

---

**In the Matter of the Special Magistrate Proceeding  
SM-2016-033  
TRANSIT WORKERS UNION OF AMERICA, LOCAL 291  
and  
MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS**

---

Appearances

Transit Workers Union	:	Mark Richard, Esq. Osnat Rind, Esq.
Miami-Dade County	:	Eric Rodriguez, Esq. William X. Candela, Esq.
Special Magistrate	:	Mark Lurie

## PREFACE

This proceeding is conducted under the authority of Florida Statute §447.403 and §447.405. Its purpose is for the Special Magistrate to issue a recommended decision that will achieve a prompt, peaceful, and just settlement of the impasse issue(s) pertaining to the parties' collective bargaining agreements.

F.S. §447.403 Resolution of impasses states, in relevant part, the following:

- (1) *If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, a dispute exists between a public employer and a bargaining agent, an impasse shall be deemed to have occurred when one of the parties so declares in writing to the other party and to the commission...*
- (2) *(a) If no mediator is appointed, or upon the request of either party, the commission shall appoint, and submit all unresolved issues to, a special magistrate acceptable to both parties... If the parties are unable to agree on the appointment of a special magistrate, the commission shall appoint, in its discretion, a qualified special magistrate.*
- (3) *The special magistrate shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved contract issues. The hearings shall be held at times, dates, and places to be established by the special magistrate in accordance with rules promulgated by the commission.*

Under F.S. §447.405, the factors, among others, to be given weight by the special magistrate in arriving at his recommended decision are to include:

- (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 (skills, qualifications, hazards) and retirement plans, sick leave and job security.*
- (5) *Availability of funds.*

(6) In this decision, the Special Magistrate will refer to the Miami-Dade County as “the County”; to Miami-Dade Transit as “MDT”; and to the County’s Department of Transportation and Public Works, of which the MDT is a part, as the “DTPW.” Transit Workers Union Local 291 will be referred to as the “TWU,” the “Union” or the “bargaining unit.” The parties have been operating under the status quo extension of a collective bargaining agreement “CBA” that covered October 1, 2011 through September 30, 2014. This impasse resolution process pertains to the agreement covering October 1, 2016 through September 30, 2017 (the “2016-17 CBA”).

The CBA refers to Article numbers by their Roman numerals. For the sake of simplicity, the Special Magistrate will refer to the Article numbers using Arabic numerals. The issues at impasse are these:

<b>1</b>	Article 1.6	:	Wages – Across-the-Board Increase	4
	Article 1.6	:	Wages – Retroactivity	13
	Article 1.6	:	Wages – Availability of Funds	17
<b>2</b>	Article 3.1	:	Joint Citizen/Passenger Service Committee	22
	Article 3.1	:	Gearbox Overhaul Memorandum	24
<b>3</b>	Articles 3.2 & 3.3	:	Authorized Leave for Union Activity	26
	Article 3.29	:	Community Mentoring Initiative	42
<b>4</b>	Article 7.14 & 7.17	:	Sick & Vacation Leave Pay	43
	Article 7.14 & 7.17	:	Sick & Vacation Leave Fractional Days	46
	Article 7.17	:	Vacation Leave Max Accrual	48
	Article 7.17	:	Payout of Accrued Unused Sick Leave	50
<b>5</b>	Memorandum	:	Unscheduled Absences	
			Membership Assistance Program – MAP	51
<b>6</b>	Memorandum	:	Unscheduled Absences	
			Attendance Control Program – PACE	57

## Article 1.6 – WAGES<sup>1</sup>

### Across-the-Board Percentage Increases

The County's proposal:

***Fiscal Year 2016-17***

***Effective the first pay period after ratification by both the collective bargaining unit and the County, bargaining unit employees shall receive a Cost of Living Adjustment of four percent.***

The Union's proposal

***All employees in bargaining unit classifications shall receive a 3% contractual raise retroactive to October 1, 2014.***

***All employees in bargaining unit classifications shall receive a 3% contractual raise retroactive to October 1, 2015.***

***All employees in bargaining unit classifications shall receive a 5% contractual raise retroactive to October 1, 2016.***

