Memorandum

MIAMI-DADE COUNTY

Date: September 10, 2010

Agenda Item No. 9(A)(3)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Collective Bargaining Impasse between Miami-Dade County and the American Federation of State, County and Municipal Employees (AFSCME), Local 121, Water & Sewer Employees

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Recommendation

It is recommended that the Board of County Commissioners (Board) resolve the collective bargaining impasse between Miami-Dade County and the American Federation of State, County and Municipal Employees (AFSCME), Local 121, Water & Sewer Employees, by accepting the special magistrate's recommendations in regard to the issues of wages, merit pay increases, longevity bonuses, flex dollar benefits, pay premium, transfers, schedules and shift rotations for the successor 2008-2011 Collective Bargaining Agreement. It is recommended that the Board reject the special magistrate's recommendation in regard to union stewards and representatives for the successor 2008-2011 Collective Bargaining Agreement; however the administration has agreed to one additional union steward being released full-time to perform union activities. To effectuate such acceptance, it is further recommended that the Board accept Article 10, Union Stewards and Representatives, Article 23, Special Wage Provisions, Article 28, Wages, and Article 30, Group Health Insurance, for the successor 2008-2011 Collective Bargaining Agreement between Miami-Dade County and AFSCME Local 121.

Scope

The impact of this agenda item is countywide.

Fiscal Impact/Funding Source

Implementation of the provisions included in this Collective Bargaining Agreement will save the County $441,269 per pay period, as compared to continuation of the status quo with respect to all elements of the agreement except for the cost of living adjustments. When comparing the cost of living adjustments included in this agreement with the previous three year agreement, that savings increases to $933,769 per pay period. The savings total an estimated $13.2 million for FY 2010-11 and $24.3 million over the three-year life of this labor agreement. The positions covered under this agreement are included in the Water and Sewer Department and are supported by water utility fee revenues.

Track Record/Monitor
The Director of Employee and Labor Relations in the Human Resources Department monitors and oversees the administration of the County's collective bargaining agreements.

Background;
A combination of factors – including an historic nationwide recession, tax-reduction legislation from the state and the Board's policy decision to maintain a flat millage rate – required the County to take unprecedented steps to close a budget gap of more than $400 million in the FY 2009-10 budget. At the Mayor's recommendation, the Board reduced the budget for employee salaries by 5 percent and froze both merit increases and longevity bonuses. The Board took the further step of suspending both flex and premium pay, as well.

While we were able to quickly implement these actions for employees who are not represented by a collective-bargaining unit, the vast majority of employees could not be impacted until new contracts were negotiated with the labor unions that represent them. The last remaining unresolved collective bargaining agreement for the 2008-2011 contract period is that of AFSCME Local 121, Water and Sewer Employees. On May 14, 2010, a hearing was held before the special magistrate appointed by the Public Employees Relations Commission (PERC) where the parties presented evidence and testimony on the issues in dispute. The special magistrate issued his recommendation (attached) on July 3, 2010. In accordance with State law, the County has notified PERC that it has accepted in part and rejected in part the special magistrate's recommendations. The following summarizes the special magistrate's recommendations and includes the County's recommendations for resolving the disputed issues that were presented at impasse.

The special magistrate recommends that the County's compensation proposals be implemented with certain modifications. In regard to wages, the special magistrate recommends that AFSCME 121 employees contribute 5 percent of base wages towards the cost of group health insurance, and that the 5 percent contribution be adjusted to compensate "for the elapsed time back to the first payroll period in February, 2010." The special magistrate found compelling the County's position that with regard to wages, employees in AFSCME Local 121 should not be treated any differently than employees in other bargaining units, and that since other bargaining units ratified their agreements months ago, employees in AFSCME Local 121 should be subject to the 5 percent contribution from a similar point in time. **The administration accepts this recommendation.** We have calculated that if the adjusted amount is paid entirely within the current fiscal year, the adjustment would increase each individual contribution to 17 percent of base pay if contributions begin July 26, 2010. In order to mitigate the impact on employees, if the adjustment were paid over 12 months, the individual contribution would be to 7.3 percent of base pay. At the end of the one-year period, the contribution to the cost of Healthcare would revert to 5 percent. The attached proposed Article 28, Wages, contains appropriate language effectuating acceptance of this recommendation.

