

**Legislative Impasse Hearing Minutes**  
**Wednesday, June 2, 2004 – 7:00 p.m.**  
**School Board Meeting Room**  
**Stuart, FL 34994**

**Members Present**

Dr. David Anderson, Chairman  
Vicki Davis, Vice-Chair  
Susan Hershey  
Laurie Gaylord  
Lorie Shekailo  
Dr. Sara A. Wilcox, Superintendent  
Tom Elfers, School Board Attorney

**Members Absent**

None

**Staff Present**

Dave Richeson, Hank Salzler, Nancy Marin, Larry Green, Ray Parrish, Sig George, Helene Baxter, Dr. Joyce Holmes, Darla Miloszewski, Deana Newson, Dr. Frank Raffone, Marshall Skinner, Rosemarie Taylor, Dave Richeson, Jeanette Phillips, Diane Lamb, Bill Connolly, Dan Alley, Vicky Alley, Leslie Kingsley, O'Hara Mackey, Tim Black, Joe Burgess, Pat Beonde, Linda Stitely, Gail Cohron, Lori Miller, Tina McSoley, Don Doscher, Rhonda Rogers, Charlie Hankin, Linda King

**Public**

Sandy Colvin, Peg Nott, Judy Burgess Quinn, Nancy Kline

**Press**

PBPost – Rani Gupta

Stuart News – Kelly Tyko

**MCEA** – Jeanette Phillips

**AFSCME** – Lisa Edwards

Call to Order by the Chairman and Pledge of Allegiance to the Flag of the United States.

Mrs. Davis read the “Procedures for Public Hearing Pursuant to F.S. 447.403” into the record.

Diane Falvo, MCEA Representative, objected to the procedure that will be followed during the hearing. Past practice dictates the Board proceeds issue by issue with the refuting party proceeding first. She reiterated that MCEA has agreed with the Special Master’s recommendations.

Mr. Elfers, legal counsel for the Legislative Body, overturned the objection on the grounds that the three original issues were initiated by the Union and the Board’s preference is to hear what was to be changed and why before moving to the exceptions and rulings.

Diane Falvo objected to the 30 minute time limit allotted for public input and asked that that public comment not be limited.

Mr. Elfers cited there is an Attorney General Opinion that allows the Board to set limits.

Ms. Falvo again objected and advised that she specifically asked Mr. Elfers to bring the opinion to the meeting. Mr. Elfers stated the Attorney General Opinion is 1996WL33417239.

**1. Open to the Public (one designated person per issue to discuss)**

Margery Garland, Susan Barsness, Judy Burgess Quinn, Ann Roulette, Vicky Alley, Peg Stover-Nott, Tina McSoley, and Chad Headman addressed teacher salaries, negotiations, Sandy Pines supplements, past practice during Legislative Hearings, health requirements, medical issues, school nurses, and the lack of respect by the School Board.

Mr. Elfers advised the Board Members have received exparte communications from Ms. Garland and the communications would be filed as such with postage date of May 29, 2004. Ms. Falvo stated that the letter Mr. Elfers sent the Union regarding exparte communications was faxed at 7:10 p.m. on Friday, May 28, 2004 and the office was closed until Tuesday. Mr. Elfers explained it was late afternoon on the 28<sup>th</sup> when he officially received word of the outcome and personally typed and faxed the correspondence as quickly as he could.

**2. MCEA Response**

Ms. Falvo placed the district on notice that new evidence has been provided within this packet that was not presented at the Special Master Hearing, and in their opinion, the legislative body is not here to review new evidence and cited Chapter 447.403(4)(a) as support. She further stated that should this additional information be considered in the decision making process, it could constitute an unfair labor practice. She referred specifically to the Special Master Proceeding of Robert C. McHenry [filed under Section III (3)] and asked that it be removed. Mr. Elfers advised he would reserve ruling until he has heard more of the proceedings and stated statute requires

only the parties offer their explanation at this hearing and no case law that delineates the form given and further noted her objection.

