compensation and graduate student stipends *that match our peers.*"

(UFF #8 at p. 23, Emphasis added).

UFF offered testimony at hearing regarding the fact that faculty salaries lag behind those of other national peer institutions. According to UFF, the UF Office of Institutional Planning and Research identifies these "Peer" institutions as University of California, University if Illinois, Indiana University, University of Michigan, University of North Carolina, Ohio State University, Pennsylvania State University, Texas A & M University, University of Texas, and University of Wisconsin. (*UFF #8 at p. 16).* According to the 2013-2014 AAUP faculty Survey *Chronicle of Higher Education,* April 7, 2014, among the 10 "peer institutions", UF ranks 8th out of 11 in average salary for full professors, and at the bottom for associate and assistant professors. (*UFF #8 at pp. 17, 18).*

However, UFF points out that, in support of its position in these negotiations, UFBOT constantly compares UF salaries to those of other SUS institutions, rather than to those of the institutions it has itself identified as national peers. UFF adds that UFBOT it makes this comparison to other SUS institutions while insisting that UF faculty be evaluated against their national--not their state--peers in terms of research, promotion and tenure standards. *(UFF Br. at p. 4).* UFF maintains further that, even when drawing comparisons to other SUS institutions, the UFBOT's data was selective and therefore misleading in at least three ways:

- it blurred important distinctions among ranks, showing a misleading overall "average" instead of averages at each rank

- it did not include in its comparison of salary increases over the past five years at all or even most SUS institutions
- it overstated UF's own raises by 2.4% and understated those of FSU and UCF. (It included the 2013-14 state employee raise for UF but not for the other schools and it failed to include the 2.15% merit component in this year's FSU raise.)

UFF argues that the correct figures are 8.95% for FSU, 10% for UCF, and 8.6% for UF. *(UFF Br. at p. 5).* UFF maintained in testimony at the hearing that, even within the SUS, salaries are lower at other institutions at ranks below professor. *(UFF #8 at p. 15).*

UFF also objects to the UFBOT's comparison of faculty in the bargaining unit to the staff "workforce." UFF asserts that this is an entirely inappropriate comparison, as workforce staff do not often hold terminal degrees or have other advanced qualifications required of faculty and do not have similar performance expectations of excellence in teaching, service and research.

Ability to Pay

With regard to the UFBOT's ability to pay, UFF refers the Special magistrate to a quote from past UF President Bernie Machen, taken from his opening remarks in a document entitled *"Together for the Gator Good" - 2013-2014 Annual Financial Report.* At page 4 of this document, President Machen states in pertinent part,

> "*With the economic downturn in the rear view mirror*, the Florida Legislature this Spring provided more than $100 million in additional funding to UF. This came on the heels of the Legislature's 2013 restoration of $300 million to state universities' budget cut in the previous year.

(UFF #4, Emphasis Added). UFF also provided testimony at the hearing, quoting President Machen in that same Annual Financial Report, as he described the University as being "on sound financial footing." *(UFF #8 at p. 28).*

At the hearing UFF also provided testimony quoting President Fuchs, in his remarks to the Faculty Senate on September 24, 2015,

> "Our financials are solid. Legislative leaders this spring provided UF with a new $19 million for meeting performance goals, allowing us to invest in our people, including $1 million in raising the minimum wage from $10 to $12 per hour. The state added a new $5 million in preeminence dollars, enabling us to add new faculty to our recent hires across campus."

(UFF # 8 at p. 33).

At hearing, UFF provided testimony and exhibits intended to show that UF's ability to fund pay increases has increased over the past year. Specifically, UFF Provided testimony that, according to the Florida Auditor General, the Restricted Expendable and Unrestricted fund balances had increased significantly as of June 30, 2014. *(UFF #8 at p. 31).*

Finally, UFF referred at hearing to Section 1011.40(2) that requires in pertinent part,

> If at any time the unencumbered balance in the education and general fund of the university board of trustees approved operating budget goes below 5%, the president shall provide written notification to the Board of Governors.

