

**FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION**

In the Matter of Special Magistrate Proceedings  
Between:

**United Faculty of Florida,  
(Union)**

and

**University of Central Florida,  
Board of Trustees,  
(Employer)**

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**Case No. SM-2010-032**

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**SPECIAL MAGISTRATE REPORT AND RECOMMENDATIONS**

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Before:

Kenneth Starr, Special Magistrate

Appearances:

For the Union, United Faculty of Florida –  
Michael Moats, Service Unit Director

For the Employer, University of Central Florida, Board of Trustees –  
Michael Mattimore, Esquire

Date of Hearing: July 14, 2010

Place of Hearing: University of Central Florida Teaching Academy, Orlando, Florida

## PROCEDURE

Pursuant to §447.403, Florida Statutes and Rule 60CC-3.004, Florida Administrative Code, the undersigned Special Magistrate was appointed on or about May 7, 2010 by the Florida Public Employees Relations Commission, Stephanie Williams Ray, Chairperson, to submit this Report and Recommendations subsequent to a declared bargaining impasse between the above parties.

The Impasse Hearing was held on July 14, 2010 at the Teaching Academy on the University of Central Florida campus in Orlando. At the outset, the parties agreed the Special Magistrate's notes would be the official record of the Hearing. Both parties were afforded a full opportunity to present evidence and the Hearing was concluded at approximately 3:30 p.m. The parties agreed that post-Hearing briefs would be submitted to the Special Magistrate on or before August 30, 2010. The briefs were received on August 30 and the Hearing was deemed closed on that date.<sup>1</sup>

## BACKGROUND

The University of Central Florida (hereinafter, "UCF" or the "University") is one of eleven institutions in State of Florida University System (hereinafter, "SUS"). Its main campus is located in Orlando and it also maintains eleven regional campuses. With a student population of more than 50,000, it is the second largest state university in Florida in terms of enrollment.

All SUS institutions were originally governed under the Florida Board of Regents, until that body was abolished in 2001. In 2003, UCF (and, at different times, all SUS institutions) became governed by a local Board of Trustees (BOT).

Prior to the abolishment of the Board of Regents, all SUS institutions were represented by the United Faculty of Florida (hereinafter, "UFF" or the "Union"), which negotiated a collective bargaining agreement for all universities within the state system. After the BOT was established at UCF, negotiations began with the local UFF on the initial CBA, based upon the 2001-2003 legacy

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<sup>1</sup> The parties agreed to participate in a phone conference on September 15, in the nature of post-Hearing oral argument, concerning the "waiver" issued discussed *infra*. While that phone conference did not have the effect of reopening the Hearing, it did delay the issuance of this Report and Recommendations.

agreement (that CBA was between the state-wide UFF and the Florida Board of Regents), which had been determined to be the existing “status quo” document.

Bargaining for the initial contract reached an impasse that was eventually resolved in 2004 when the University and the Union agreed on a three-year CBA, which contained automatic reopeners. Wages were renegotiated in 2005 and again in 2006, and other provisions were renegotiated in 2007. The initial three-year CBA expired on or about August 7, 2007.

Negotiations for a successor CBA began in November 2006, well before the expiration of the initial agreement. The parties reached tentative agreements on many of the contract articles, but after more than two years of negotiations, impasse was declared on three articles—Articles 10, 16 and 23. Evidence on those articles was heard by a Special Magistrate (Magistrate Young) in August 2009 and the parties accepted the recommendations as to the resolution of Article 16. The BOT imposed provisions contained in the remaining two articles: Article 10 – Evaluations; and Article 23 – Wages (which is the subject of the instant Impasse) in January, 2010.

The Union responded to the BOT imposition of Article 10 on evaluations by withdrawing previous waivers of its bargaining rights on several subjects, including Administrative Discretionary Income (ADI). The University previously had the discretion to provide salary increases to bargaining unit members for a myriad of reasons, including the retention of faculty who had received higher salary offers from other institutions. As a result of the Union withdrawing the waiver on ADI, the University lost that ability. The Union has been unwilling to reinstate the waiver as to ADI as long as the University continues to impose its version of Article 10 – Evaluations.

The BOT imposition on Article 23 – wages applied only through the 2008-'09 academic year. Meanwhile, prior to the imposition of Article 23 provisions, the parties had, in November, 2009, begun additional negotiations on wages for the 2009-'10 academic year. Those negotiations failed and Impasse was declared by the Union in April, 2010.

The parties have submitted to the Special Magistrate, their respective proposals on Article 23 for the 2009-'10 academic year that ended on or about August 7, 2010. Accordingly, the term for any recommendations made at this time (unless the parties mutually agree to a longer term), or any imposition made by UCF, will have expired prior to the date it is issued or imposed. The parties will again, be compelled to enter into ongoing negotiations after the 2010-'11 academic year has begun.