Ms. Falvo again asked the Board to reconsider the process and present issue by issue and Mr. Elfers again denied the request. Ms. Falvo reserved 15 minutes for rebuttal.

#### Sandy Pines Supplement

Ms. Falvo reviewed the Sandy Pines supplement request and provided examples of deviant behavior and agrees with the Special Master that these teachers work under inordinate difficult circumstances.

#### Just Cause

Ms. Falvo reviewed the meaning and application of “just cause” and when included within a contract it guarantees that regardless of the school site where a teacher works or regardless of the site administrator at that site, all teachers within the district will be treated equally and fairly in regards to disciplinary procedures. She discussed the 7 questions of Just Cause, exceptions to Just Cause, reasons for Just Cause inclusion in the contract, district’s objection to Just Cause and Article X Employee Disciplinary Procedures. She provided an example of a case at Martin County High School whereas Just Cause would have been advantageous to the employee. She stated there are three counties in Florida without Just Cause language in their contracts: Martin, St. Lucie and Indian River, however it is found in Martin County’s AFSCME contract. She further stated that the district says Florida Statute covers this language, however it deals only with suspension and termination and not letters of reprimand and being forced to attend anger management sessions. She reviewed their proposed language as underlined in Article X of the PowerPoint presentation.

#### Health / Hygiene Procedures

Union members indicated through a survey that they wanted language to protect them against being required to administer medication and having to provide invasive medical services to students. MCEA accepts the Special Master recommendation that language should be added to the contract. She reviewed F.S. 1006.062 (4) that indicates employees can be trained to perform certain procedures and reviewed the survey results. She quoted from F.S. 1006.0622(2) that states, “There would be no liability for civil damages as a result of the administration of the medication when the person administering the medication acts as an ordinarily reasonably prudent person would have acted under the same or similar circumstances.” She reviewed the chart Dr. Holmes provided at the Special Master Hearing on the number of health care services in the district and stated the MCEA survey indicated teachers are far more involved in providing medical services than what the district data proffers. She read the proposed language into the record. She further added into the record, which was done verbally at the Special Master Hearing, that a middle school teacher did a survey at their school site of 6<sup>th</sup> graders and 19% were under some type of prescription medicine and 14% of them were on one specific team.

### **3. School District Response**

#### Employee Discipline and Just Cause Language

The Superintendent recommends that no additional language be added to Article X1. Mr. Richeson explained the District does not oppose requiring Just Cause in progressive discipline, however is opposed to including additional language in the contract on an issue that is already covered by Florida law. The Legislature has established a limited number of reasons for which a teacher may be terminated or suspended without pay and established a structured Due Process Appeals System (Ex. 1). Additionally, paragraphs A and B of the current contract were added as a compromise during the 2002-2003 negotiations as a package deal and the District contends that since the Union proposes removing paragraph B it is only appropriate to remove paragraph A as well. Contrary to MCEA belief, the District is not opposed to Just Cause, as it is required by F.S. Statute 101.2336A, and feels the imposed legislative due process provides adequate protection. Ms. Baxter stated past Special Master’s have ruled that there is no need to add additional Just Cause language to the contract. Mr. Richeson rebutted the Union’s request to dismiss the Special Master recommendations from 1993 and 1994, due to being new evidence and stated, in his opinion, these are public records and not new evidence. He explained AFSCME employees do not have the statutory protections that the teachers have and therefore language is included within their contract. He further advised the Union’s current contract protects and allows going to arbitration on reprimands under paragraph B, however the Union has removed this paragraph.

Mrs. Baxter addressed page 25 of the Union Contract and rebutted the conduct of the Martin County High School teacher and outlined the procedure that was taken to investigate the complaint. She explained this example was brought before the negotiation teams in 2002-2003 and the two sides formulated a remedy to ensure this does not happen in the future. Current language allows the Union to grieve a letter of reprimand and the teacher had the right to file a letter of grievance at that time and elected not to. He also had the opportunity under Florida Statute to write a rebuttal and elected not to as well. She reviewed an elementary school case involving the misconduct of a teacher and explained the Principal received a complaint from a parent, the Principal investigated the situation and in turn spoke with the employee; no reprimands were given. She explained the District is concerned that additional language would require binding arbitration for grievances such as when a supervisor speaks with an teacher.