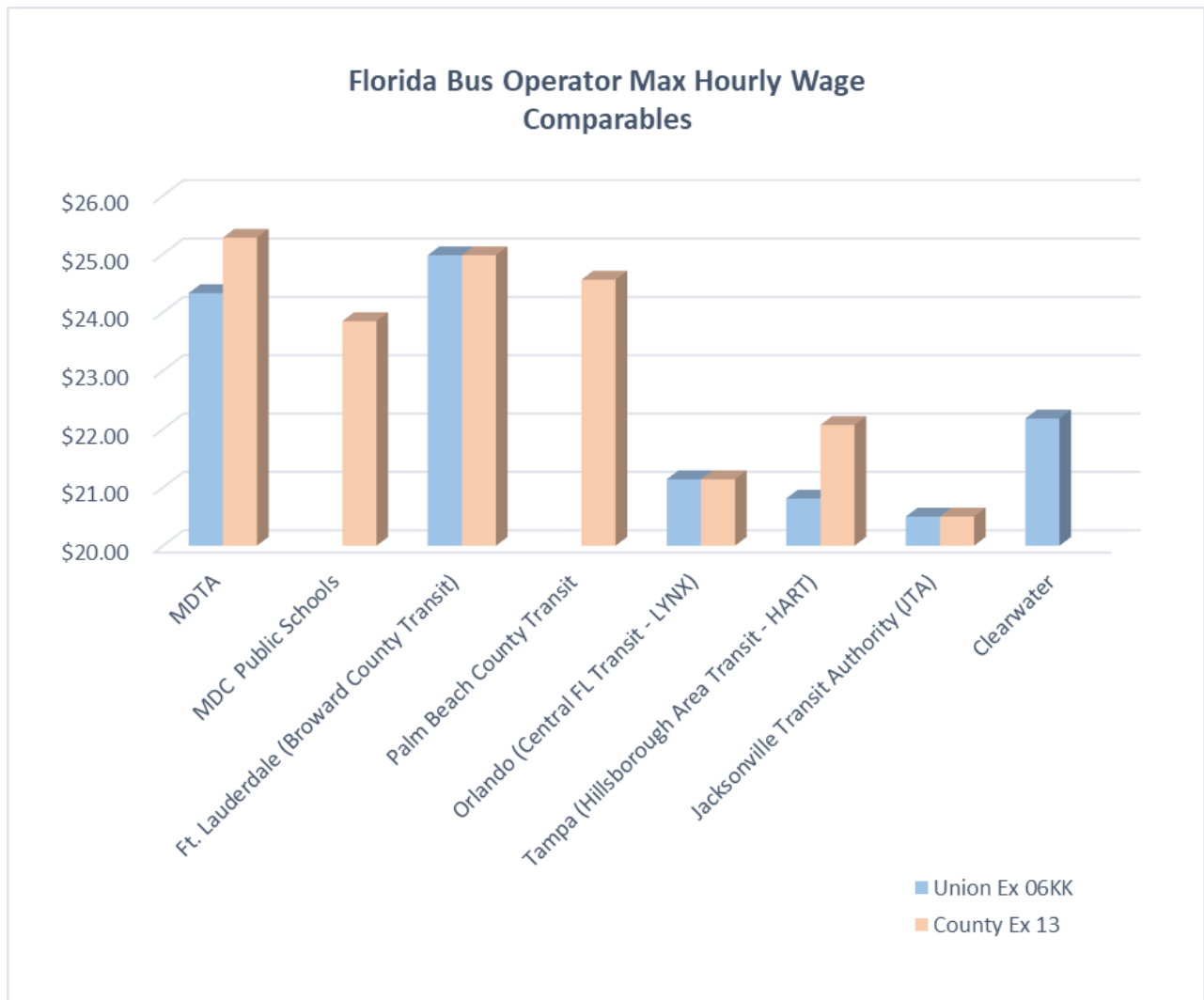
The bargaining unit has about 3,000 members, of whom about 60% are bus operators. The other job classifications represented are train operators (85), bus maintenance technicians (288), bus and rail hostlers (120), inspection specialists (10), maintenance of rail and structures (239), rail car maintenance (169).<sup>2</sup> Both parties have proposed across-the-board percentage increases to wages ("ATBPI") but differ as to the number of increases, the rates of increase, and retroactivity.

Since 1982, the parties have engaged in pattern bargaining, meaning that all 9 of its bargaining units (representing, in the aggregate, about 25,600 employees<sup>3</sup>) have received the same across-the-board percentage increase ("ATBPI") in base wages effective the first day of the contract year. Non-bargaining unit personnel (2,550 persons) were granted the same ATBPI.<sup>4</sup>