The Special Magistrate feels it is important to point out that the relationship between the Union and UCF has been anything but amiable over the past several months. In March 2009, UFF filed an Unfair Labor Practices (ULP) claim against UCF related to the University's continued awarding of ADI to some faculty members. That claim was upheld by PERC and UCF was required to cease providing any such discretionary income effective retroactively to August 2007. As noted above, in January 2010, after Magistrate Young submitted his Report and Recommendations on the previous Articles at Impasse, the parties declined to accept recommendations as to Articles 10 & 23 and the BOT imposed its own contract language.

The Union, now having rescinded waivers as to several permissive subjects for bargaining previously given to UCF, has notified the University it desires to bargain these subjects. The Union asserts it is improper for the Special Magistrate to consider any BOT proposals that require UFF to waive its right to bargain these subjects.

Additionally, during a pre-Hearing phone conference held in this matter on or about July 6, neither side voiced any objections to exhibits the other side might tender at the Impasse Hearing. At the beginning of the Hearing, the Special Magistrate was advised that several exhibits of questionable relevance would likely be tendered by UCF, but the Union was not going to object. Prior to the culmination of the Hearing, both parties asked for additional time to object to various exhibits tendered by the other side. Numerous objections were thereafter submitted by both sides.

Upon receiving agreement from all representatives, the Special Magistrate met separately, via telephone, with both parties in an effort to ameliorate the deteriorating relationship and to, possibly

help the parties reach agreement on various issues. Those telephonic meetings failed to accomplish the intended purpose and the parties presently appear to be so far apart, the Special Magistrate is pessimistic that any of his recommendations will be mutually accepted. In fact, it is the Special Magistrate's perception that the parties have consciously taken such extreme positions that the likelihood of a negotiated CBA in the near future is questionable. As noted above, the recommendations contained herein will apply only to the academic year that has already ended. The parties will be compelled to begin/continue negotiating for the 2010-'11 academic year.

### **ARTICLE 23 ISSUES at IMPASSE and POSITIONS OF THE PARTIES**

Starting Salaries— UCF wishes to retain the right to negotiate starting salaries with prospective employees. UFF maintains the UCF proposal on this subject is improper and it does not agree to waive its right to bargain starting salaries. It proposes a minimum/maximum starting salary for all new hires.

Merit/Across the Board Salary Increases— UCF wishes to distribute a pool of money as salary increases, equal to 1% of the total base salaries in each department, based upon merit. UFF wishes the pool of money be distributed in equal, across the board salary increases.

Incentive Award Programs— UCF wishes to have the right to determine the number, if any, of incentive awards to be awarded to “faculty” each year. UFF wishes to require a minimum number of awards be distributed each year to “employees,” the designation currently in use, rather than “faculty.”

Administrative Discretionary Increases (ADI)— UCF wishes to have the discretion to provide a limited amount of salary increases to employees for a variety of reasons. UFF maintains the UCF proposal on this subject is improper; it does not agree to waive its right to bargain ADI. It proposes no “out-of-cycle” discretionary salary increases.

Grievability — UCF wishes to limit the subjects and types of grievances that may be brought, alleging violations of Article 23. UFF maintains the UCF proposal on this subject is improper; it does not agree to waive its right to bargain grievability. It proposes that any violation of the provisions of the CBA should be grievable.

Administrate Salary Stipends — UCF wishes to have the discretion to provide salary stipends for additional duties and to make those stipends permanent salary increases. UFF maintains the UCF proposal on this subject is improper and does not agree to waive its right to bargain discretionary increases. It proposes that no such language be inserted into the CBA.

One-Time Bonuses — UCF wishes to reserve the right to deny one-time bonuses to Contract & Grant (C&G) employees, if the outside funding for those employees is not sufficient to cover said bonuses. UFF wishes the one-time bonuses be guaranteed to all employees, including C&G employees, even if outside funding is not sufficient to cover said bonuses for the C&G employees.

Salary Increases for C&G Employees — UCF wishes to avoid providing salary increases to those C&G employees who do not have sufficient funds in their respective contracts and grants to fund said increases. It also wishes to be able to continue to provide larger salary increases to these employees if money is available in their respective contracts and grants. UFF maintains the UCF proposal on this subject is improper and does not agree to waive its right to bargain salary increases for C&G employees. It proposes that C&G employees receive the same salary increases as all other bargaining unit members, regardless if there are sufficient funds in their respective contracts and grants to support said increases, and they should not receive larger increases, even if the respective contracts and grants can provide for such increases.