By UFF's calculations, the 5% threshold for UF's unencumbered fund balance would be $34.7 million. The 2015 unrestricted net assets for the University entity is $112 million, and, according to UFF, that would constitute an ending fund balance of 29.2% of total revenues. *(UFF #8 at p. 35).*

According to UFF, since 2010, bargaining unit members received one cost-of-living increase. This occurred in 2013, when the Legislature--not the Board of Trustees--gave all state employees raises of $1000 or $1400, depending on their income. In its brief, UFF points out that UFBOT, in referring to the COl, provides an inflation figure only for the most recent month (October, 2015) rather than for the entire period in question.

Effective Date

With regard to the effective date of the proposed wage increases, it is UFF's position that Article 24.2 of the CBA requires that "all salary increases and adjustments referenced in this Article shall become effective retroactive to the beginning of the faculty member's annual appointment, unless otherwise provided below." Since 2010, when the first locally-bargained CBA went into effect, salary increases have taken effect at the beginning of a faculty member’s annual appointment. Both parties agreed to one exception to this, in 2013, when raises were deferred until October 1 in order to implement a state-mandated lump sum raise that did not originate with the UF Board of Trustees.

UFF points out that the UFBOT’s position that raises take effect January 1, 2016 effectively reduces its proposal of a nominal 2.5% increase by as much as half. The net loss to faculty will be $1,832,624.

Using the UFBOT's argument that only sections 24.4 (c) and (e) are at impasse, UFF maintains that the language in Article 24.2 is not at impasse and must therefore remain in effect. UFF’s proposes a 2.5% merit increase and 2.75% across-the-board wage increase be effective retroactively to August 15, 2015, and that all salary raises and promotional increases continue to be effective at the beginning of faculty members’ annual appointment.

Interest of the Public

UFF asserts that the wage increases it proposes are in the public interest, as they will help resolve some serious morale issues among faculty after the financial downturn and thus help UF retain and recruit excellent faculty.

According to UFF, the result of this failure to provide even a cost of living increase to bargaining unit members has adversely affected faculty morale and resulted in some highly qualified faculty moving to other "peer institutions." In the 2015 UFF-UF Faculty Climate Survey, in response to the statement, *"The administration gives clear indication that it values my success and respects my work,"* 49% of the 562 faculty members responding strongly or somewhat disagreed with the statement. In response to the statement, *"I would leave UF if I were offered a comparable job elsewhere and personal factors did not keep me here,"* 62% strongly or somewhat agreed with the statement. *(UFF #8 at pp. 25, 26).*

UFF argues that funding its proposed wage increase allow it to attract and retain highly qualified faculty thus furthering UF's research and teaching missions moving UF toward the laudable goal of becoming a top ten public university.

UFBOT Position

The University engaged in reopened contract negotiations with the assertion that the only provision of the CBA reopened was Article 24.4(c), as it did not agree to reopen any other contract provision. UFBOT maintains that it is undisputed that the parties did not negotiate over any issue other than general wage increases. *(UFBOT Br. at p. 15).* The University proposes a 2.5% merit increase for all faculty members, effective January 1, 2016.

In its brief, UFBOT asserts that UF has provided two wage increases, and proposed a third, over the past three years, totaling an 11% wage increase. This amount includes the current proposed 2.5% increase effective January 1. 2016. UFBOT notes that the COL increase as of October, 2015, is .2%.

Comparability -

Pursuant to Section 447.405 (1) and (2) Florida Statutes, UFBOT presented evidence and testimony at the hearing regarding the comparison of the income of public employees in similar public governmental bodies in the local operating area and within the State. According to the UFBOT exhibits, a comparison of the public university salaries in Florida during the period 2013-2016 establishes that UF salaries increased by 11% (including the 2.5% proposed to become effective January 1, 2016) - higher than UCF (10%), FIU (7%), FSU (6.8%) and USF (4%). UFBOT compared the average SUS average faculty salary to that of UF, and showed that UF ranked well above the other SUS institutions. *(Impasse Hearing Presentation, Tab 9).*

UFBOT also compares the proposed increases to tenure and tenure track faculty nationwide, and concludes that the 11% (including the proposed 2.5% increase) provided to UF faculty from 2013 thru 2015 exceeds the 6.2% increases provided at public universities nationwide during the same period. *(Impasse Hearing Presentation, Tabs 3, 4).*