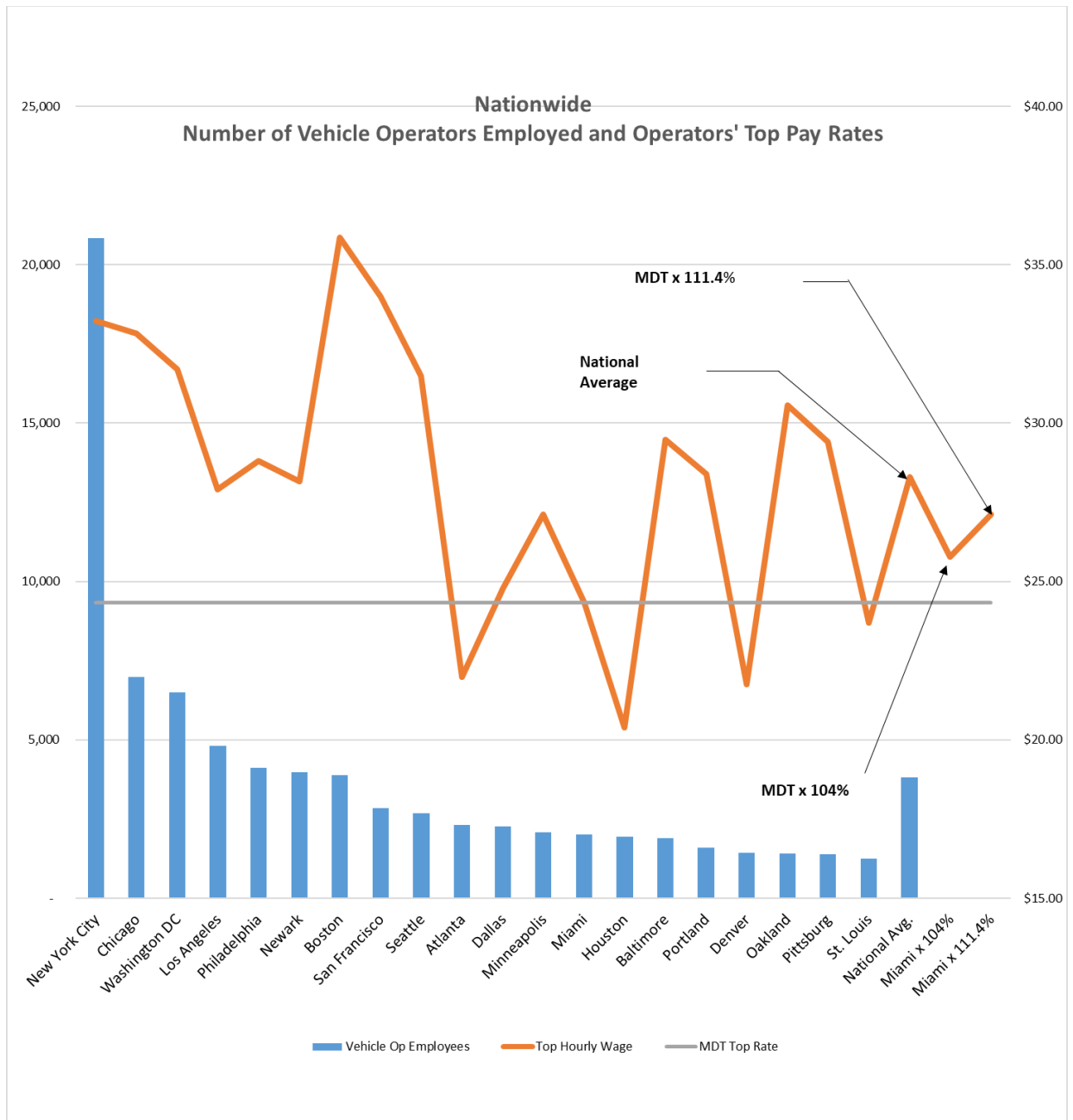
In the instant case, each party has proposed that their ATBPI(s) apply across all job classifications regardless of differences in the prevailing wage comparability between classifications, even though (the Special Magistrate finds) some job classifications diverge more from the comparable norm than others. The County's proposal equals 104% of the status quo rate; the Union's proposal equals 111.4% of that rate. (The 111.4% number is the product of the Union's proposal for three successive increases for 2014, 2015 and 2016 (3%, 3% and 5% respectively). The Special Magistrate, as well, will not distinguish between job classifications but

will gauge the wage comparability of the bargaining unit as a whole on the basis of its most populous job classification: bus operators.