### **Legal/ Evidentiary Findings**

The University argues it is proper for the Special Magistrate to consider all provisions in Article 23 in connection with issuing this Report and Recommendations. The Union takes the position that, while it previously waived its right to bargain certain permissive subjects, it has now withdrawn

those waivers and it is impermissible for the University to insist the following subjects to impasse: Salary Increases for C&G Employees, Administrative Discretionary Increases, Grievability and Administrative Salary Stipends. Likewise, it is improper for the Special Magistrate to make recommendations that require a waiver of bargaining rights on these subjects.

It is clear that a party may not insist to impasse on a permissive subject of bargaining. See *City of Casselberry v. Orange County PBA*, 482 So. 2d 336 (Fla. 1986); *United Faculty of Palm Beach Junior College v. Palm Beach Junior College Board of Trustees*, 7 FPER ¶ 12300 (1981), aff'd, 425 So. 2d 133 (Fla. 1st DCA 1982), aff'd in pertinent part, 475 So. 2d 1221 (Fla. 1985); *Hollywood Firefighters, Local 1375 v. City of Hollywood*, 11 FPER ¶ 16001 (1984), aff'd in pertinent part, 476 So. 2d 1340 (Fla. 1st DCA 1985).

The issues in this matter appear to be identical to those presented in *United Faculty of Florida v. Florida Board of Education*, 28 FPER P 33232, CA-2002-020 (July 2002). As the Special Master stated prior to the filing of the ULP claim in that case, "A salary proposal is normally a mandatory subject of bargaining. However, I agree with the UFF that the FBOE's Article 23 salary proposal was transformed into a permissive subject of bargaining because it contained waivers of the UFF's right to bargain over the mandatory subjects of salaries and the scope of the grievance arbitration provision."

The Special Master went on to state: "It is well settled that parties can agree to include a permissive subject of bargaining in a contract, but that voluntary agreement does not mean that the permissive subject may be imposed in future negotiations."

The undersigned Special Magistrate is cognizant of the fact that similar issues were presented to Magistrate Young in the Impasse Hearing involving these same parties in August 2009. In his Report and Recommendations, issued on October 9, 2009, Magistrate Young appeared to recognize the BOT could not impose provisions concerning permissive subjects of bargaining but, nevertheless, made recommendations on some of those subjects in his Report. With all due respect to Magistrate Young, the undersigned Special Magistrate, does not believe he has the authority to issue

recommendations that are not appropriate for the entire impasse proceeding – including the imposition of terms by the governing body. Nor does the Special Magistrate believe he has the authority to address the Union’s argument that the University’s action of urging these permissive subjects be recommended in this forum is an Unfair Labor Practice.

As noted above, both parties objected to the introduction into evidence of various exhibits submitted by the opposing side. UCF objected to the Union’s exhibits #2, 3, 4 5, & 6. Exhibits #2-5 purport to be starting salary schedules for nearby community colleges for academic years 2009-’10 or 2010-’11. The University objected to these exhibits on the grounds that the exhibits were not authenticated, they purport to reflect starting salaries at community colleges, rather than universities, and are therefore irrelevant to the subject of starting salaries for UCF faculty members and to one exhibit (Union Exhibit #2) because it is merely a “proposal.” Exhibit #6 is a list of UCF employees, and their alleged salaries in various departments.<sup>2</sup> The University objected to this exhibit on the grounds it was not authenticated, its origin is unknown and it does not provide any information of the position(s) held by the listed employees (whether they are clerical, faculty or other). Consequently, the Special Magistrate is unable to determine the exhibit’s relevance, if any, to any subject in dispute.

The Union responded to the University’s objections to Exhibits #2-5 by arguing that starting salaries for community college faculty working in the local operating area are relevant. It also responded to the University’s objections to Exhibit #6, arguing in effect, the objections are frivolous since the list was supplied to the Union “by UCF via email.” The Union offered no response to the University’s contention that the content of the exhibit is so deficient, it is irrelevant for any purpose.

UFF objected to UCF’s exhibits #2A, #2G, #2H, #2I, #2J, #2K, #2N, #2O, #2P, #2Q, #2R, #2S, #2T, #2U and #4. UCF Exhibit #2A purports to be a comparison of the parties’ various proposals at the time of the Impasse Hearing. The Union objected to this exhibit on the grounds that the use of the terms “management rights” and “*status quo*” in the exhibit are misleading. The Union objected to

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<sup>2</sup> It is unclear whether the salaries reflected on the exhibit are for 12 months of employment or some lesser period of time.