The special magistrate also recommends that no wage increase be provided in FY 2008-09 and FY 2009-10, and that a 3 percent wage increase be given effective July 1, 2011. **The administration accepts this recommendation but recommends that - consistent with all other bargaining units - the 3 percent wage increase be effective the first pay period in July 2011, rather than July 1, 2011.**

The special magistrate further recommends that a suspension of merit increases, longevity bonuses, premium pay and flex pay be for one year, but without any reopeners based on economic conditions.

Rather, the special magistrate recommends that premium pay and flex pay be restored automatically after one year and that merit pay and longevity bonuses be restored subject to "unrestricted reopener negotiations". **The administration accepts this recommendation.** The attached proposed Article 23, Special Wage Provisions, and Article 30, Group Health Insurance, contains appropriate language effectuating acceptance of this recommendation.

In regard to other issues presented by the union at the impasse hearing, the special magistrate recommends that the union proposal on stewards and representatives be implemented, except in regard to their layoff proposal. The union had proposed that in addition to its President, its Vice President and Secretary-Treasurer, two additional employees be released full-time with pay for union activities. Currently, the President and two additional employees are released full-time with pay. The union also proposed that all the employees released full time for union activities be exempted from layoff action and receive one hour of overtime daily. Currently, only one other County union, the Transport Workers Union has guaranteed overtime for its full-time released employees. **The administration rejects this recommendation, but agrees to one additional steward being released full-time with pay to perform union activities.** The attached proposed Article 10, Union Stewards and Representatives, contains appropriate language effectuating the changes of this recommendation.

The special magistrate further recommends that the union's proposal on transfers, schedules and shift rotations not be implemented but addressed "as a future reopener provision". **The administration accepts this recommendation.** The union had proposed an entirely new contract article severely restricting management's rights to transfer and schedule employees except upon 14 days' written notice, even when such transfer is necessary to respond to daily operational needs. The union's proposed article would also have mandated the creation of light duty positions, which are now handled appropriately on a case-by-case basis. The special magistrate correctly reasoned that negotiations over a new article on this issue would require "sufficient information to understand the cost of its implementation and the restrictions it will place on both parties".

The Board is required by Florida law to resolve the disputed issues presented and to take such action as it deems to be in the public interest and the interest of its employees. However, while the Board resolves the impasse, by the law terms approved by the Board must be voted upon by the bargaining unit members. A vote by the bargaining unit members in favor of the terms would settle these matters as they have been described in this agenda item and conclude the County's labor negotiations through the end of FY 2010-11.

If the bargaining unit fails to ratify the action taken by the Board at impasse, Florida law dictates that the decision of the Board would only apply to the first fiscal year of the agreement. The provisions that take effect during the first fiscal year of the agreement would become the status quo and can only be changed through subsequent negotiation and settlement or through further impasse hearings. In that event, the 7.3 percent contribution towards group health insurance would not revert to 5 percent after one year, because the reversion to 5 percent is not a term of the first year of the agreement. Instead, it would remain at 7.3 percent until a future negotiation and settlement or impasse hearing results in a change to this provision. Likewise, the merit increases, longevity bonuses, flex pay and premium pay would not be restored, nor would the 3 percent cost-of-living adjustment being provided to other employees be applied to AFSCME Local 121 absent a future settlement or impasse resolution, also because those enhancements are not part of the contract's first year.

In the event that bargaining-unit members fail to ratify the Board's action, compliance with state law will make it necessary to provide an *effective* date for all recommended provisions within the first year of

the agreement, despite the fact that FY 2008-09 has passed. In order to realize those savings in the FY 2009-10 and FY 2010-11 budgets, it is necessary to have an *implementation* date in the immediate future. Therefore, the attached articles provide for *effective* dates of the last pay period in September 2009, but the *implementation* date of the articles would be July 26, 2010, irrespective of whether the bargaining unit ratifies the Board's action in a vote subsequent to July 26, 2010.