Finally, UFBOT pointed out that the 2.5% proposed merit increase is the same as that provided to all other UF workforce employees, and argues that there will be an unfair discrepancy created between the in-unit faculty and the larger workforce of employees that are not in the bargaining unit. *(UFBOT Br. at p. 7).*

Ability to Pay -

According to UFBOT, the cost of providing a 2.5% increase to bargaining unit members is $4,858,933.22, and the cost of the UFF proposed increase (including merit - 2.5%, across the board - 2.75%, and market increases - .75% would amount to $11,661,439.74. The difference between the two proposals is $6,802,506.52. According to Assistant Vice President and Comptroller West, this amount would materially strain the University's reserves, and, as evidenced by GASB Statement No. 68, have legitimate budgetary considerations. *(UF-Tab 7; UFBOT Impasse Hearing Presentation, Tab 6; UFBOT Br. at p.10).* It is UFBOT's position that funding the University's proposed 2.5% increase ensures that the University will maintain solid financial footing, and remain in compliance with all accounting requirements. On the other hand, UFBOT suggests that, should the Special Magistrate recommend the UFF's proposal, "there would be greater financial uncertainty . . . in these tough economic times." *(UFBOT Br. at p. 9).*

UFBOT points out that it does not have the ability to raise additional revenue through taxation. To the contrary, the University receives its funding primarily through student tuition, legislative appropriations, and performance funding allocated from the Board of Governors. UFBOT points out further that the State Legislature withholds an amount of appropriation to be distributed based on performance, and that, depending on how the university ranks, the funding can be increased, decreased or completely withheld. Thus, according to UFBOT, these funds are thus "non-recurring" and cannot be counted on from year to year. The 2016 appropriation based upon performance is $19,371,969. *(Impasse Hearing Presentation, Tabs 6, 8).*

According to UFBOT figures, the 2015 UF unrestricted non-recurring and committed net position is 112,000,000, a figure that was reduced by $37,000,000 from 2014 to 2015. However, according to UFBOT, the monies that the UFF believes will fund its requested wage increases are restricted and cannot be used to pay recurring wage increases. In support of its argument, UFBOT refers to a recommendation previously issued by the undersigned. In that case, UFBOT quotes the undersigned as having determined that while the financial resources were available to fund the union's proposals at another university, "funding recurring costs (wages) from non-recurring fund sources (fund balance) is not fiscally prudent policy." *In the Matter of Impasse between University of South Florida and AFSCME, Florida Council 79, SM-2009-032 (Young, III, 2009). (UFBOT Br. at p. 12).*

UFBOT noted that the Florida Board of Governor's Regulation 9.007 requires a minimum of 5% of operating budget reserves and that for FY 2016, that amount would be $50,035,002. According to

Assistant Vice President and Comptroller West's testimony, while the minimum fund balance must be above the 5% requirement, it would be irresponsible for the University to allow its fund balance approach such a low level. It is the UFBOT's position that its offer recognizes the Faculty's contributions, while remaining fiscally prudent, permitting the University to maintain a balance closer to 10% of operating expenses. *(UFBOT Br. at p. 12).*

Interest and Welfare of the Public -

UFBOT argues that UFF's wage proposal could have deleterious effects on the University's employees. As previously stated, all other University personnel received the same 2.5% wage increase. The University submits that it is in the best interest of the public to maintain equality in terms of wage adjustments across all faculty and non-faculty employees. The University's proposal provides a modest increase to all employees, while taking into account the nonrecurring nature of legislative appropriations.

DISCUSSION AND ANALYSIS

Section 447.405, Florida Statutes provides as follows:

> Factors to be considered by the special magistrate.—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.
> (2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.
> (3) The interest and welfare of the public.
> (4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:
> (a) Hazards of employment.
> (b) Physical qualifications.
> (c) Educational qualifications.
> (d) Intellectual qualifications.
> (e) Job training and skills.
> (f) Retirement plans.
> (g) Sick leave.
> (h) Job security.
> (5) Availability of funds.