exhibits #2G - #2K and #2N - #2P, purported salary articles contained in CBAs in various other SUS institutions, on the grounds that none of these exhibits were properly authenticated, some reflected agreements for previous academic years, others were merely proposals that had not yet been ratified and some were multi-year contracts that had been negotiated several years ago. Consequently, none of these proffered exhibits was relevant to any issue presently at impasse. The Union also objected to exhibits #2Q - #2U, charts purportedly reflecting agreements, or lack thereof, on other subjects (raises, ADI, Grievability, starting salaries and C&G salary increases) at the 10 other SUS institutions. The Union objected to all of these exhibits on the grounds that none were properly authenticated and four (#2R – ADI, #2S – Grievability, #2T – starting salaries and #2U -- C&G salary increases) injected waiver issues into the impasse proceeding and therefore constituted a ULP. Finally, the Union objected to UCF Exhibit #4, a document that purports to be the “Wages” article, effective for the 2007-'08 year, in a CBA between the UCF BOT and the AFSCME union, on the grounds that it is not only outdated, but also the employees represented by the AFSCME “are generally non-exempt, hourly employees”<sup>3</sup> and therefore their salaries are not relevant for any purpose in this dispute.

The Special Magistrate is required by law to consider evidence and to utilize numerous factors in arriving at his recommendations. See: Chapter 447, Florida Statutes. The above objections as to authentication are generally valid and, if strict rules of evidence were to apply in impasse hearings, they would be sustained. It should also be noted that neither side provided the Special Magistrate with either the type of documentary evidence, nor expert testimony, he is typically used to receiving in impasse hearings. For example, the Union offered purported starting salary data from nearby community colleges, but no data from any four-year state institutions. The University offered purported CBAs, either previously in effect, proposed or, in some cases, presently in effect at other four-year state institutions. However, no data was tendered by the University on actual starting

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<sup>3</sup> Presumably, this reference relates to the overtime provisions of the FLSA.

salaries at any of those institutions.<sup>4</sup>

The above discussion notwithstanding, the Special Magistrate will consider the evidence proffered by both sides for whatever relevance and weight, if any, he deems appropriate.

### **DISCUSSION**

Starting Salaries— UCF wishes to retain the right to negotiate starting salaries with prospective employees. UFF does not agree to waive its right to bargain starting salaries. It proposes a minimum/maximum starting salary for all new hires.

While the Union previously agreed to waive its right to bargain starting salaries, it contends it notified the University of its intent to withdraw that waiver. The University apparently has not engaged in bargaining this issue and has not submitted any proposal to the Special Magistrate. It argues that starting salaries apply to job “applicants,” not to members of the bargaining unit. Taking away the University’s ability to negotiate with each individual applicant would have a deleterious effect on hiring the best applicant at an optimum starting salary. It opposes any minimum or cap on starting salaries.

The Union vaguely proposes that starting salaries should be based on mean salary data found in the CUPA-HR salary survey (which was not tendered into evidence). The Union has not given the Special Magistrate any hard data on exactly what the starting salary should be for any new applicant, how that salary compares with starting salaries for similarly-credentialed faculty at any other institutions (two or four year) in the state, or the cost to the University of adopting its proposal.

The University simply asserts that any requirement for minimum (or maximum) starting salaries would be an infringement of its “management right” to negotiate with each new employee. To suggest that prior waivers to bargain starting salaries has created a “management right” is, to say the

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<sup>4</sup> The University did attempt to inject two charts of “average salaries” at other state universities in its post-Hearing brief. However, aside from the question of the authenticity of said charts, and the relevancy of average salaries on the issue of starting salaries, the Special Magistrate deems the attempted introduction of evidence after the close of the evidentiary hearing improper. He therefore declines to consider the charts for any purpose.

least, disingenuous. The Union apparently gave the University a benefit in the past, by virtue of waiving its right to bargain starting salaries, and now the University argues, for a variety of reasons, it should not be required to give up that benefit. It compares faculty with other professionals, such as doctors, lawyers, accountants, etc., and suggests that placing any restriction on the University's ability to negotiate and pay new professionals commensurately with their accomplishments would result in a disservice to the students. Further, the University has always enjoyed the unfettered ability to negotiate starting salaries and restricting that ability may have the undesired effect of being forced to hire less qualified faculty (if the minimum starting salary is too low) or requiring it to pay more than is necessary to attract qualified applicants (if the minimum is too high). It also takes exception of the Union's apparent attempt to place a cap on starting salaries, suggesting that could have the effect of prohibiting the University from attracting well-qualified faculty that may deserve a higher salary than permitted by any arbitrary cap.

Most of the evidence, objected to above by both parties, was ostensibly related to starting salaries. While the Special Magistrate agrees that the Union has the right to bargain starting salaries for members of the bargaining unit, he finds the evidence tendered by both sides to be woefully inadequate for him to make well thought-out recommendations on specific salary minimums.