Upon resolution of this last collective bargaining impasse, the County will have concluded negotiations with all ten of our bargaining units. Your acceptance of the special magistrate's recommendation in regard to wages and benefits for AFSCME Local 121 will result in economic concessions fairly applied to all County employees.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: September 10, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 9(A)(3)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

__✓__ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(3)
9-10-10

RESOLUTION NO. _____

RESOLUTION RESOLVING COLLECTIVE BARGAINING IMPASSE BETWEEN MIAMI-DADE COUNTY AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 121, WATER & SEWER EMPLOYEES

WHEREAS, Miami-Dade County and the American Federation of State, County and Municipal Employees (AFSCME) Local 121, Water & Sewer Employees, have negotiated for a reasonable period of time on a successor collective bargaining agreement to the agreement that expired September 30, 2008; and

WHEREAS, the parties have reached an impasse in their negotiations; and

WHEREAS, the parties have agreed to the appointment of a special magistrate who, after hearing, has rendered a recommended decision; and

WHEREAS, this Board has conducted a public hearing at which the parties were required to explain their positions regarding the recommendations of the special magistrate; and

WHEREAS, this Board, pursuant to Fla. Stat. Sec. 447.403, is required to take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve the disputed impasse issues; and

WHEREAS, the issues at impasse are wages, merit pay increases, longevity bonuses, flex dollar benefits, pay premiums, union stewards and representatives, and transfer schedules,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves and ratifies the County Mayor's recommendations for settling the collective bargaining impasse for the reasons set forth in the County Mayor's Memorandum. The County Mayor and AFSCME Local 121 shall reduce to writing an agreement which includes those issues previously agreed to

by the parties and the disputed impasse issues resolved herein. The written agreement shall be signed by the County Mayor and submitted to the bargaining unit for signature and ratification. If the bargaining unit fails to ratify the agreement, the action taken in this resolution shall take effect as of the date of this resolution and shall be effective for the first fiscal year that was the subject of negotiations (October 1, 2008 to September 30, 2009).

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of September, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.
Lee Kraftchick

ARTICLE 10 UNION STEWARDS AND REPRESENTATIVES

1. The Union shall have the right to select employees from within the unit to act as Union Stewards. The names of the employees selected as stewards shall be certified by the Union, in writing, to the Water and Sewer Department Director and the Director of ~~Labor Management~~ Employee and Labor Relations.

2. It is agreed to and understood by the parties to this Agreement that Union Stewards may, without loss of pay, with prior approval of their supervisor, process grievances. The supervisor's approval will not be unreasonably withheld.

3. It is further agreed that the Union may appoint twenty (20) Union Stewards within the bargaining unit as defined.

4. It is agreed to and understood by the Union that Stewards shall process grievances in such a manner as to not disrupt normal County and Department activities, work production and services. This provision shall also be extended to Representatives of the Union who are not employees of the County, and who have been certified in writing to the Director of ~~Labor Management~~ Employee and Labor Relations.

5. The Union President, Vice President and Secretary-Treasurer will be released from duty with pay to administer this agreement. Effective the beginning of the first pay period following ratification and approval of this agreement by the Board of County Commissioners, one (1) additional bargaining unit employee, designated in writing by the Union President to the Director of Employee and Labor Relations ~~Labor Management~~ and to the Department Director, will be released from duty with pay to administer this agreement. ~~Effective the beginning of the first pay period in July 2007, one (1) additional bargaining unit employees, designated in writing by the Union President to the Director of Labor Management and to the Department Director, will be released from duty with pay to administer this agreement.~~ Effective upon ratification of this Agreement by the Board of County Commissioners, the Union President and any additional employees released from duty full-time with pay to administer this Agreement shall receive while on such release, performance evaluations containing no more than an overall rating, which rating shall reflect the average of the three overall ratings received prior to serving in such capacity.