Comparability -

Both parties addressed the factor of comparability. However, UFF chose to compare the salaries of the UF faculty to other national "peer institutions." As noted above, these "peer institutions," according to the UF Office of Institutional Planning and Research, include the following:

University of California, University if Illinois, Indiana University, University of Michigan, University of North Carolina, Ohio State University, Pennsylvania State University, Texas A & M University, University of Texas, and University of Wisconsin

(*UFF #8 at p. 16)*. As UFF points out*,* according to the 2013-2014 AAUP Faculty Survey *Chronicle of Higher Education,* April 7, 2014, among the 10 "peer institutions", UF ranks 8th out of 11 in average salary for full professors, and at the bottom for associate and assistant professors. (*UFF #8 at pp. 17, 18).* UFF's use of these comparators is persuasive in that it is consistent with the stated objectives and goals of the UF to be competitive with these national peer universities. The quotations referenced by UFF are most telling in this regard. As UFF points out, Past UF President Bernie Machen stated, on March 18, 2014,

> "Our highest priority is securing funds for raises for our excellent faculty and staff."
>
> "This is important in part to make up lost ground in rewarding employees for their performance - performance that remained at a high level during the prolonged economic downturn despite years without raises and added workloads due to attrition and hiring freezes."
>
> "Boosting our employee compensation will also help ensure that we pay salaries that are *more competitive with our peer universities nationally*. This is key as we emphasize attracting accomplished faculty as part of our Preeminence Plan to *rise among the nation's top public universities.*"

Quoting current UF President Kent Fuchs in his State of the University Address to the Faculty Senate on September 24, 2015,

> "We also appreciate that *competitive salaries and support are critical in attracting and retaining the world's best faculty* and graduate students. We are *committed to achieving employee compensation* and graduate student stipends *that match our peers.*"

Clearly, UF intends to be compared and comparable with the national institutions it has designated as its peers. However, as pointed out by UFF, the salaries of UF faculty do not compare favorably with those of UF's national peers. In fact, information provided by UFF and described above indicates that UF faculty salaries are at or near the bottom of the list.

UFBOT does compare the salaries of its faculty to tenure and tenure track faculty nationwide, and concludes that the 11% (including the proposed 2.5% increase) provided to UF faculty from 2013 thru 2015 exceeds the 6.2% increases provided at public universities nationwide during the same period. However, these comparisons are apparently in reference to <u>all</u> universities nationwide, as opposed to those peer institutions to which it seeks to be compared, and the comparisons are consequently not compelling.

UFBOT chose instead to emphasize the comparison of the faculty salaries to similar public employee governmental bodies of comparable size within the state, pursuant to the second factor listed above in 447.405 above. In this comparison, UF comes out very well with the average UF faculty salary exceeding that of every other member of the SUS. However, even this comparison is subject to some question in that UFF asserted that the data used was "selective" and "misleading." There is insufficient evidence on this record to resolve these competing claims concerning the comparison of UF faculty salaries to other SUS institutions. *(However, as indicated below, the resolution of these competing claims is not critical to the analysis of the factors in question.)*

UFBOT also points out that the 2.5% proposed merit increase proposed for UF faculty is the same as that provided to all other UF workforce employees, and argues that there will be an unfair discrepancy created between the in-unit faculty and the larger workforce of employees that are not in the bargaining unit. While the fairness or unfairness of such a discrepancy is a matter of legitimate concern, the comparison of salary increases for tenured and tenure track faculty to other UF workforce employees is not persuasive in view of the fact that, according to Past President Machen, "Our highest priority is securing funds for raises for our excellent faculty and staff." By its own admission, UF is competing with its peer institutions to attract and retain the "world's best faculty."

UFBOT points out that much of the data presented by UFF included comparative information falling outside the scope of Section 447.405, Florida Statutes. By this statement, it seems that UFBOT is suggesting that Section 447.405 somehow limits the special magistrate to factors to be considered. In attempting to evaluate these competing comparisons, it is important to note that Section 447.405 provides in pertinent part as follows:

> The factors, *among others*, to be given weight by the special magistrate in arriving at a recommended decision shall include: . . .

