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Mr. Mike Carrere
Chair, UBOT Collective Bargaining Committee
c/o Cynthis S. Visot
cvisot@usf.edu

Ms. Sandra Callahan
UBOT Collective Bargaining Committee
c/o Cynthis S. Visot
cvisot@usf.edu

Mr. Oscar Horton
UBOT Collective Bargaining Committee
c/o Cynthis S. Visot
cvisot@usf.edu

RE: USF Board of Trustees and AFSCME Florida
Council 79 – Recommendations for Resolving Issues
at Impasse

Dear UBOT Collective Bargaining Committee Members:

In reference to the Impasse in negotiations between the American Federation of State, County and Municipal Employees Florida Council 79 (“Union”) and the University of South Florida Board of Trustees (“University”), the Union was obligated to declare Impasse in July 16, 2020. The Collective Bargaining Agreement (CBA) expired on June 30, 2019 and negotiations by that time had not produced a mutually agreed upon Contract. The Union engaged Florida’s Bargaining Statute 447 and the mechanism established by the Public Employees Relations Commission (PERC) to resolve issues and a Special Magistrate was selected.

The Special Magistrate in this instance was/is Jared D Simmer who was tasked with conducting a hearing for both parties to present the issues at Impasse with their reasoning/justification behind the proposals. Upon completion of said hearing the Special Magistrate issued his recommendations for a just resolution to the conflict based on the aspects presented by the parties and factors identified in Section 447.405:

- (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.

Once the Special Magistrate submits his recommendations the parties have the option to accept the recommendation or reject. The Union presents this as the University did not accept the Special Magistrate's recommendation on two of the Articles in Impasse and the Union and the University could not reach a compromise the two articles out of the eight issues that went before the Special Magistrate.

Issues Remaining:

1. Orientation Packets (Article 5.2)

The Union proposed to provide informational packets for distribution to new employees. Specifically, the Union's proposal is "New Employee Orientation: During planned orientation the Union shall provide informational packets to be distributed to the new employees of the AFSCME bargaining unit." The University opposes the distribution of a Union packet due to Florida Statute 447.501 Section 1 (e) as they interpret the statute to mean that distribution of the packet is assisting or contributing to the support of the Union. The University claims that the orientation as set-up does not allow for the time to distribute the packets as it is "very regimented", that no other university provides such packets, and that all orientations are composed of members of the different bargaining units and non-bargaining unit employees.

The University identifies the purpose of the orientation is to provide new employees with information about the University including employee benefits and that they have a couple of

individuals that come in to provide information. What they don't state is that the Orientation Master Schedule incorporates into the "very regimented" schedule a half-hour break starting at 10:00 am

through 10:30 am, Restroom break at 11:15 am through 11:30 am, Lunch and tour starting at 11:30 am through 1:30 am, and finally a 10-minute break at 3:25 pm through 3:35 pm. Also not stated was that the Union offered for them to approve the information packets. The Union maintains that the CBA is a document that contains pertinent information for employees, be that rights and benefits. Providing the CBA to new employees meets the informational goals of the University as stipulated in the purpose of the orientation. Individual University employee packets are prepared for employees depending on their job and such accommodation could be met.

The argument that providing employees with the CBA, a document that the University is a party to, negotiates, adheres to, and provides employees with information of benefits and rights is an act of supporting the Union and thus prohibited is false and misleading. There is no legal precedence for that position and it delegates to chance if an employee becomes knowledgeable of rights and benefits found in the CBA contract and of the Union's presence on Campus.

The CBA is a contract that USF has entered into with its employees. It represents an agreement that USF will live up to and uphold. By providing the CBA to all new employees USF fulfills the trust of the employees and the community as an institution of truth and knowledge.

Another argument/explanation not to provide the CBA to employees at orientation is that the CBA is available on USF's web-site. This is not realistic for the employees that have no access to computers, lack the time on work time to look it up, may lack the skills to navigate a complicated web-site which is overloaded with information thus this explanation represents no access of the CBA for these employees.

The Special Magistrate recognized this issue and recommended that the informational packets be situated on a table at the back of the room where orientation took place thus each individual new employee can decide whether to take one or not. He also recommended that the University exercise the Union's offer to approve the contents of the packets.

The Employees/Union maintains that this is a reasonable compromise without cost in expenditures or time to the University.

2. Wages (Article 21)

The Union submitted a wage proposal when negotiations began with room to reduce the proposal as negotiations progressed. It was and continues to be an across-the-board increase for all employees and a new hiring minimum for the University. This is standard procedure with employers that usually start their negotiations at a zero wage increase offer. Specifically, the Union's proposal that reached Impasse was:

A. ~~2016-2017~~ **2019-2020** Academic Year

1. The University will adjust the minimum hourly rate to ~~\$10.54~~ **\$15.00** for bargaining unit employees who, on the date of ratification of the Agreement by the Board of Trustees, are at or below ~~\$10.33~~ **\$15.00** per hour.