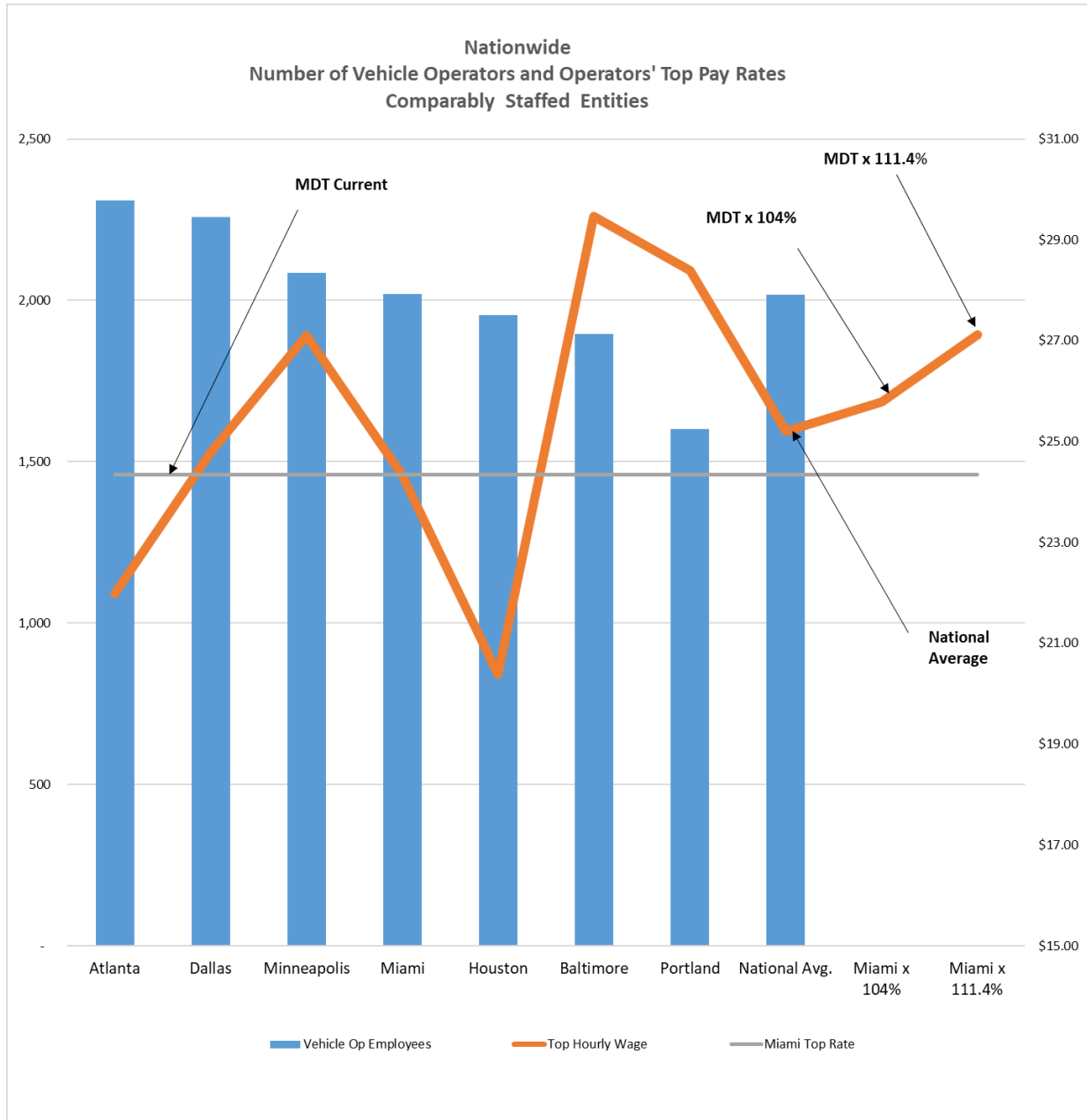
The Bus Operators' wage levels at September 30, 2016 were higher than the single local operating area comparator – the MDC Public School Bus Drivers – and generally comparable to or higher than that of comparably sized Florida transit agencies.<sup>5</sup>



The Union contends that the above Florida comparators are not as representative of the appropriate compensation for MDT employees<sup>6</sup> as would be the twenty largest transit agencies nationwide, both because of the size of their operations and because several of those non-Florida-agencies include rail services, as does the County.<sup>7</sup> The following graph shows that comparison:



The Special Magistrate observes, however, that the largest and smallest national transit agencies skew the average disproportionately, and that when the comparators are narrowed to those transit agencies whose number of vehicle operators approximates those of MDT (specifically, those agencies within 500 employees of MDT’s 2,020), then the MDT operators’ wages, although currently below the national average, will exceed their average under both the County’s and the Union’s proposals.<sup>8</sup>



This is not to say that the national comparators should be given the weight of the statutorily prescribed Florida factors. To the contrary, absent a showing that the Florida comparators will yield manifestly unreasonable or distortive results, they deserve primacy because they are what the statute prescribes.<sup>9</sup> In this instance, the relevant nationwide numbers corroborate the statewide results.