Conclusion - Comparability

The comparison to national peers is found to be more compelling than the comparison to SUS in this case, and the evidence of record indicates that UF suffers by comparison.

Ability to Pay -

It is respectfully submitted that analyzing the factor of "ability to pay" should begin with the premise that a public employer or public institution has the obligation to use the public funds it receives to provide the services it is obligated to provide in an efficient and effective manner in order to best serve the interest and welfare of the public. The funding for the provision of this service is derived in large part from taxes paid by the public that receives the service. The level of the funding is determined by local or state government, and the determination of the amount provided to these public employers is a political decision, albeit not always well reasoned. Once the level of funding is determined and distributed, the public employer has an obligation to use the funds in a fiscally responsible way to deliver the intended services.

There is a legitimate expectation the funds received by the public employer will be spent to deliver the service that is the responsibility of the public employer -e.g., public schools will educate children, cities and counties will provide police, fire protection and waste collection for the safety and well being of its citizens, public universities will provide quality education for the students and encourage and support research that will benefit mankind, etc., etc..

The decision as to how the funds will be spent to deliver the serve is the responsibility of public officials, elected or appointed, who do not have the ability to increase funding in the event of unanticipated contingencies or revenue shortfalls. In order to accomplish this, public employers develop a budget. The budget is always developed with the anticipation that, at the end of each fiscal year, there will be some funds remaining that are unrestricted. In this way, public employers ideally are able to begin the next fiscal year with a "reserve."

Assuming for the sake of this discussion that there is expectation by the public that the funds received by the public employer will be spent to deliver the service that is the responsibility of the public employer, and that the public employer will develop a budget with a "reserve," there comes a point when the size of the "reserve" competes to some extent with the delivery of the intended service. To illustrate this point, assume that a municipality routinely over estimates expenditures and under estimates revenues so that at the end of each fiscal year, for more than five years, it ended with a 30% "reserve" in its operating budget (which was the fact in an actual case before the undersigned).

It is respectfully submitted that a "reserve" of this size, especially when it occurs year after year, effectively denies the citizens, who contributed the tax dollars that funded the municipality, a level of services that they have reason to expect will be provided. In other words, for example, a portion of the "reserves" could have (should have) been budgeted each year for additional police officers or more frequent waste collection, or for some other purpose that would improve the delivery of services to the community. Obviously, there is a point where reducing the "reserve" becomes fiscally irresponsible, but the point is that public money should be spent to deliver services to the public. It should not reside unused in an excessively large reserve.

Except in cases such as the one described above, these funds can be said to be non-recurring. That is, the "reserve" is a remainder of the funding received by the public employer from the previous year, and there can be no certainty that such an amount will be available at the end of the next fiscal year. There are no guarantees that the politicians will continue funding at the level of the previous year, and there is no guarantee that there will not be some unexpected contingency in the coming year that will deplete the reserves. Thus, it is not fiscally responsible, as a general proposition, to fund recurring costs (e.g., wages) with non-recurring revenue (i.e., "reserves").

Nevertheless, it is this "reserve" or "contingency fund" or "unrestricted, unreserved fund balance", or "unrestricted net position" (there are many ways to describe this "reserve"), that is typically looked to by public employees in negotiations as the primary source for increases in wages and other economic benefits.

It is interesting to note that UFBOT made reference to a 2009 case in which the undersigned also served as Special Magistrate, and quoted language from that case in support of the argument that its impasse position on a wage increase should be adopted. The UFBOT argument is based on the proposition that funding the UFF wage proposal from non-recurring funds would, according to Assistant Vice President and Comptroller West, "materially strain the University's reserves."