2. The University will provide a ~~two percent (2%)~~ **6%** increase to bargaining unit employees who, on the date of ratification of the Agreement by the Board of Trustees, meet all of the following criteria:

- a. ~~Their base hourly rate of pay is above \$10.33~~ **\$10.54** per hour (\$21,569.04); and ~~(\$21,923.20)~~
- b. They do not have an overall rating of “Needs Improvement” or “Unsatisfactory” on their evaluation of record; **These employees shall receive the increase on the first pay period once they meet a satisfactory rating.**
- c. They have been employed by the University in an established position since on or before July 1, 2016, **2018** and continuously employed in an established position; ~~and~~
- d. ~~They do not have an open Performance Improvement Plan.~~

3. Effective Date of Applicable Adjustment/Increase

The adjustment to increasing the hourly minimum rate, or if applicable*, the ~~two percent (2%)~~ **6%** increase, shall be granted on the first pay period following the date of ratification by the Board of Trustees.

* Employees shall not be entitled to both the hourly minimum rate increase and the ~~two percent (2%)~~ **6%** increase unless their pay adjustment to the new minimum rate was less than a the ~~2%~~ **6%** increase.

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

B. ~~2017-2018~~ **2020-2021 and 2021-2022** Academic Year.

Wages shall be subject to renegotiation. Renegotiations shall begin no later than October 1 of each respective year.

1. The University will provide a two percent (2%) _____ increase to bargaining unit employees who, as of June 30, 2017, meet all of the following criteria:

- a. ~~They do not have an overall rating of “Needs Improvement” or “Unsatisfactory” on their evaluation of record;~~
- b. ~~They have been employed by the University in an established position since on or before July 1, 2017, and continuously employed in an established position; and~~
- c. ~~They do not have an open Performance Improvement Plan.~~

2. Effective Date of Increase. The two percent (2%) _____ increase shall be granted on the first pay period following July 1, 2017 to eligible employees.

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

~~C. 2018-2019-2019-2020 Academic Year.~~

~~1. The University will provide a two percent (2%) _____ increase to bargaining unit employees who, as of June 30, 2018, meet all of the following criteria:~~

- ~~a. They do not have an overall rating of “Needs Improvement” or “Unsatisfactory” on their evaluation of record;~~
- ~~b. They have been employed by the University in an established position since on or before July 1, 2018, and continuously employed in an established position;~~
- ~~c. They do not have an open Performance Improvement Plan; and~~
- ~~d. They have not accumulated leave of absence (excluding federally mandated leave such as FMLA leave or military leave, and excluding workers’ compensation leave) greater than four (4) months (16 weeks) during the period December 1, 2016 through November 30, 2017.~~

D. Wage Adjustments.

The University shall, **upon thirty (30) day notification to the union**, retain the authority to make wage adjustments for employees for market equity, compression/inversion or other reasons **should those adjustments represent and increase to the affected employees.** **The University and the Union shall meet and confer within the thirty (30) day notification period.** Also, the University shall retain the authority to enter into financial settlements with employees in the settlement of grievances, lawsuits and other disputes **and shall provide copies of said settlements to the designated Officer of the union.**

E. Performance Based Funding (“PBF”) Contingency.

1. The increases for ~~2017-2018 and 2018-2019~~ contained in this article are contingent upon no reduction in the University’s Performance Based Funding (“PBF”) as compared to the level of PBF on August 1, 2016. To avoid confusion, the PBF Model was approved at the January 2014 Board of Governors Meeting. The model includes 10 metrics that evaluate Florida institutions on a range of issues. PBF levels will be calculated on August 1 in each year of the contract for the purposes of determining if there was a reduction in PBF. **The results of the PBF Determination Process shall be provide the Union.**

2. In the event of a reduction in PBF funding the University ~~shall have the sole discretion to determine whether to proceed with the increases described in this article. In the event the University does not proceed with the increases due to reduction in PBF,~~ the University will notify AFSCME in writing of its decision (“Notice”). Within 30 (thirty) days of the University’s Notice, the parties will meet to bargain in good faith for an alternate salary article.

The first negotiations session was in December of 2018. The Union sat down with the intention to negotiate a three-year agreement starting July 1, 2019 through June 30, 2022 with an increase due in 2019 and re-opens for 2020, and 2021. The Union also added language for the Employer’s minimum wage to be raised to \$15.00 per hour.

As the Union was negotiating for the July 1, 2019 increase (which due to the pandemic caused delay morphed also into negotiations for the 2020 increase) it is vital to examine the finances of the University of Fiscal year July 1, 2018 through June 30, 2019. The University had a budget of nearly 1.5 billion dollars with a total operating budget of 1.48 billion. The surplus resulted in a year-end balance of 914.6 million. Unrestricted net before recognition of long-term liabilities was 494 million.