Technically, job applicants (as characterized by UCF) are not yet members of the unit. However, the moment they are hired they are eligible for Union membership and, upon eligibility, are entitled to all benefits afforded to bargaining unit members. The Union's purported objective is to get the best benefits possible for its members. Its proposal for minimum starting salaries is understandable, but its insistence on salary caps for new hires is troublesome. The Special Magistrate recognizes that offering an unreasonably high salary to one, or a few new hires, could deplete the amount of money available for raises to the majority of bargaining unit members. However, the establishment of an arbitrary salary cap could also have the effect of preventing the University from hiring a highly-credentialed and desirable new faculty member. If, as the University suggests, the

Union's objective is to address salary compression, rather than low starting salaries, there are other – more efficient – ways to do that.

Merit/Across the Board Salary Increases— UCF wishes to distribute, as salary increases, a pool of money equal to 1% of the total base salaries in each department, based upon the prior year's performance. That money would be “distributed proportionately to those employees in a ratio of .5 for *Satisfactory*, 1.0 for *Above Satisfactory* and 1.7 for *Outstanding*.” UFF wishes the pool of money to be distributed in equal, across-the-board salary increases.

When the initial CBA was adopted, there were two separate provisions within Article 23 pertaining to salary increases. Article 23.4 provided for a 2% across-the-board increase for the 2004-'05 academic year for “in-unit employees” who had obtained at least a *Satisfactory* evaluation the previous year. Article 23.5 created a pool of money for merit-based salary increases equal to 1% of the total base salaries of the employees in each department/unit. That money was to be distributed proportionately, in differing percentages, only to those employees whose annual evaluations were *Above Satisfactory* and *Outstanding*.

When wages were renegotiated for the 2005-'06 academic year, pursuant to a legislative mandate requiring competitive pay adjustments, Article 23.2 provided that each “eligible employee” receive a 3.6% salary increase. Article 23.5 again created a merit-based pool of money – that year it was 0.5% of the total base salaries of the employees in each department/unit. The distribution ratio remained the same as it was previously.

When wages were renegotiated for the 2006-'07 academic year, the legislative mandate requiring competitive pay adjustments resulted in Article 23.2 providing a 3% salary increase to each “eligible employee.” Article 23.5 again created a merit-based pool of money – that year it was 1.2% of the total base salaries of the employees in each department/unit. The distribution ratio remained the same as it was previously.

No salary increases have been provided to bargaining unit members since October 1, 2006, the effective date of the competitive pay adjustments noted immediately above. The University asserts that, due to “current budgetary restrictions” and limited availability of funds, it is not feasible to provide both across-the-board increases and merit-based increases for the 2009-'10 academic year.<sup>5</sup>

The University offers a compelling argument that faculty are unlike organized workers in traditional “blue collar” trades. They are more like professionals, such as doctors, lawyers and accountants whose compensation is typically based on performance, billable hours and generation of revenue. Accordingly, it is appropriate to reward outstanding performance. Other arguments offered by UCF include job security for even the most mediocre performers and the likelihood of losing talented faculty if they are not adequately compensated.

The Union opposes merit-based salary increases at this time because, very simply, bargaining unit members have not had any increase in approximately four years. If, due to financial exigencies it is not feasible to provide both across-the-board and merit-based increases at this time – across-the-board increases are absolutely necessary.

The arbitrator actually views the University’s proposal as a hybrid of sorts. Clearly it is merit-based in that faculty members with the highest performance ratings are to receive the highest percentage increases. However, much like the across-the-board increases negotiated in the initial CBA, faculty members must obtain a minimum rating of *Satisfactory* to be eligible. UCF proposes that a minimum rating of *Satisfactory* will result in a factor of .5, which would produce a much smaller increase than previous across-the-board raises.<sup>6</sup>

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<sup>5</sup> Little, if any, evidence was introduced at the Impasse Hearing on the limited availability of funds argument advanced by UCF. However, the Union apparently tacitly acknowledges that both merit-based and across-the-board increases are not feasible at this time.

<sup>6</sup> While the distribution of pool money was not discussed in detail at the Hearing, the Special Magistrate is of the belief that, assuming the same base salaries, a faculty member with an *Above Satisfactory* rating (a factor of 1.0) will receive an increase of exactly twice the increase of the member with a *Satisfactory* rating. And, another faculty member with the same base salary who receives an *Outstanding* rating will receive an increase of nearly three and one-half times the member with the *Satisfactory* rating.

As pointed out by the Union in its post-Hearing brief, the University clearly has funds available to fund increases equal to 1% of the total base salaries in each department. The only question is whether these increases should be made available to all bargaining unit members equally or whether they should be given, in differing proportions, to only those members who performed at the *Satisfactory* level or above.