The Union notes that the 4% increase proposed by the County would not return the compensation of its members to the buying power it had in some prior periods. The County, using different starting years, asserts that the TWU members' wages have exceeded increases in the consumer price index. Both may be true, but the statutory criteria that the Special Magistrate is to apply do not prescribe the preservation of inflation-adjusted pay levels but rather wage comparability. And that is so regardless of whether the CPI adjustment would result in wages being higher than or lower than those based upon comparability.<sup>10</sup>

#### **Special Magistrate's Recommendation**

The Special Magistrate recommends adoption of the County's 4% ATBPI, both because it will place MDT's wage rates above, but only slightly above, the Florida comparators, and because adoption of the 4% ATBPI may preserve the parties' practice of pattern bargaining that has served them well in the past.<sup>11</sup>



- 
- 1 Both parties appear to agree that the following will be deleted from Article 1.6:

*FY 2011-2012*

*All employees in bargaining unit classifications shall be required to continue to contribute five percent (5%) of base wages from the time of ratification of this Agreement toward the County's cost of health care. This provision shall supersede any conflicting provision of Article VII. 16, Group Health Insurance. In addition, the parties agree to submit to the County Commission, with the parties' mutual waiver of any right to a hearing before a Special Magistrate, for final resolution of the parties' impasse, the issue of whether employees shall be required to contribute an additional amount, not to exceed five percent (5%) of their base wages, towards the County's cost of health care, effective upon the ratification of this agreement.*

*FY 2013-2104*

*Effective January 1, 2014, the monies comprising the health care contribution shall be reinstated to the employees' pay, provided however, that the County shall have the right to reopen this provision of the Collective Bargaining Agreement, in advance, for the purposes of negotiating whether these reductions will be continued. In the event that the County chooses to reopen this provision and the parties are unable to reach an agreement, the dispute shall be submitted to the County Commission, with the parties' mutual waiver of any right to a hearing before a Special Magistrate, for final resolution of the impasse in accordance with the requirements of State law.*

- 2 Union Exhibit 6D

- 3 County Exhibit 09:

AFSCME Local 199 – General	7,573
PBA – Rank & File	4,857
GASF/OPEIU Local 100 – Supervisory	3,621
Non-Bargaining Unit	2,550
<b>TWU Local 291</b>	<b>2,919</b>
IAFF Local 1403	1,975
AFSCME Local 121 – WASD	1,705
GASF/OPEIU Local 100 – Professional	1,190
AFSCME Local 1542 – Aviation	921
PBA – Supervisory Unit	236

- 4 County Exhibit 14

5

	Operator's top Rate @ July 2017	Max Rate @ 10/1/2016
	Per U 06KK	Per County 13
MDTA	\$24.33	\$25.28
MDC Public Schools		\$23.85
Ft. Lauderdale (Broward County Transit)	\$24.98	\$24.98
Palm Beach County Transit		\$24.56
Orlando (Central FL Transit - LYNX)	\$21.14	\$21.14
Tampa (Hillsborough Area Transit - HART)	\$20.81	\$22.07
Jacksonville Transit Authority (JTA)	\$20.50	\$20.50
Clearwater	\$22.18	
MDTA includes \$50 biweekly supplement		

6 The Union's expert witness, Thomas R. Roth, as follows:

*... in my opinion, the top 20 [national transit] properties [are] an important and appropriate peer group for making comparisons in terms of wages and benefits and compensation for the transit workers because it would be 10 properties that are smaller [and 10 that are larger]... [We and Trirail are]... the only railroad in town apart from CSX which is freight railroad. [Tr 188-189]*

*...the economics of large transit systems are totally different than small transit systems. Large transit systems by definition operate in higher density areas, typically have much higher load factors. The load factors drive high productivity per employee or per hour of work. High productivity in turn drives down unit cost. That is to say, the cost of furnishing one passenger mile, which is our output or our product. ... Large transit systems have the ability, more so than small transit systems, to support higher wages and benefits for their operators and for their workforce generally. [Tr 89]*