Health & Hygiene

The Superintendent recommends not adding the Special Master recommendations to the contract and advised there is language that provides teachers must be trained before doing health or medical procedures. Students health and safety is the district's number one concern and the Superintendent cannot recommend language that may place a students health in jeopardy. Mr. Richeson stated the District would place at each school the protocol for dispensing medication and performing health and hygiene procedures.

Ms. Baxter explained this issue is not unique to the Martin County school system and like all other districts across the country are required by law to perform school health services to students; this fulfills the obligation to provide a free and appropriate education to all students including those with disabilities. There is a big difference between school health services and medical services; medical services can only be done by a licensed physician and school health services can be performed by school nurses or other qualified persons such as teachers and school personnel. The Supreme Court of the United States has ruled on this issue in the case of Irving Independent School District v. Tatro 468 U.S. 883 (1984) and Florida law addresses school health services under F.S. 1006.062, which outlines what a school district can assign and who may or may not perform certain services. She further pointed out that Florida Statute outlines that non-medical district school personnel shall not be allowed to perform invasive medical services that require special medical knowledge, nursing judgment, and nursing assessments, including but not limited to, sterile cauterizations, master gastric tube feeding, cleaning and maintaining a tracheostomy, and deep suctioning of tracheostomy. She advised the District does not have non-medical personnel performing these procedures. F.S. paragraph 4 states non-medical assisted personnel shall be allowed to perform health related services upon successful completion of child specific training by a registered nurse or advanced registered nurse practitioner. She pointed out in the contract, page 13 Article 5.9, that stipulates non-instructional duties and advised non-trained personnel are not to perform these services. F.S. 1006.062 also protects teachers from liability if they act as a reasonable prudent person, as well does school board policy. She explained the district does not look to teachers as being the first provider, however rely on health assistants, aides, nurses and volunteers. The District again has agreed to post protocol on how to dispense medication and perform health and hygiene procedures.

The district rejects any contract language that would prohibit the district asking a teacher to perform these health hygiene procedures or giving medications. They will however ensure there are procedures in place at each school site that would provide guidelines.

Sandy Pines Supplement

Mr. Richeson advised the district has rejected the request to add a 5% Sandy Pines supplement to the pay schedule because these teachers are not required to have certifications in specialized fields. The teachers have smaller classes and the support of medical staff and trained paraprofessionals. Disruptive students are immediately removed from the classroom and returned to the hospital, which is not the case in the ESE classes in other schools in Martin County.

Retirement Supplement

Currently Contract Article 12.8 contains a provision for a teacher that is retiring to receive a supplement of the employees current annual salary of 15%. The supplement was offered to reward long term teachers rather than those who come to the district for short periods and then retire. The district proposed ten consecutive years in Martin County and the Union proposed they share the power with the Superintendent to waive the notice requirement and the district does not agree, however the Superintendent has agreed to notify the Union of waiver requests. The Special Master agreed with the district proposals and language except he recommended six years in lieu of ten. The district feels there is no justification to lowering it to six and recommends ten years.

Union Rebuttal

Sandy Pines

Ms. Falvo stated the Sandy Pines teachers are not required to have ESE certifications, however they all do. They all do IEP's and other duties that are well above and beyond the call of duty. She disagreed that students are immediately removed from the classroom if an incident occurs and advised anything can set these students off and aides are not always in the room. She discussed the distance involved to get to the facility as compared to the distance to Indiantown.

Health and Hygiene

Ms. Falvo reviewed the school board exhibit "Martin County School Health Services" (the page immediately prior to tab #5) and pointed out that the Union never intended to present the survey to a Special Master or Legislative Body and had they known they would need to they would've been far more careful in how it was constructed. She questioned how many students with serious medical conditions are not recorded within the district survey. She advised the Union's language does not restrict the teachers from performing medical procedures, however allows them to volunteer. She further advised that the statute Ms. Baxter referred to has liability protection only for medications. She rebutted Ms. Baxter's analysis of contract language 5.9 B.