The Special Magistrate agrees with the University's arguments, as reflected above. Moreover he does not believe it is in the best interest of the University or its students to provide across-the-board salary increases to all faculty – even those performing below the *Satisfactory* level. However, he feels the Union's argument that four years without any increase in salary is stronger. Presumably, those faculty members who perform at the highest levels will be in line for promotions much earlier than those who consistently perform at the *Satisfactory* level. While that is likely insufficient compensation for those who may be years away from a promotion, equity requires that all faculty performing, at least at the *Satisfactory* level, receive equal, across-the-board increases at this time.

Incentive Award Programs/Awards of Distinction — UCF wishes to have the right to determine the number, if any, of incentive awards and awards of distinction to be awarded each year and for all “faculty” to be eligible for said awards, rather than in-unit “employees,” the designation presently in use. UFF wishes to require a minimum number of awards be distributed each year and to maintain the current designation of “employees,” which includes non-faculty members.

In the initial CBA, Article 23.7 addressed all incentive awards, other awards and awards of excellence presently at issue.<sup>7</sup> By its express language, the provisions of that article were designed “to recognize and promote faculty excellence and productivity that respond to and support the mission of the University of Central Florida.” The wording indicated “the University shall award up to \_\_\_\_\_ (number for each specific program) awards . . . each year.” Additionally, with regard to the incentive

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<sup>7</sup> The parties have apparently agreed to have separate articles for incentive awards and those other awards, including “Excellence Awards” in a category that will be referred to as “Awards of Distinction.”

awards, the initial CBA provided that the University “president shall give the final approval for awards to the successful *faculty members*.” (emphasis supplied)

When wages were renegotiated prior to the beginning of the 2006-'07 academic year, the Article addressing these awards was renumbered as 23.6 The wording regarding incentive awards was also changed by removing the words “up to” so that it now reads: “. . . the University shall award \_\_\_\_\_ (number required each year) new . . . awards.” Additionally, the “president shall give the final approval for awards to the successful *employees*.” (emphasis supplied) The word “employees” was inserted in the first paragraph of the newly-numbered article and thus would appear to apply to all incentive awards, as well as other awards, including awards of excellence/distinction. This language is presently the *status quo*. Historically, there have been three broad categories of awards to be included in the Awards of Distinction article: (1) Trustee Chair Professorship; (2) Pegasus Professor; and (3) Excellence Awards. When Article 23.6(d)3, the portion covering “Excellence Awards,” was renegotiated prior to the beginning of the 2006-'07 academic year, the wording was changed by removing the words “up to” so it now reads: “For the 2006-2007 year, the University shall award \_\_\_\_\_ (number required) . . . awards each year . . .”

The question presented is whether a minimum number of these awards should be given each year or whether the University should have the discretion to determine how many should be given. The University also points out that, by changing the word “employee” to “faculty,” non-unit faculty will also be eligible for these awards. The Union counters by arguing there are non-faculty bargaining unit members who would become ineligible for these awards if they were limited to “faculty.”

The awards in question were initially designed to promote faculty excellence and productivity. It appears they have become, at least in the eyes of the Union, annual salary supplements that are distributed to more than 100 bargaining unit members each year.<sup>8</sup> These awards were not, in the

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<sup>8</sup> A total of 79 incentive awards were mandated by the 2006-'07 supplement to the CBA. Recipients get a \$5,000 base salary increase, retroactive to the beginning of the academic year. A total of 38 excellence awards were required by the

opinion of the Special Magistrate, designed to operate as a salary enhancement entitlement program for bargaining unit members. The wording utilized in the initial CBA clearly gave discretion to the University to award “up to” a specific number of awards. That wording was changed (when the State was experiencing much better financial times), and it is understandable how and why the Union would view these awards as mandatory salary enhancements. However, during these more trying economic times, it does not appear to be in the best interest of the University or the students it serves to require the awarding of a minimum number of awards. This is especially true when considering the initial purpose of the awards.

With regard to changing the award recipients from “employees” to “faculty,” the Union argues that the word “faculty” is not defined in the CBA and such a change would clearly exclude non-faculty bargaining unit members. UCF contends that it wishes to expand the eligibility to non-bargaining unit faculty. Both sides present compelling and logical arguments to support their respective positions. The Special Magistrate sees no reason why both sides’ concerns cannot be met by changing the wording from “employees” to “employees and/or faculty.”

Grievability — UCF wishes to limit the subjects and types of grievances that may be brought, alleging violations of Article 23. UFF maintains the UCF proposal on this subject is improper; it does not agree to waive its right to bargain grievability. It proposes that any violation of the provisions of the CBA should be grievable.