7

	Vehicle Ops Employees	Operator's Top Rate	MDT Operator's Top Rate
	<u>Union Ex 06N</u>	<u>Union Ex 06R</u>	<u>Union Ex 06R</u>
New York City	20,848	\$33.23	\$24.34
Chicago	6,978	\$32.82	\$24.34
Washington DC	6,494	\$31.69	\$24.34
Los Angeles	4,823	\$27.90	\$24.34
Philadelphia	4,128	\$28.81	\$24.34
Newark	3,983	\$28.16	\$24.34
Boston	3,881	\$35.86	\$24.34
San Francisco	2,846	\$33.98	\$24.34
Seattle	2,692	\$31.49	\$24.34
Atlanta	2,310	\$21.99	\$24.34
Dallas	2,259	\$24.79	\$24.34
Minneapolis	2,085	\$27.11	\$24.34
<b>Miami</b>	<b>2,020</b>	<b>\$24.34</b>	<b>\$24.34</b>
Houston	1,954	\$20.38	\$24.34
Baltimore	1,895	\$29.47	\$24.34
Portland	1,602	\$28.39	\$24.34
Denver	1,441	\$21.75	\$24.34
Oakland	1,415	\$30.57	\$24.34
Pittsburg	1,385	\$29.40	\$24.34
St. Louis	1,254	\$23.69	\$24.34
<b>National Avg.</b>	<b>3,815</b>	<b>\$28.29</b>	\$24.34
<b>Miami x 104%</b>		<b>\$25.78</b>	\$24.34
<b>Miami x 111.4%</b>		<b>\$27.11</b>	\$24.34

8

	Vehicle Ops Employees	Operator's Top Rate	MDT Operator's Top Rate
	<u>Union Ex 06N</u>	<u>Union Ex 06R</u>	<u>Union Ex 06R</u>
Atlanta	2,310	\$21.99	\$24.34
Dallas	2,259	\$24.79	\$24.34
Minneapolis	2,085	\$27.11	\$24.34
<b>Miami</b>	<b>2,020</b>	<b>\$24.34</b>	<b>\$24.34</b>
Houston	1,954	\$20.38	\$24.34
Baltimore	1,895	\$29.47	\$24.34
Portland	1,602	\$28.39	\$24.34
<b>National Avg.</b>	<b>2,018</b>	<b>\$25.21</b>	<b>\$24.34</b>
<b>Miami x 104%</b>		<b>\$25.78</b>	<b>\$24.34</b>
<b>Miami x 111.4%</b>		<b>\$27.11</b>	<b>\$24.34</b>

- 9 The County furnished, in its post-hearing brief, this well-considered assessment of the import of the statutory language:  
*A fair reading of the statute is that the "among other factors" catch all language relates to the possibility of relying on factors other than the salary comparison factors explicitly set forth in the statute. Indeed, it is notable that subsections (1) and (2) do not contain any open ended catchall language that would suggest that out of state employers' salary levels should be considered. It asks too much of the general statutory catch-all language to use it as an explicit repudiation of salary information from public employers inside Florida and from the local operating area. It hardly seems reasonable to ignore the Legislature's explicit detailed requirements for salary comparisons and instead rely on out of state data merely because the statute has an "among other factors" catch-all provision which does not even appear in the subsection describing salary comparisons. ...[The statute] conspicuously limits the consideration of salary comparisons to the "local operating area" and "public" employers "within the state."*
- 10 The Union is not faithful to the statute when it argues that the wage levels should be the greater of the CPI adjusted wages or comparability, and the County is not when it argues that wage levels should be the lesser of the two.
- 11 The Union's wage proposal sought to catch up with increases, spanning many years, in the Miami-Ft. Lauderdale Consumer Price Index. But, as noted, maintaining take-home wages at CPI equivalency rates is not one of the statutory factors, and must be given secondary importance to wage comparability.

### Wage Increase Retroactivity

The County signed contracts with all but two unions; one of the two being the TWU.<sup>1</sup> Prior to October 1, 2016 – the start of the County’s fiscal year and the start date of its collective bargaining agreements – the other eight unions (“*The Eight*”) agreed to a 4% ATBPI effective October 1<sup>st</sup>. Negotiations with the TWU continued beyond that date, and the County’s last offer to the TWU was for a non-retroactive 4% increase to take effect when the TWU CBA is ratified. Since ratification will occur after September 30, 2017, under the County’s proposal, the TWU bargaining unit members would receive no increase in pay for the work they performed during FY 2016-17.<sup>2</sup>

The County acknowledges that non-retroactivity will be a departure from the pattern bargaining that has prevailed for about four decades, but argues that it was the Union that broke that pattern when it rejected the 4% ATBPI offer that *The Eight* had agreed to. In the County’s view, a retroactive ATBPI for the TWU bargaining unit would further break the bargaining pattern because “No bargaining unit has received a retroactive COLA in the 2014-2017 collective bargaining agreement period” and because *The Eight* “ratified a prospective... COLA.”<sup>3</sup> Pattern bargaining aside, the County further asserts that, because the bus drivers have already rendered their services during FY 2016-2017, it is not in the public interest to pay them more for work already performed.