It would be instructive to look at the context of the quote referenced by UFBOT in evaluating the factors relating to ability to pay in the instant case. Regarding the question of ability to pay, the undersigned wrote as follows:

> "As in virtually every special magistrate proceeding, there is no agreement regarding the availability of funds to meet the demands of the union. Are there financial resources available to fund the UFF economic proposals? Yes. However, funding recurring costs (wages) from non-recurring fund sources (fund balance) is not fiscally prudent policy.
>
> USF has made a compelling argument concerning its financial position. The facts are clear and irrefutable. Florida's financial position is poor and is likely to get worse. The loss of population makes that almost inevitable, absent some willingness on the part of state government to find new revenue sources (taxes), a potential that is sure to go unrealized.
>
> . . .
>
> It is important to note that USF has taken various actions in an effort to lessen the impact of the severe budget reductions on its employees. Because of budget reductions in 2007/2008 and 2008/2009, the evidence establishes that USF eliminated approximately 459 positions, laid off approximately 59 employees, and held open approximately 376 positions. It is reasonable to assume that USF would not have taken these very serious steps unless such action was compelled by its financial situation."

In the Matter of Impasse between University of South Florida and AFSCME, Florida Council 79, SM-2009-032, at pp. 24, 25 of the Recommendations.

As was the situation in the USF case, and in virtually every case involving an impasse over wages, there is disagreement regarding the employer's ability to pay for the wage increase. The purpose of this recitation from the USF case is to distinguish it from the facts in instant case. To be sure, funding recurring costs (wage increases) from non-recurring funds needs to be carefully considered. In the USF case, the employer's situation was dire - there were budget reductions due to reductions in state funding, there were positions eliminated and employees laid off. We did not know it then, but it was the beginning of the "Great Recession."

The situation UFBOT finds itself in today is decidedly different. In the University of Florida 2015-2016 Financial Report *(Tab 6 at p. 8)*, there is the following statement under the heading, *Economic Factors That Will Affect the Future:*

> "The University's economic condition is closely tied to that of the State of Florida. The Florida Economic Estimating Conference held July 17, 2015, revealed the state's economy is growing at a slow to moderate pace. The forecast suggests overall stability for the Florida economy, with modest, yet uneven growth in all key economic indicators . . . ."

Clearly, the University is not anticipating a recession and layoffs. In fact, according to evidence submitted at hearing, the University is using additional funding received from the State to employ additional faculty. It is assumed that the decision to increase staff would not have been made if economic indicators were unfavorable.

It is UFBOT's position that funding the University's proposed 2.5% increase ensures that the University will maintain solid financial footing, and remain in compliance with all accounting requirements. The evidence of record indicates that is accurate. On the other hand, UFBOT suggests that, should the Special Magistrate recommend the UFF's proposal, "there would be greater financial uncertainty . . . in these tough economic times." *(UFBOT Br. at p. 9).* As indicated above in the University's Financial Report, the evidence on this record does not establish that these are "tough economic times."

Nevertheless, the question of funding wage increases with non-recurring funds certainly deserves to be addressed. It seems conceded by both parties that the source of the funding for the proposed wage increase is the unrestricted fund balance. UFBOT's position regarding its ability to pay for wage increases is apparently based in large part upon the Florida Board of Governor's Regulation 9.007 that requires a minimum of 5% of operating budget reserves. For FY 2016, UFBOT maintains that that amount would be $50,035,002. It is interesting to note that, at hearing, UFF presented testimony that the 5% figure would be $34.7 million.

According to Assistant Vice President and Comptroller West's testimony, while the minimum fund balance must be above the 5% requirement, it would be irresponsible for the University to allow its fund balance approach such a low level. The undersigned agrees that UFBOT's position in this regard is a fiscally responsible position. It is UFBOT's position that its offer recognizes the Faculty's contributions, while remaining fiscally prudent, permitting the University to maintain a balance closer to 10% of operating expenses. *(UFBOT Br. at p. 12).*

It is noted that achieving a 10% balance is not required by the Board of Governors, nor was any evidence offered to confirm the appropriateness or necessity of achieving such a balance. UFBOT introduced evidence to establish that the 2015 "Unrestricted Net Position" is $112 million. *(UFBOT Tab 6).* A rough calculation would establish that the current unrestricted net position of $112 million exceeds the "preferred" 10% balance by approximately $12 million. It should be noted that the unrestricted net position for the preceding fiscal year was $147 million.

Thus, it is clear that, at least for these passed two fiscal years, the University's net unrestricted position considerably exceeded the preferred 10% of the operating budget. And, it is noted that "preferred" is UFBOT's terminology. Obviously, "preferred" is not the same as "required." One can conclude that a "preferred" unrestricted net position of 10% is desired, but that there is some flexibility around that preferred point so long as the final unrestricted net position is well above the 5% minimum required by the Board of Governors.