This is another instance of the University insisting to impasse a subject where it has, in the past, readily accepted the Union’s waiver. UCF offers no explanation for its position other than: This is the way it has always been and now the Union wishes to change the situation because it is dissatisfied with previous imposition of contract terms through the impasse process.

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supplement. Recipients get a one-time payment of \$2,000. The evidence at the Hearing was unclear, but it appeared to the Special Magistrate that these awards have been rotated among bargaining unit members – they are not awarded to the same employees year after year.



The Union clearly does not agree to waive its right to bargain this subject, nor does it wish to limit its right to grieve any perceived violation of Article 23. The Special Magistrate does not see any reason why the Union’s right in this regard should be limited.

Administrative Discretionary Increases (ADI)— UCF wishes to have the discretion to provide a limited amount of salary increases to employees for a variety of reasons. UFF maintains the UCF proposal on this subject is improper; it does not agree to waive its right to bargain ADI. It proposes no “out-of-cycle” discretionary salary increases.

As noted above, as a result of an ULP claim asserted by UFF in 2009, UCF was required to cease providing ADI retroactively to August 2007. The University now suggests that the Special Magistrate should take the subject (ADI) into account notwithstanding the fact that he should not recommend it be reinstated and acknowledging the fact it cannot be imposed. The University asserts the reason ADI should be discussed in this Report and Recommendations is that the Union is utilizing it to obtain leverage in future bargaining sessions.<sup>9</sup> Apparently the University believes it is either improper or not in the spirit of good-faith bargaining for the Union to employ such a tactic. In fact, UCF states that Florida statutes require the use of “the impasse process, which may end in imposition by the legislative body . . . to bring stalled negotiations to closure with a resultant contract.” Taken to the extreme, the University’s argument in this regard could be interpreted as supporting a bargaining process in which the employer, through the legislative body (in this case the BOT), simply ignores the Union’s positions and interests and imposes whatever contract language it wishes. The Special Magistrate declines to accept that scenario. The Union’s motives in withdrawing its waiver of ADI may be extremely important in future bargaining sessions, but is not relevant at this juncture of the impasse process.

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<sup>9</sup> In its post-Hearing brief, UCF ostensibly quotes from a Union posting (that was not introduced into evidence) to its members, wherein it acknowledged that the withdrawal of its consent to ADI was “[o]ne of the few ways UFF has to pressure the Administration” into reversing prior imposed contract language.

Administrative Salary Stipends — UCF wishes to have the discretion to provide salary stipends for additional duties and to make those stipends permanent salary increases. UFF maintains the UCF proposal on this subject is improper and does not agree to waive its right to bargain discretionary increases. It proposes that no such language be inserted into the CBA.

The parties are actually not in disagreement over whether salary stipends are proper when additional duties are assigned to bargaining union members. The disagreement arises when those stipends become permanent increases after the additional duties are no longer being performed. The Union argues that, in those cases, what should have been a temporary salary stipend becomes, in effect, ADI. It is that result to which the Union objects. The Special Magistrate agrees with the Union.

### **Contract & Grant Employees**

The bargaining unit contains two distinct classes of employees: Educational and General (E&G) employees and C&G employees. E&G employees' salaries and expenses are funded by state funds and tuition. C&G employees' salaries and expenses are funded by outside agencies. E&G employees (especially tenured faculty) have job security unlike that in most other public and private settings. C&G employees have job security only so long as the outside agency decides to provide funds to the University for this purpose. Traditionally, C&G employees have had the latitude to earn more than E&G employees, if the funding provided by the outside agency was sufficient. It is important to note that the University does not have any control over the contracts and grants that fund the C&G employees. But for the funding from the outside agency, the positions held by C&G employees would not exist.

It is apparent to the Special Magistrate that C&G employees are more like private executives who are expected to generate revenue for the employer and to fund their own positions. The fact they are included in the same bargaining unit as E&G employees is beyond the understanding of the Special Magistrate. In the past, special exceptions were carved out for C&G employees (by agreement),

apparently in recognition of the differences in the sources of funding for their salaries and, perhaps, their duties.

Article 23 of the initial CBA provided limited distinction between the two classes of employees. C&G employees were exempted from ADI limitations imposed on E&G employees. Article 23.9 expressly addressed salary increases of C&G employees. C&G employees were guaranteed salary increases equal to similar E&G employees “provided that such salary increases are permitted by the terms of the contract or grant and adequate funds are available for this purpose in the contract or grant.” Additionally, C&G employees were not restricted from obtaining salary increases higher than E&G employees. These distinctions were included in the renegotiated Article 23 and are currently in effect. UCF takes the position that treating the two classes of employees differently does not constitute a waiver of bargaining rights.

