

***FLORIDA EDUCATIONAL NEGOTIATORS  
39TH ANNUAL CONFERENCE***

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**Preparing for a Special Magistrate Proceeding  
(Persuading the Special magistrate)**

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**I. Selecting the Special Magistrate** (*Why is this important? - and IT IS!*)

A. Per Rule 60CC- 3.003, PERC maintains the roster; qualifications are indicated; 40 magistrates on the roster.

B. Rule 60CC-3.004 governs appointment of Special Magistrate. Parties may agree and jointly request a special magistrate, and PERC will appoint if the individual selected is deemed qualified.

C. If no such request, PERC will provide list of 7. Within 20 days of receipt of list, each party shall notify PERC of three rejections, or one preference.

D. If the parties are unable to agree on special magistrate, PERC Chair appoints from the roster.

*The parties do not need to wait for the list from PERC. If they can agree on a Special Magistrate, they may request PERC to appoint that individual.*

*What do you look for in a Special Magistrate?*

**II. Pre-Hearing**

A. Per Rule 60CC-3.005, within 10 days after the date of appointment of a special magistrate, each party shall serve upon the special magistrate and upon each other party a written list of issues at impasse.

*Try to get agreement on the issues at impasse (Why is this important? - and IT IS!)*

**III. The Hearing**

A. Party declaring impasse goes first unless parties agree otherwise.

B. Stipulations of fact may be introduced in evidence with respect to any issue.  
*Use stipulations where possible - Why?*

C. Transcript or not?

#### **IV. Persuading the Special Magistrate**

*(Hire outside counsel or do it your self?)*

A. Pursuant to 447.405, the SM's recommendations shall be made with the objective of achieving a "just" settlement of the disputes - *What does this mean?*

*Keep this concept in mind when writing your brief - it is often ignored*

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

1. Comparison of the annual employment income of public employees in question with the annual income 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 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.

*This factor is often ignored. For me, this is one of the most important factors in considering the relative merits of the respective proposals.*

4. Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:

Hazards of employment.

Physical qualifications.

Educational qualifications.

Intellectual qualifications.

Job training and skills.

Retirement plans.

Sick leave.

Job security.

5. Availability of funds

*Management typically believes this factor should be the most compelling for the Special Magistrate - this is not always the case: could it not be said that there are always funds available to meet the union's demands?*

C. When presenting evidence regarding these factors, keep the following points in mind:

1. RE: Factors 1 and 2: should be "apples to apples"

*These factors are important regarding whether the settlement he is proposing is "just."*

Comparability of annual income could include factors such as the following: length of work year and work day; availability of overtime; health benefits, including cost to the employer and the amount of deductibles and out of pocket cost to the employee; pension plan including cost to the employer and whether it is a defined benefit or defined contribution plan. These factors should be noted in the comparison so that it is clear that we are comparing apples to apples. *The SM should give these factors considerable weight as he considers a settlement that is "just."*

2. RE: Factor 3: Many parties to the impasse hearing deal with the public interest as an afterthought, or not at all. What is the "public interest"?

*Why is it important?*

3. RE: Factor 4: not particularly useful in school district cases - *why not?*

4. RE: Factor 5: Make the presentation clear.

- do proper costing of proposals

- tie back to "public interest" because *it is often more about **choices than ability to pay.***

D. Surprisingly, one of the occasional shortcomings of presentations regarding the funding of union proposals is the *failure to adequately cost them out*. This is especially damaging if the union fails to present credible evidence concerning the cost of its proposals.

1. The union is asking the magistrate to recommend funding the union's proposals, but, if the magistrate cannot determine the cost of the proposals, there can be no effective determination made concerning their fiscal impact, nor can their impact on the "public interest" be assessed.

*(If the union fails to effectively or accurately cost out the proposals in its presentation of its case, point this out in your brief!)*

2. And, it is not sufficient for the union to simply cost out the proposals and expect the magistrate to "find" the money. Once there is an effective presentation regarding the cost of the union's proposals, the union should present evidence concerning sources for those funds, the use of which will not adversely affect "the public interest."

3. The employer should present credible evidence concerning the real cost of the union proposals, and, having done so, *indicate how funding those proposals would **not** be in the best interests of the public.* *The union should anticipate this argument and present evidence to rebut it.*

*(NOTE: All of these factors, to the extent they are relevant to your issues at the table, should have been considered BEFORE YOU BEGAN BARGAINING! - these factors will enable you to justify your position at the table)*

## **V. Briefs**

Request for permission to file post-hearing memorandum must be made before the close of the hearing. *There is never a good reason not to file a post-hearing brief!*

## **VI. The Recommendation**

A. By statute and rule, recommended decision is to be issued to parties and Commission within 15 days after the close of the hearing.

With the agreement of the parties, the hearing closes when briefs are received electronically on an agreed upon date.

B. Rule 60CC-3.007 provides that special magistrate will review and consider all of the relevant evidence that has been presented during the hearing(s), and any oral or written arguments provided by the parties, and prepare a recommended decision.

C. The Decision is limited to only that evidence presented at the hearing(s) in light of factors in § 447.405.

D. Recommended decision shall include findings of fact and recommendations for "settlement of each issue in dispute."

## **VII. Legislative Body hearing**

A. Pursuant to 447.403(3), each recommendation shall be deemed approved unless it is specifically rejected by written notice filed with the Commission. The written notice shall contain a statement of the cause for each rejection.

B. Within 10 days after rejection, the CEO shall transmit a copy of the SM's recommendation to the legislative body.

C. Both parties shall also file with the legislative body their recommendations for settling the disputed impasse issues.

D. The legislative body shall "forthwith" conduct a public hearing at which the parties shall be required to explain their positions.

E. The legislative body shall take such action as it deems to be in the public interest, including the interest of the employees (emphasis added)

***QUESTIONS?***

***4/22/19***