ARTICLE 23 SPECIAL WAGE PROVISIONS

1. PAY ADVANCES - An employee may request through his supervisor, his vacation pay checks in advance of any scheduled annual leave by submitting a request to the department payroll office at least three (3) weeks prior to leaving on annual leave.

2. LONGEVITY BONUS: Employees with fifteen (15) years of continuous service shall receive annual longevity bonus payments on their anniversary date and each year thereafter. Deferment for leave of absence shall be deductible and not considered as a break in service.

   The annual longevity bonus payments will be paid in accordance with the following schedule:

Years of Completed Full-Time Continuous County Service	Percentage Payment of Base Salary
15	1.5%
16	1.6%
17	1.7%
18	1.8%
19	1.9%
20	2.0%
21	2.1%
22	2.2%
23	2.3%
24	2.4%
25	2.5%
26	2.6%
27	2.7%
28	2.8%
29	2.9%
30 or more	3.0%

Effective the beginning of the first pay period in September 2009, the payment of longevity bonuses shall be suspended.

Third Year 2010-2011

Effective the beginning of the last pay period in July 2011, the payment of longevity bonuses shall be restored prospectively only.

3. SAFE DRIVING INCENTIVE

An employee, who drives or operates mobile equipment fifty percent (50%) of the time in performance of their duties, shall receive awards for safe driving, including a pin, annually, with the number of safe driving years thereon. After the fifth year, he will receive an award of five dollars ($5.00) for each consecutive year of safe driving completed. Should a driver have a preventable accident, he starts over the first day after the accident.

4. ENTRANCE PAY RATES

For all employees hired into the County Service on or after November 1, 1991, the entrance pay rate for all bargaining unit classifications shall be pay step 1 of the appropriate pay range provided in the Miami-Dade County Pay Plan. Progression from the entrance level pay of step 1 to step 2 shall be six (6) months (13 pay periods) based upon satisfactory or above satisfactory job performance. Progression from step 2 to the maximum step in the pay range shall be at one (1) year (26 pay periods) intervals thereafter based upon satisfactory or above satisfactory job performance. Effective the beginning of the first pay period in September 2009, progression from any one pay step to the next pay step, merit increases and longevity increases shall be suspended.

Third Year 2010-2011

Effective the beginning of the last pay period in July 2011, progression from any one pay step to the next pay step, merit increases and longevity increases shall be restored prospectively only.

5. SPECIAL WAGE PROVISIONS

Full-time bargaining unit employees will be eligible to receive a $50.00 biweekly pay supplement. Effective the beginning of the first pay period in September 2009, the $50 biweekly pay supplement shall be suspended.

Third Year 2010-2011

Effective the beginning of the last pay period in July 2011, the $50 biweekly pay supplement will be restored prospectively only.

Article 28 WAGES

First Year 2008-2009

Effective the beginning of the last pay period in September 2009, all employees in bargaining unit classifications shall be required to contribute seven-point-three percent (7.3%) of base wages toward the cost of coverage for group health insurance. This provision shall supersede any conflicting provision of Article 30, "Group Health Insurance".

Second Year 2009 - 2010

Employees in bargaining unit classifications shall not receive a wage adjustment for fiscal year 2009-2010.

Third Year 2010 - 2011

Effective the beginning of the first pay period in July 2011, all employees in bargaining unit classifications shall receive a three percent (3%) wage increase. Effective the beginning of the last pay period in July 2011, the contribution toward the cost of coverage for group health insurance shall be reduced to five percent (5%).

ARTICLE 30 GROUP HEALTH INSURANCE

The County's contribution for group health insurance shall not exceed the amount it contributes toward single employee coverage and no contribution shall be made for dependent coverage.

The parties agree that bargaining unit employees will be afforded the opportunity to become members of a qualified Health Maintenance Organization pursuant to law and in accordance with all rules, regulations, and procedures pertaining thereto prescribed by the County and the qualified Health Maintenance Organization.

Any employee who desires to enter the County Group Insurance plan who has either withdrawn from the plan or not joined the plan in accordance with its terms shall be subject to the requirement of a physical examination at the employee's expense if an examination is required by the insurer.