One-Time Bonuses — UCF wishes to reserve the right to deny one-time bonuses to C&G employees, if the outside funding for those employees is not sufficient to cover said bonuses. UFF wishes the one-time bonuses be guaranteed to all employees, including C&G employees, even if the outside funding is not sufficient to cover bonuses for those employees.

The University argues that, since the C&G employees were hired with the understanding that their positions would not be funded by those fund sources used to pay E&G employees (state funds and tuition), it should not be required to augment their salaries with funds used to pay E&G employees.

Salary Increases for C&G Employees — UCF wishes to avoid providing salary increases to those C&G employees who do not have sufficient funds in their respective contracts and grants to funds said increases. It also wishes to continue to provide larger salary increases to these employees if money is available in their respective contracts and grants. UFF maintains this is not a proper subject of the Impasse procedure; it does not agree to waive its right to bargain salary increases for C&G employees. It proposes that C&G employees receive the same salary increases as all other bargaining

unit members, regardless if there are sufficient funds in their respective contracts and grants to funds said increases. Additionally, C&G employees should not receive larger increases, even if the respective contracts and grants can provide for such increases.

The University advances the same argument that the C&G employees were hired with the understanding they would be treated differently from E&G employees. Further, since it is understood that salaries of C&G employees are dependent upon the outside funding source, there is no rational reason to restrict salary increases of these employees if the contract or grant providing funding allows greater increases.

The Union now argues that, while it previously waived the right to bargain over starting salaries for C&G employees, it is now withdrawing that waiver. Consequently, what otherwise would have been a mandatory subject of bargaining is now a permissive subject and it is not appropriate for the Special Magistrate to recommend a waiver in the impasse procedure. As noted above, UCF does not agree that the different treatment of C&G employees constitutes a waiver of bargaining rights.

The Special Magistrate concludes that salaries, and job security, for C&G employees are so fundamentally different from salaries, and job security, for E&G employees that both groups should not be included in the same bargaining unit; however they are. Under these circumstances, the Special Magistrate does not believe that different treatment of C&G employees constitutes a waiver of bargaining rights. He therefore agrees with the University's position as to C&G employees on both subjects discussed above.

## **RECOMMENDATIONS**

Starting Salaries — The Special Magistrate recommends that minimum starting salaries be established for all new hires. Since neither party provided sufficient evidence to support any specific salary base, he declines to recommend a minimum starting salary. That number will have to be negotiated or become the subject of another impasse process. Conversely, the Special Magistrate recommends there should be no cap on starting salaries. He believes that all of the statutorily-required

factors would be best served by permitting the University to pay certain select applicants an amount sufficient to entice them to join the faculty.

Merit/Across the Board Salary Increases — It is recommended that, since sufficient funds are apparently not presently available to provide both across-the-board and merit increases at this time, only across-the-board increases should be made. However, the Special Magistrate does not believe it is in the best interest of the University, the students and the population served to provide across-the-board increases to bargaining unit members who did not receive at least a *Satisfactory* evaluation for the relevant time period. Accordingly, the recommendation is for an across-the-board increase in the agreed-upon amount, effectively retroactively to the latest date upon which increases were provided to other University employees, for all bargaining unit members who received at least a *Satisfactory* evaluation.

Incentive Award Programs/Awards of Distinction — The Special Magistrate recommends the University should have the discretion to determine how many awards to bestow each year. Consequently, he recommends the “up to” language proposed by UCF be adopted. He further recommends that, as to eligibility for said awards, the wording should be changed from “employees” to “employees and/or faculty.”

Grievability — The Special Magistrate recommends that any violation of the provisions of the CBA shall be grievable.

Administrative Discretionary Increases (ADI) — The Special Magistrate declines to make a recommendation as to ADI for the reasons expressed above.

Administrative Salary Stipends — It is recommended that these stipends be provided to employees, *temporarily*, for as long as additional duties are assigned to, and being performed by, bargaining union members.

One-Time Bonuses — The Special Magistrate recommends that one-time bonuses, in the agreed-upon amount, be given to all E&G employees, and to all C&G employees, “provided that such

salary increases are permitted by the terms of the contract or grant and adequate funds are available for this purpose in the contract or grant.”

Salary Increases for C&G Employees— The Special Magistrate recommends that C&G employees receive *at least*, the same salary increases as E&G employees, “provided that such salary increases are permitted by the terms of the contract or grant and adequate funds are available for this purpose in the contract or grant,” and further that increases for C&G employees not be limited to those provided to E&G employees.

RESPECTFULLY SUBMITTED this 17th day of September, 2010.

A handwritten signature in cursive script that reads "Ken Starr". The signature is written in black ink on a light-colored background.

By: \_\_\_\_\_  
Kenneth Starr, Special Magistrate