Employee Discipline and Just Cause Language

Ms. Falvo stated the high school teacher in the scenario previously presented did write a letter of rebuttal to the discipline and delivered it to the district office as she helped him write it. She discussed the language they are asking to have stricken and feels grievance arbitrations would be a quicker remedy with a final resolution.

**District Rebuttal**

Employee Discipline

Mr. Richeson discussed the choices for remedies that the Union has proposed would not hold up in court. He stated the district is not opposing a language change; they simply want to remove the entire language package, A and B, as opposed to only part of the language in question.

Health and Hygiene

Mrs. Baxter rebutted Ms. Falvo's comment that coaches are not required to have CPR or first aid training, as School Board Policy 5.17 requires all athletic coaches who participate in activities covered by the Florida High School Athletic Activities Association to be trained in first aid and have CPR certification by the American Red Cross. Ms. Falvo discussed the districts claim regarding the rise in students needing related health services and advised there is no evidence to back this statement.

**MCEA CLOSING**

Ms. Falvo feels it is punitive to take A and B out of the language and believes the district wants to take all protection away from its teachers. Granting the just cause language would go a long way in building trust between the two entities. The Union provided evidence that 19% of 6<sup>th</sup> graders in one school alone require medication and medical services, and if not an increase it is a shocking number.

**DISTRICT CLOSING**

Ms. Baxter clarified that she meant there is no evidence that there are more and more teachers being asked to perform health related services.

Mr. Richeson feels that by removing Article 10 or 1A they are not removing all the protections to the teachers and advised other articles of protection would remain. Ms. Falvo advised those remaining articles do not provide much protection and Article A guarantees that you have progressive discipline except for serious offenses.

*Mr. Elfers ruled that the prior Special Master opinion is not be considered as evidence, however can be referred to as a historical record of what happened with this issue, but not weighed as evidence or considered for that purpose.*

**4. Open to the Legislative Body (School Board)**

Mrs. Davis inquired on Indiantown teachers receiving a distance supplement and Mrs. Baxter advised it is not a supplement for travel, however a supplement to encourage teachers to work in the western zoned schools. Dr. Anderson agreed that it was never the intent of the Board to utilize this supplement as a distance supplement and Ms. Phillips disagreed.

Mrs. Gaylord asked what certifications the Sandy Pines teacher's hold and Ms. Falvo advised there are no special certification requirements beyond a Bachelors Degree because the students are on homebound programs, however all but one have ESE certification because they are required to deal with IEP's for those students. Dr. Anderson asked if the classroom populations at the school are 5-6 students each and Ms. Falvo stated the numbers fluctuate and generally average 10-15 students. Dr. Anderson advised when he visited the school he did not see these numbers and saw the medical staff on site. Mrs. Gaylord stated her certification is in ESE and it wasn't attained simply to write IEP's. Ms. Falvo feels this certification is required in order to be effective teachers. Mrs. Gaylord's concern is that every teacher expressed their happiness with being at the facility and she did not hear any discontent or any horrible and nasty issues. Ms. Falvo discussed the physical demands of the job. Mrs. Davis asked how much the supplement would be and was advised it is 5% of the base pay and would be approximately \$12,000 total. Mrs. Shekailo has received calls from teachers at other schools indicating they have had to restrain students and expressed concern with the Sandy Pines teachers receiving a supplement when other teachers have to deal with the same safety issues.

**Sandy Pines Supplement**

Mrs. Davis advised the Superintendent's recommendation is that the Board move to reject the recommendation of the Special Master because employees are working with the assistance of hospital staff. Mrs. Hershey moved to reject the Special Master recommendation, and Mrs. Gaylord seconded. Mrs. Hershey advised she was a Home Bound teacher for 25 years and it was not unusual to write 45-50 IEP's and deal with students who were not members of the general population. She understands where they are coming from, however does not feel she performed a greater or better service than the regular classroom teacher. Dr. Anderson voiced concern that the next school to request the supplement would be Spectrum. The motion carried unanimously.