The Union replies that it was the County that broke the bargaining pattern when it demanded concessions from the TWU that exceeded, in number and magnitude, those it demanded from *The Eight*.<sup>4</sup> It also points out that when the shoe was on the other foot – in 2013, when County Mayor Carlos A. Gimenez vetoed a County Commissioners’ impasse resolution that would have ended a 5% contribution for certain bargaining units but not for others – he eschewed adherence to the pattern in favor of “equity and fairness.”<sup>5</sup> The Union notes that, in another Special Magistrate proceeding,<sup>6</sup> County Attorney Lee Kraftchick argued that delay of a 5% give-back by AFSCME 121 warranted increasing the percentage of that union’s give-back rate in order to achieve the same wage effect for the entire fiscal year as other County personnel had experienced:

*The principle underlying each of the County's past impasse decisions is that it is fair and equitable to treat all County employees the same with respect to general wage adjustments. ...*

*The principle of fair and equitable treatment of all County employees does not depend upon whether the adjustment is up or down. What is important is that the adjustment, whether it is an increase or a decrease, be the same for all employees.*

In that same case, a 3% ATBPI was granted in September 2010, retroactive to July of that year.

### **Special Magistrate's Recommendation**

The Special Magistrate recommends that the 4% ATBPI be made retroactive to October 1, 2016 for the primary reason that the statutory objective of the Special Magistrate process is to achieve a prompt and just settlement of the impasse. Requiring TWU bargaining members to forego a year's increased wages that other MDT employees have received will be perceived as unjust,<sup>7</sup> will engender bargaining unit antipathy, will impair morale, and will not lead to settlement.<sup>8</sup>

The County's assertion that paying the TWU bargaining unit members more for work already performed is inapt: the subject of this Special Magistrate proceeding is what the terms of employment of the TWU members should have been for the 2016-2017 contract year. The question of their rate of pay for that interval has been deferred pending settlement or action by the local legislative body.

---

1 The other is the County Water and Sewer Department's AFSCME Local 121.

2 The Union refers to its across-the-board percentage wage increase proposal as "contractual raises" and the County to its "COLAs." The Union's proposal of compound 3% - 3% - 5% increases would yield an aggregate increase of 11.4% for the three year interval started October 1, 2013. The County's non-retroactivity would yield no aggregate increase for FYs 2014-2017, albeit that the 4% increase would take effect upon ratification and be the starting point for any subsequent 2017-2018 ATBPI. For comparison, according to the parties' documentation, the consumer price index will have increased between 4.3% and 6% during that 3-year interval:

County Exhibit 14 page 2 showed cumulative CPI increases for 2014 through 2016 of 6%:

2014 : 1.6%

2015 : 0.1%

2016 : 1.3%

Union Exhibit 06H pages 10 and 11 show cumulative CPI increases of 4.3%

Oct 1, 2013 : 220.4

Oct 1, 2014 : 224.8

Oct 1, 2015 : 226.2

Oct 1, 2016 : 229.9  $((229.9-220.4)/220.4) = 4.3\%$

3 Quotation is of the County's written opening statement. In its post-hearing brief, the County stated that  
*...the County's current proposal for this Union is a prospective 4% COLA upon ratification which is consistent with the other units.*

Although the Special Magistrate has not been furnished with the ratification dates of the County's other CBAs, he doubts that they were all ratified on October 1<sup>st</sup>, and it is clear that the date that the wage increases took effect was October 1<sup>st</sup> and not necessarily the dates of ratification. In its brief, County also referred to the increase as a "prospective COLA," by which it meant that the increase would take place on October 1<sup>st</sup> and when the CBA was ratified. The County's tying of the increase to the date of ratification is unique to the TWU.

---

4 The rationale for wage non-retroactivity is that the union has prolonged the impasse (1) by unreasonably rejecting any one or more of the provisions offered and (2) by unreasonably insisting that the employer accept all of its proposals. Consideration of this argument requires an interest arbitrator to presuppose such unreasonableness. The Special Magistrate assumes that the same argument would pertain if a union were to assert that the employer was unreasonably prolonging the bargaining process and that the union's members should be paid double the pay increase amounts they seek until such time as the employer has capitulated.