The unrestricted amount was sufficient to grant the employees an increase on July 1, 2019 and thus to carry it over and budget the increase as a re-occurring expense in the subsequent budget as the surplus exposed that their expenditures were less than their budgetary needs, or a one-time bonus from the surplus. However, as testimony from Nick Trivunovich, Vice President for Business and Finance brought to light, the University does in fact use any monies carrying over from the previous fiscal year which are allocated to anticipated expenses of the next budget **but not set aside for wages though ongoing negotiations may be transpiring**. Thus it is established the availability of funds, money was not an issue in 2019 as there were funds to cover any negotiated wage increase or even a bonus had the University wanted to offer as a form of compensation to the employees, except that the University allocates those monies for other budgetary expenses **and sets nothing aside for its employees**.

Regarding the increases being negotiated for 2020, which come out of the budget approved before June 30, 2020, the Union put forth no new proposal. The increase put forward for 2019 morphed into an increase but now to cover for 2019 and 2020. It should be noted that as per the University's Exhibit during the Impasse Hearing funding increased for the year 2019-2020 by 1% - 18,765 million which explains a growth in carry-forward funds to 16 million. **Again, this fiscal budget represents no set aside for employees wages even though negotiations were ongoing**. However the University did not prioritize, consider, or care that the employees were in contract negotiations and were negotiating for an increase and a new minimum wage. Furthermore, an article in *Florida Today*, has more to say from Magistrate Thomas Young in the Impasse Case of SM-2018-030, Brevard Federation of Teachers v. School District of Brevard County. In the final paragraph, the Magistrate notes *"There are always funds available to provide for increases such as the ones proposed by BFT. It is a question of priorities...of choices,"* Young states in the report. *"It would be feasible to fund the BFT proposals if the School Board changed its priorities, i.e., if it made different 'choices'."* The University did not prioritize the employees.

There is no denying that the COVID 19 Pandemic has impacted the University's finances. CFO Trivunovich testified at the Impasse Hearing that the University has been asked to find 8.5 percent in savings in 2021 and prepare for a 10% cut in 2022. A 6% cut was mentioned but Mr. Trivunovich clarified that the 6% was part of the 8.5%. Mr. Trivunovich also expected a cut in students thus a decrease in tuition revenue as well as more costs regarding the COVID 19 pandemic and less money appropriated by the State in the next state budget year. These cuts did not come to pass. USF received their usual funding from the State and in addition received CARES and ARP Act monies, over \$102 million dollars through the ARP Act alone.

What is at Impasse is a wage increase for USF employees for 2019 and 2020. Their last increase was a 2% increase in July of 2018. The lack of preparation by the University to prepare for an increase for their employees when the employees were at the table negotiating for an increase should not fall on the employees back as the University was obligated to negotiate in good faith and prepare for the eventuality that they would arrive at a contract with the employees. Especially when both budgets, 2019 and 2020 showed that monies were available for an increase, or a one-time bonus had the University prioritized their low paid employees.

Here again the Special Magistrate recognized the need of an increase for the employees. His recommendation tried to balance the uncertainty of the Universities funding going forward and the needs of the employees. His proposal was a 2.5% percent to the employees when the University

assured its funding, a 2.5 bonus retro-active to April 1, 2020 – again when the University had secured its funding, and negotiations for the fiscal year 2021 – 2022 to commence as soon as possible. *This does not represent the wishes of the Employees/Union however they whole-heartly accept the recommendation of the Special Magistrate to resolve this conflict/impasse and the University has been informed.*

The Union also requested that the University raise their starting wage to \$15.00 per hour. As the University does not live in a vacuum, the Government of Hillsborough County in which the University's Main Campus is located, the City of Tampa, also where the main campus is located, the City of St. Petersburg where the second biggest University's campus is located, have all raised their minimum starting salary to \$15.00 dollars per hour. The Tampa Bay region has started moving in that direction by both public and private employers. The citizens of Florida just voted an amendment to the State Constitution incorporating the \$15.00 dollar per hour minimum. The University must raise the minimum as required by the Constitution by 2026 to the new \$15.00 minimum. The employees feel that as employees of the University, their starting wage should retain the purchasing benefit they currently hold in the Tampa Bay Region.

The Special Magistrate also recognized an increase in the minimum wage on a more gradual rise. Again, the Employees/Union maintains that this is a reasonable compromise and accept the recommendation of the Special Magistrate.

The recommendations contained herein can be found in the Special Magistrates "Report and Recommendations" (attached). Eight items went to Impasse: the Union withdrew two items from these proceedings going forward following the recommendation's; the Union agreed to modify three items to less than the recommendation of the Special Magistrate; on one item both parties agreed to the Special Magistrate's recommendation; however on these 2 items, Article 5.2 and 21, the Union requests that the Board of Trustees accept the Special Magistrates recommendations as the recommendations represents fair and equitable solutions to and for the Employees and the University.

Respectfully Submitted,
Hector R. Ramos
Hector R. Ramos, Coordinator
AFSCME Florida Council 79 Region 2

CC: John Dickinson, Esq.
Cynthia S. Visot, Ph. D.