According to UFBOT, the cost of providing a 2.5% increase to bargaining unit members is $4,858,933.22, and the cost of the UFF proposed increase (including merit - 2.5%, across the board - 2.75%, and market increases - .75% would amount to $11,661,439.74. The difference between the two proposals is $6,802,506.52. According to Assistant Vice President and Comptroller West, this amount would "materially strain" the University's reserves, and, as evidenced by GASB Statement No. 68, have legitimate budgetary considerations.

As was indicated previously, there is no mention of the .75% market equity in UFF's brief and it is no longer on the table. Subtracting the cost of .75% (approximately $1,457,000) from the UFBOT estimated cost of the UFF proposed wage increase of $11,661,000 million would reduce the cost of the UFF proposed merit and across the board increases to approximately $10,204,000. Subtracting that amount from the $112 million unrestricted net position would leave approximately $102 million - just above the preferred 10% balance mentioned above by Comptroller West. It is respectfully submitted that the evidence on this record does not support the Comptroller's opinion that the University's reserves would be "materially strained" by such a settlement.

UFBOT also argues that the funds included in the $112 million Unrestricted Net Position are nevertheless "committed." However, it is the understanding of the undersigned that UFBOT may decide to change these "commitments" at any time, unlike funds that are "restricted." Consequently, the funds that are "committed" for other purposes may be used to fund wage increases if the UFBOT decides to do so.

UFBOT points out that, under GASB Statement No. 68, an important new accounting and reporting requirement, unfunded pension obligations or net pension liability will become a new liability line on the University's statement of net position within the University's basic financial statements. According to UFBOT, this new liability line will appear to reduce the value of the University's ending net position and may have secondary consequences on financial perception and University initiatives. *(UFBOT Tab 7).*

In fact, according to the UFBOT's Net Position Summary, the UF has already committed $123,293,000 for Pension Liability - this is <u>in addition to</u> the $112,181,000 of unrestricted funds. *(UFBOT Tab 9)*

Coming back full circle to the question of funding pay increases from non-recurring fund sources, the advisability of such an action depends upon the amount of the unrestricted reserves and the estimates of future revenues and expenditures. As has been pointed out by both parties, there is no guarantee that funding from the Legislature will remain constant or increase in the coming years. The budget is a living document and is amended frequently during the fiscal hear as situations change. However, according to the University's 2015-2016 Financial Report, "the state's economy is growing at a slow to moderate pace. The forecast suggests overall stability for the Florida economy, with modest, yet uneven growth in all key economic indicators."

There is apparently agreement between the parties on the 2.5% merit increase. The disagreement on this issue is the effective date. UFBOT proposes that the funds be made available January 1, 2016. UFF proposes that the increase be retroactive to August 1, and that all salary increases are effective at the beginning of faculty members' annual appointment. UFBOT has, by agreeing to this increase, accepted the fiscal impact beyond January 1, 2016. The fiscal impact of accepting the UFF proposed retroactive date of August 1, 2015, is estimated by UFF to be $1,832,624, and is assumed to be included in the UFBOT's estimate of the cost of implementing the UFF wage proposal. The fiscal impact of implementing the UFF proposal has been discussed above.

The UFF proposed 2.75% across the board increase is not specifically addressed by UFBOT, other than to reject the proposal as being too costly. An across the board increase is clearly anticipated to be a subject of the reopener pursuant to Article 24.4(c). According to UFF, since 2010, the faculty has received one cost-of-living increase. This occurred in 2013, when the Legislature--not the Board of Trustees--gave all state employees raises of $1000 or $1400, depending on their income. Other than that, according to UFF testimony at hearing, there has been no adjustment to faculty salaries to address the cumulative inflation of 9% over that five-year period. An across the board adjustment would seem appropriate under these circumstances.