The County's flexible benefits program will remain in effect during the term of this collective bargaining agreement. The parties agree that bargaining unit employees will be offered the opportunity to participate pursuant to law and in accordance with all rules, regulations, and procedures pertaining thereto prescribed by the employer and the Internal Revenue Code.

1. The County's Group Health Insurance will include ~~be~~ a Point of Service Managed Health Care Group Insurance Plan.

2. The County will provide a $5.00 biweekly Flex Dollars contribution to the Flexible Benefits Plan to employees enrolled in the JMH Health Plan HMO or the individual practice association model HMO currently administered by AV-MED. a High Option HMO Plan.

3. The County will provide a $10.00 biweekly Flex Dollars contribution to the Flexible Benefits Plan to employees enrolled in the group/staff model

HMO with the lowest employer contribution per employee. a Low Option HMO Plan.

4. The County will provide an annual $1,000 Flex Dollars contribution, to the Flexible Benefits Plan paid in biweekly increments, for County to employees eligible for group health insurance or the Flexible Benefits Plan.

5. All employees enrolled in the County's Point of Service/Managed Health Care Group Insurance Plan shall be required to pay three percent (3%) of the cost of single coverage of this plan.

6. Effective the beginning of the last pay period in September 2009, the County's contributions to the flex dollar benefits as provided in sections 2, 3 and 4, above, shall be suspended.

Third Year 2010-2011
Effective the beginning of the last pay period in July 2011, the County's contributions to flex dollar benefits shall be restored prospectively only.

7. ~~6.~~ Post Employment Health Plan (PEHP) – It is the intent of the parties, during the term of this agreement, to permit the Union to establish a PEHP whereby employees who are retiring and separating from the County will have the applicable payout of their accrued sick leave placed in a PEHP account consistent with current Internal Revenue Service (IRS) Rules and Regulations. It is the understanding between the parties that the Union will be solely responsible for obtaining the PEHP provider and administrator for this service and for ensuring compliance with all applicable state and federal laws and regulations. The County will only be responsible for payment of an employee's applicable sick leave into the PEHP selected by the Union. Additionally, the Union agrees to indemnify and hold the County harmless against any and all claims, suits, orders and judgments brought and issued against the County as a result of any action taken or not taken by the

County or any party under the provisions of this section of this agreement.

State of Florida
Public Employees Relations Commission
Case # SM - 2009 - 049

Report and Recommendations of the Special Magistrate on the Impasse between AFSCME Local 121, AFL CIO and Miami-Dade County, Florida
Hearing Date: May 14, 2010 in Miami, Florida

Appearances:
For the Employer: Lee Kraftchick, Esq. for Miami-Dade County, Florida

For the Union: Osnat K. Rind, Esq. & Ronald Cohen, Esq. for AFSCME Local 121, AFL-CIO

Hearing Closed and Consideration of Issues Commenced by Special Magistrate on June 20, 2010, after receipt of briefs from the Parties. The Report of the Special Magistrate issued to the Public Employees Relations Commission via facsimile transmission and each party by certified mail on July 3, 2010.

Issues before the Special Magistrate:
The Parties set forth 3 issues for the Special Magistrate to consider, these issues are reduced from an initial list of 52 proposals that were initially at Impasse. The issues are:

1. **Wages-All wage and wage related benefits including: Gross Wages, Merit pay, Longevity Bonuses, Premium Pay, and Flex Pay. Relevance of Pattern Bargaining and Wage parity between Bargaining Units.**
2. **Article Union Stewards & Representatives – The union seeks to expand the number of representatives and the amount of time allowed for union business.**
3. **Transfers, Schedules and Shift Rotations- The union seeks to place restrictions on managerial rights to transfer, assign and schedule personnel.**

Background of the Dispute & Bargaining History:

The parties have a long time extensive bargaining history. Their ability to reduce the number of issues from an initial 52 issues to 3 demonstrates the maturity of this relationship.

The parties have resorted to the Special Master Impasse Report Process on several occasions in the past dating back to November 24, 1988. The unique position of the employees in this bargaining unit because they work for a proprietary entity within the County management structure was addressed in Special Master reports in 1988 and 1991.