**Employee Discipline and Just Cause Language**

Dr. Anderson stated he always felt comfortable working on an annual contract with the statutory just cause language. Mr. Richeson, in response to Mrs. Gaylord, advised A limits what can go to arbitration and B prevents terminations and suspensions without pay from going to arbitration. If you remove B and leave A, then all disciplines, such as suspension without pay and terminations, can go to binding arbitration. Mrs. Hershey agrees this issue needs to be discussed, however cannot approve it now without defining what progressive discipline is. Mr. Elfers referred to specific cases that he researched regarding just cause language. Detailed discussion ensued. Mrs. Hershey asked the Union to leave A and B in the contract for the time being and Ms. Falvo disagreed. Mrs. Hershey moved to support the Superintendent's recommendation, and the motion died for lack of a second. Mrs. Gaylord asked for clarification on Ms. Falvo's comments that it would be cheaper to handle grievances in-house and Mr. Richeson commented.

Mr. Elfers explained the Special Masters recommendations were clear that the parties would waive an individual's ability to go to court and commented further in depth. Mrs. Gaylord would like to move forward at this time and address the language at future negotiations and took issue with the Special Master making a decision on the issue before hearing anything from the Board.

Ms. Falvo pointed out that the Union did not agree with the Special Master on the salary recommendation and decided to honor the process and therefore agreed to the recommendation, however the district wants it all.

Mrs. Davis asked Ms. Falvo and Mr. Richeson if it would be acceptable to leave A in Article X and B replaced with the Union's recommended B except for the last sentence (If the employee elects to pursue a remedy....) and Ms. Falvo advised that would be fine. Mr. Elfers stated that the last sentence of the Union's language would not be up held by the Court and further advised the wording under B, "Discipline will be for just cause" is not acceptable to the Board and Mr. Elfers stated he is referring to the wording under B.1. Mr. Richeson advised the district wants to remain with the legislative system and not go to an arbitrator.

Mrs. Gaylord moved to approve the Superintendent's recommendation regarding the just clause language, Mrs. Hershey seconded and asked for comment. She asked that this issue be first and foremost in the next round of negotiations and Dr. Anderson agreed. Discussion further ensued. The motion carried 4-1 with Mrs. Shekailo in dissent. Mrs. Shekailo explained she is not satisfied with the wording provided by either party without further information. Mrs. Davis advised that according to Board direction, this item will be the first thing to go forward through the collaborative bargaining process.

**Retirement**

Mrs. Hershey moved to accept the Union and Superintendent's recommendation of a ten year qualifying period for the 15% supplement, Mrs. Shekailo seconded, and the motion carried unanimously.

**Health and Hygiene**

Mrs. Hershey commented that the Board has fought the fight to provide nurses in all the schools to no avail and will continue to do so. Ms. Falvo advised if the Board requires teachers to perform certain medical services and something goes wrong, there is nothing in Statute that provides them with liability; statute only covers administration of medication. Mrs. Gaylord stated it is her understanding that the district has not required teachers to perform these procedures without accepting the responsibility. Mrs. Gaylord agrees that staff needs training with a paper trail indicating an employee received or refused training. Ms. Falvo asked what the board would do if a teacher refuses the training. Dr. Anderson feels if a teacher does not want to perform these services then they shouldn't. Ms. Baxter advised that students with medical concerns are placed in classrooms where there is a teacher who is going to be understanding of the medical concern. Ms. Falvo reiterated her previous question and Mrs. Hershey advised she is more concerned with the medical safety of a child. Ms. Falvo stated the district then needs to provide nurses or other health care providers. Ms. Baxter stated just because a nurse is on site does not ensure a teacher doesn't have to perform the necessary medical procedure due to time constraints.