Furthermore, as indicated above in the discussion of the comparability factor, it is concluded that UF seeks to be compared to and competitive with its peer universities on the national level. With this goal in mind, it is appropriate to provide an across the board increase to bring UF faculty salaries into a more competitive position in order to attract and retain highly tenured and tenure track faculty. The cost of the 2.75% across the board increase has been included in the UFBOT's estimate of the cost of implementing the UFF wage proposal, and the fiscal impact of implementing the UFF proposal has been discussed above.

Conclusion - Ability to Pay

Based upon the size of the Unrestricted Net Position and the relatively promising fiscal forecast, it is concluded that the evidence on this record indicates that funding the UFF proposed wage increases is economically feasible and would not unduly burden the budget.

Interest and Welfare of the Public -

The parties spent little time on the question of the impact of the respective proposals on the interest and welfare of the public.

Summarized briefly, it is the position of the UFBOT that it is in the best interests of the public that it acts in a fiscally responsible manner. One could not disagree with this position. UFBOT states further that, "[I]t is in the best interest of the public to maintain equality in terms of wage adjustments across all faculty and non-faculty employees." *(UFBOT Br. at p. 14).* There is no evidence or rationale offered in support of this statement.

UFF offers little more on the subject. In fact, there is one statement in its brief referencing the public interest - to wit, "As demonstrated at the Special Magistrate impasse hearing, UFF's position serves the interest and welfare of the public. . . ." *(UFF Br. at p.2).* UFF presented testimony at the hearing to the effect that "UF's mission is to offer the best possible training for the children of Florida's citizens and those who will make Florida their home. Attracting, developing, and retaining the best possible faculty serves this mission for the public good." Again, it would be difficult to disagree with this position. The assumption would be that attracting and retaining the best possible staff could be achieved by achieving a more competitive salary structure.

Arguments Beyond the Jurisdiction of the Special Magistrate

As was noted by the undersigned during the hearing conducted in these proceedings, the authority of the special magistrate is limited to identifying the unresolved issues at impasse and making recommendations regarding their resolution. The arguments raised by UFF in its brief - i.e., that UFBOT did not properly engage in collective bargaining, that UFBOT violated or failed to comply with the CBA, and that the UFBOT insisted to impasse on permissive subjects of bargaining, are issues appropriately raised in other forums and will not be addressed here.

The remaining issues raised by the parties were deemed not to be at impasse and are therefore not addressed.

RECOMMENDATION

Based upon the testimony and evidence of record in this proceeding and in consideration of the arguments raised in the briefs submitted by the parties, and for the reasons stated above in the Discussion and Analysis, it is recommended that the issues at impasse be resolved as follows:

The UFF bargaining unit members receive a 2.75% across the board salary increase, and a 2.5% merit wage increase as provided for in the collective bargaining agreement. The wage increases shall be effective August 1, 2015, and all salary raises shall be effective at the beginning of faculty member's annual appointment.

It is most important to observe that had the University been satisfied to be one of the pre-eminent universities in the SUS, it would have been most appropriate to adopt the UFBOT's proposed wage increase. The evidence introduced by UFBOT clearly establishes that, using Florida SUS institutions as comparators, UF ranks at or near the top in faculty compensation.

However, as was noted above, the language in Section 447.405, Florida Statutes, provides that a special magistrate may consider other factors than those comparability factors listed sections (1) and (2). The single most compelling argument in support of accepting the UFF proposed wage increase is the University's oft expressed goal to become " *more competitive with our peer universities nationally,"* and that it seeks *"to rise among the nation's top public universities"* - President Machen, March 18, 2014; and, that the University" is *committed to achieving employee compensation and graduate student stipends that match our peers.*" - President Fuchs, September 24, 2015. Achieving this noteworthy and laudable goal does not come without a price. The evidence of record indicates that, among its 10 "peer institutions", UF ranks 8th out of 11 in average salary for full professors, and at the bottom for associate and assistant professors. The UFF's proposed faculty wage increases will contribute to improving the UF's position in comparison to its peer universities on the national level. And, as indicated above, according to the UFBOT's own figures, such increases can be provided while keeping the Net Unrestricted Position above the preferred 10% of the operating budget.

Respectfully Submitted this 28th day of December, 2015

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Thomas W. Young, III

Special Magistrate