The union and the county were represented by experienced labor counsel to present their respective positions and the parties have prepared thorough and well documented evidence submissions and briefs on their respective positions on each issue. Oaths were administered to all witnesses. Each party was provided with a full and ample opportunity to present their evidence, arguments and testimony at the hearing. The parties each filed well researched and extensive briefs in support of their positions.

The exhibits, 72 from the County and 42 for the union, were extensive comprising approximately 3,000 pages of supportive data that were read and considered by the Special Magistrate.

In addition a 222 Page, 2 volume transcript was read and considered by the Special Magistrate. Each party provided extensive testimony from their qualified expert witnesses; said testimony was considered and evaluated for its relevance.

The 3 issues before me are very important issues, two issues are covered in contract language in the current and prior

collective bargaining agreements. The parties have been involved in negotiations on the entire contract, since the

expiration of the prior contract on September 30, 2008.

Telephone pre-hearing conferences were held to define the issues and set forth the issues in dispute. The initial hearings in November and December were postponed at the request of the parties and agreement to convene this hearing was delayed.

The parties are under the significant pressure of the financial situation that all governmental entities are facing due to the broad down turn in both the national and world economies. Miami-Dade County has been one of the most devastated communities in Florida during this economic downturn due to the significant deterioration of the tourism, real estate and construction industries. The parties demonstrated the maturity of their relationship by reaching agreement on all but these 3 issues in the two agreements. However, the divide between their respective positions is extremely wide and can only be bridged with a mutual understanding of the gravity of the economic situation they find themselves confronted with in 2010.

Presentations of the Parties:

The parties created compelling and well articulated individual presentations during the hearing. The information in exhibits and oral arguments submitted was well researched, well argued and thoroughly documented by each party.

A large delegation of union members attended the hearing and all of these participants conducted themselves in a respectful manner, while demonstrating their support for their union and its positions by wearing their message shirts and paying rapt attention to the proceedings.

Position of AFSCME Local 121:

AFSCME believes that the employees of the Water and Sewer

Department are in a unique position due to the Proprietary nature of the funding of their department which should entitle them to have their contract proposals funded in a break with the pattern bargaining that has been the primary bargaining pattern in Miami-Dade County. The decline in revenue in the general fund of the county should have no impact on this bargaining unit because this department is not dependent on ad valorem and general tax revenues.

The water and sewer department relies solely on the proprietary fees generated from the payment of water & sewer bills based on the rates set by the county Commission. The union does not dispute that county revenues derived from taxes have significantly declined, but water and sewer fees have not declined. The Water & Sewer Department is in excellent financial health and it can easily afford the cost of the 3 union proposals. Net operating revenues and net assets of this department have increased year over year and these funds can be used to pay for all union proposals without using any money from the general fund or any other county revenue resource.

Significantly, AFSCME notes that the department actually over budgeted last year by 6.8% in their operating budget. Every financial indicator demonstrates that this department can easily afford to fund the union proposals and this bargaining unit should be treated separately from any other county department or bargaining unit because of its proprietary funding arrangement.

The Miami-Dade County proposals to freeze various wages and to eliminate hard won prior benefits has no basis in economic fact. There are no sound reasons for failing to pay any existing compensation benefit that our members now enjoy.

The county claim that pattern bargaining has been the rule is not supported by the actual contract language that has been

negotiated in the numerous contracts the county has negotiated with the various unions. Special agreements on funding benefits vary from contract to contract and there is no lack of revenue rationale for not funding the 3 AFSCME proposals we have carefully crafted to meet available departmental funding.

AFSCME asks the Special Magistrate to examine its arguments and recognize that this bargaining unit is wholly funded by a proprietary department that has ample departmental funding sufficient to pay for all 3 of its very reasonable proposals. The county argument about the primacy of pattern bargaining has no relevance when it is applied to a proprietary department and the AFSCME proposals should be recommended in their entirety for implementation by the Special Magistrate.