Ms. Thorn, a member of the Union negotiating team, stated she has not been asked to do any medical procedures, however would not want to be asked to be trained to catheterize a student or be required to toilet that student. She is there to teach and will do everything to educate them. She stated she is not talking Epipens or medication, however invasive type procedures. Mrs. Shekailo agrees that no one should be required to do something that they feel uncomfortable doing, but staff must be trained for emergencies. She feels that an Epipen should be administered by the first available adult in the case of an emergency, however does not feel that it should be a teachers job to do it as the first person on a daily basis. The district has an obligation first and foremost to the children in the district to ensure their safety and wellbeing.

Mrs. Shekailo wants a procedure that protects the teacher that absolutely does not feel they are capable of performing a cauterization or similar procedure. Mrs. Hershey advised that there is a Health Aide at each school and in the event that he or she is absent there is a list of employees in order that would perform the services.

Dr. Holmes explained every school has a pecking order on who performs cauterization or suctioning type procedures, such as the health assistants, paraprofessionals, and administrators; and therefore are not an issue.

For medical issues such as Epipens and peanut allergies, they want the entire staff trained. She further advised that appropriately trained personnel are sent on field trips according to the students with need.

Mr. Elfers advised legally if training is required of an employee and they refused training then they could be disciplined. Mrs. Davis asked if a teacher had a student in their class that requires invasive medical procedures, would the classroom teacher be required to undergo training for that procedure and Dr. Holmes explained the Health Department would train the health assistant, the paraprofessionals and administrative assistants and not the teacher. She can never recall a teacher performing a cauterization or suctioning in the school district; however recalls a teacher receiving this training. Dr. Holmes recommends not separating the two items, invasive medical procedure and life saving procedure, and feels when you try to describe the differences between the two; you are then defining difficult language, which would lead to problems with the health, safety and welfare of the children.

Dr. Anderson does not want to require teachers to be trained in medical procedures and Mr. Richeson feels the district should not give up the right to require this training. Dr. Holmes agreed and feels children could need assistance with an Epipen and you would not be able to place that child in a particular classroom because that teacher has not volunteered. Mrs. Gaylord voiced concern with the district being deemed negligent by not providing the training to all employees and thereby possibly saving the life of a child. Dr. Anderson suggested preventative language. Mrs. Hershey feels the Board has a responsibility to the district to provide the training.

Mr. Elfers reiterated the district can legally require the training and can discipline those who refuse.

Dr. Anderson moved to approve the recommendation of the Superintendent, Mrs. Hershey seconded and stated she wants to ensure a list is posted with a pecking order and training be offered in life saving procedures (as identified by the Health Department). Mrs. Shekailo asked if a remedy could be implemented for those teachers that truly do not feel comfortable doing these medical procedures such as a transfer. She feels that no one should be forced to perform these procedures, Mrs. Davis agreed as well as Mrs. Hershey. Mrs. Davis called for the vote: Dr. Anderson and Mrs. Hershey concurred, Mrs. Davis and Mrs. Shekailo dissented and Mrs. Gaylord had further questions. Mrs. Hershey withdrew her second to the motion and Dr. Anderson withdrew his motion. Detailed discussion took place with various language recommendations made by both parties.

Mrs. Hershey moved approval of the language to read, "Under ordinary circumstances, only properly trained employees will be asked to perform medical procedures or dispense medication to any student," Dr. Anderson seconded, and the motion carried unanimously.

Ms. Falvo pointed out that even though the Union accepted the Special Master's salary recommendation, they will not select a salary schedule to put out for ratification. She advised the Board or Superintendent will have to select a schedule and notify the Union of such. Mr. Elfers advised it would be improper for the Board to rule on salary this evening because the issue is not legally on the agenda for action and suggested referring this to the Superintendent. Ms. Falvo asked the district to put out an informational letter in conjunction with the MCEA advising employees where the materials will be located and dates for review.

There being no further business to bring before the Board, the meeting was adjourned at 1:25 a.m.

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**CHAIR (Vicki Davis)**

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**SECRETARY (Sara A. Wilcox, Ph.D.)**