Position of Miami-Dade County:

Miami-Dade County argued in its pre and post hearing briefs and at the hearing that the county and the country are in the midst of an unprecedented fiscal crisis. As tax revenues have fallen demands of the public for services have increased.

The county has had to take drastic measures to balance their budget and every department is expected to participate in cuts to salaries for all county employees. No department can be immune and every bargaining unit has accepted cuts except for this Water and Sewer Bargaining unit.

The county has designed cuts in wages; flex pay, longevity pay, bonuses, premium pay and other wage rates. We have sought to have all of our bargaining units accept these cuts to maintain the pattern bargaining relationship and history that has been the basis of bargaining since its inception in Miami-Dade County.

This bargaining unit has refused to accept any of the terms that we have proposed for every other unit and for the

employees who are not represented in bargaining units.

This union has delayed this process for over a year by cancelling scheduled Impasse hearings and using other delaying tactics and this has only worsened the impact on their members.

The county has several proprietary departments in the county and the bargaining units for the other proprietary departments have all accepted the cuts proposed by the county. AFSCME represents other bargaining units and they have accepted the county cuts, they have understood the dire financial situation that faces county government.

The county has taken steps to increase revenue with tax and proprietary fee increases. In response to tax payer demands we have cut services and we have accepted the taxpayer demand to maintain our millage rate.

The county has consistently offered the same reductions in all proprietary departments and the 3 other AFSCME units have accepted this package consistent with our long tradition of pattern bargaining. We have tried to tailor these cuts to be reasonable and to apply for only one year even though the County Commission has recommended suspension of some of these benefits for 2 years. We have proposed comparable cuts for comparable job titles, regardless of the unit or who they

are represented by, to promote fairness.

The argument of the union is that since we are in a proprietary department, even though we have never been treated differently before, we deserve to gain a settlement that no other unit has achieved. The union has made this argument before on a number of occasions and it has always been found to be without merit, including in prior Special Master proceedings and we are providing copies of those relevant decisions for

consideration by the Special Magistrate.

Wage parity among Miami-Dade County employees is an historical fact and must be maintained because there is no compelling reason to do otherwise, concluded a prior Special Master and that opinion is still quite relevant today. The County has maintained the same wage rates for all of our employees for a period of 40 years.

The County has proposed no other issues to be considered by the Special Magistrate. The other 2 issues raised by the union could be worked out had there been an acceptance of the wage reduction package by AFSCME.

STATUTORY ISSUE CONSIDERATION:

Florida Statute Section 447.405 requires that a Special Magistrate consider certain factors that should be given weight in making any recommendations to the parties.

These factors fall into 5 categories and these include two types of annual income comparisons, the interest and welfare of the public, 8 various peculiarities of employment and availability of funds.

Each party has urged me to give these factors full consideration as I deliberate on their respective presentations. I have utilized each of these factors in the consideration of evidence, arguments and testimony provided by the parties in the research and drafting of this report and its recommendations.

Discussion and Recommendations on the Issues in Dispute by the Special Magistrate:

1. Wages – The parties have articulated detailed and well researched arguments on their respective wage proposals.

The outstanding and preeminent issue as to the wage issue is the argument that as a proprietary department the WASA employees in this bargaining unit should be treated differently and exempted from any wage reductions suffered by any other county employee in any other bargaining unit.

The union's argument fails for the following significant reasons:

1. The contract between the parties is between the County and AFSCME, it is not a contract between a proprietary department and the union.
2. The history of bargaining between the county and all of its bargaining units is one of pattern bargaining and continuation of wage parity for similar job titles.
3. The union contention that these employees in a proprietary department can be treated differently has never been successfully argued in the Impasse resolution process.
4. Since the Bargaining unit was certified it has conducted negotiations with the county as a county department and not as a proprietary entity.
5. Pattern Bargaining with all bargaining units has been an established county policy for 40 years and this unit has always participated in that process as just one other county department and not as a proprietary unit.
6. Historically there is no compelling justification for allowing employees in a proprietary department to be given special treatment or to enjoy a special advantage that is not enjoyed by their fellow employees in all other county departments. Proprietary departments are not unique in the collective bargaining process when their employer is the same entity that is the employer of all other county employees.

The county argument that its pattern bargaining proposal should be recommended is compelling, it is consistent with the

settlements it has achieved with all other bargaining units, including other AFSCME units. There are several variations in the other agreements, particularly related to the agreements reached on flex and premium pay benefits.

Recommendation: The County compensation proposals as proposed should be implemented. However, the reductions will have to be recalculated to reflect the time that has lapsed from when those proposals were implemented for other units. This will mean no general wage increase for 2008-2009 and 2009-2010. A contribution of five per cent of base wages to cover the cost of group health insurance adjusted to an accurate percent to compensate for the elapsed time back to the First payroll period in February, 2010. A 3% wage increase across the board effective July 1, 2011. Suspension of all merit pay increases for one year. Suspension of all pay step increases for one year. Suspension of Longevity Bonuses for one year. All premium pay is suspended for one year. Flex pay is suspended for one year. However, the county proposal to allow reopeners dependant upon economic conditions should not be incorporated in the agreement. Instead, the premium pay and flex pay provisions should be restored after the one year suspension and other suspended compensation should be subject to unrestricted reopener negotiations.

2. Article 10: Union Stewards and Representatives – The parties have had contract language on this subject for several contracts. The county believes these proposals are unnecessary and unfair to other bargaining unit members. The union argues that these proposals are necessary to adequately represent their bargaining unit members and they will not be a burden to the county financially.

Recommendation: The union proposals would be beneficial in improving contract administration, they should be implemented, however, the no lay off provision

is excessive and should not be implemented.

3. Article 48 - Transfers, Schedules and Shift Rotations – The union proposes an entirely new article that would place significant controls on management's rights as they are related to implementing transfers, scheduling and shift rotations. The county points out that such an article requires significant bargaining in order to arrive at a workable process. In view of the current economic conditions faced by this employer, the implementation of this language with no study as to its costs and restrictions on management's ability to act promptly and flexibly in this environment would be irresponsible.

Recommendation: This new Article should not be incorporated in the contract at this time. This issue should be readdressed as a future reopener provision, when the parties can negotiate over it with sufficient information to understand the cost of its implementation and the restrictions it will place on both parties.

Report Summary:
I firmly believe that both parties have expended a great deal of effort in their attempts to reach an agreement. The testimony

of the expert witnesses Michael Messina and Jennifer Glazer-Moor highlighted all of the aspects of the departmental budget. Each of these witnesses was a qualified expert and their assessments were based upon their extensive review of the budget. Their testimony highlighted the inordinate amount of time spent arguing over the sole issue of allowing this bargaining unit to depart form the well established pattern bargaining that both parties have participated in throughout the history of this bargaining unit and this employer.

The parties need to set aside that issue and focus on implementing an agreement incorporating the established pattern bargaining recommendations I have set forth above.

The parties have demonstrated their obvious ability to engage in numerous compromises by the large number of agreements over open issues that they have already reached through their direct negotiations. I recommend they avoid the distraction of arguing over establishing a special proprietary relationship for this bargaining unit. Such a relationship has never existed and the county will never agree to violate the pattern and wage parity that has existed historically.

I recommend that you carefully consider all three of these recommendations that I have made and redouble your efforts to utilize these recommendations to finalize your contract.

The enthusiasm and calm demeanor exhibited by union members and departmental mangers speaks volumes about the attributes they can employ to enhance the fine reputation that their department and its employees have created. Their work is important and valued and they are to be praised for the valuable services they perform for Miami-Dade County taxpayers.

These recommendations are solely based on the important testimony, exhibits and oral arguments that you provided during the hearing and through your representatives written briefs and therefore they are a direct product of your efforts and input in this dispute resolution process. I hope you will consider them as your own contribution to reaching a final agreement that you can live with for its term.

I believe that the interests and welfare of the public are best served by the implementation of my recommendations by both parties.

Respectfully submitted,

William J. Mc Ginnis, Jr.
Special Magistrate

July 3, 2010