5 Union Exhibit 06EEE.

6 SM 2009-009 for AFSCME Local 121. Here are relevant excerpts:

*Because the Union has managed to delay implementation of the wage reductions through numerous requests for extensions of time, the recommendation in this proceeding must take account of the cost associated with the delay in implementation of the wage reductions. In order to obtain the equivalent of the 5% reduction from February through September 2010 that all other County employees received, this unit will have to receive a 10% reduction from June through the end of the fiscal year in September, or even higher if implementation is delayed past June. ...*

*The principle underlying each of the County's past impasse decisions is that it is fair and equitable to treat all County employees the same with respect to general wage adjustments. ...*

*The principle of fair and equitable treatment of all County employees does not depend upon whether the adjustment is up or down. What is important is that the adjustment, whether it is an increase or a decrease, be the same for all employees.*

*No Special Magistrate has ever recommended departure from this policy, i.e., that one unit of county employees be treated differently than another when it comes to an across the board adjustment.*

*In recognition of this well-established history, in this year's negotiations each of the County's unions insisted upon and received a "me-too" clause, which guarantees either receipt of the most favorable wage adjustment received by any other County unit (GSA) or at least the right to reopen their contract...*

*Because the Union has through various requests for postponement of the impasse process managed to delay resolution of their contract by months, to ensure equal treatment of all County employees, the 5% decrease other County employees have accepted for the period February through September 2010 should be increased to -10% for the period June through September 2010 for members of this unit, then return to -5% beginning on October 1.*

The Special Magistrate and then-County Manager George Burgess were persuaded by County Attorney Kraftchick's argument:

*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 over 12 months, the individual contribution would be 8.1 percent of base pay. At the end of the one-year period, the contribution to the cost of Healthcare would revert to 5 percent...*

7 The injustice of the County's proposal can be appreciated by considering the following scenario. What if, instead of the County proposing that bargaining unit members forego a day's wage increase for each day that the Union holds out, the Union were to have proposed that bargaining unit members be paid twice their proposed wage increase for every day that the County held out. The County would undoubtedly have deemed the proposal outrageous and unjustified.

8 Having identified the primary reason for recommending retroactivity, the Special Magistrate will examine rule-driven reasons for the recommendation; reasons that he believes to be of secondary importance:

Under the statute, the terms of settlement are to be "just." Making wage increase retroactivity contingent on Union capitulation implicitly places the responsibility for non-settlement on the Union, because its members alone will suffer financial loss. The Special Magistrate finds that the Union alone has not been responsible for the protracted impasse; that the County shares some of the responsibility; and that non-retroactivity is therefore unwarranted.

---

The County has suggested a historic pattern of ratification preceding the cba effective date, but has proffered no collective bargaining agreements to support that pattern. SM 2009-009, discussed in the footnote immediately above, contradicts the claim.



### Availability of Funds

One of the statutory factors that the Special Magistrate is to weigh is the “availability of funds.” The County asserts that there are not funds available with which to pay a retroactive 4% ATBPI – a sum expected to be about \$7million<sup>1</sup> – to the members of this bargaining unit. The County points to a decline in transit fares each year since FY 2014-2015, from \$118 million to \$114 Million, to \$103 million, to an estimated \$102 Million in FY 2016-2017.<sup>2</sup> Additionally, FY 2016-2017 PTP sales tax receipts<sup>3</sup> are expected to decline from \$206 million in FY 2015-2016 to \$202 million in FY 2016-2017, contributing to a decline in total revenues of about \$29 million while total operating expenditures remain unchanged.

The Union responds that the County adopted a FY 2016-2017 operating budget for its Transportation and Public Works Department that included a retroactive 4% ATBPI for all of its personnel, including the members of this bargaining unit.<sup>4</sup> In January 2017, County Mayor Carlos A. Giménez, described that budget as “*sustainable, resilient and forward-looking.*”<sup>5</sup> The same opinions were expressed in the County’s Transit Enterprise Fund Annual Financial Report for FYE September 30, 2016.<sup>6</sup>

Of the nation’s twenty largest transit systems, Miami-Dade County charges its passengers less than all but four. MDT’s low fares are the result of the County’s political decision to subsidize public transportation users, many of whom have low incomes. That subsidization is a policy choice that the County and not the members of this lone bargaining unit should fund.<sup>7</sup> As noted by a blue ribbon panel of arbitrators in a 1997 Presidential Emergency Board report pertaining to Amtrak,<sup>8</sup> transit systems are inherently money-losing operations that require subsidization. The funding of those systems is a political decision that should not be confused with the fair compensation of transportation employees.<sup>9</sup>

Belying the County’s claim that there are insufficient funds available to pay this bargaining unit a 4% retroactive increase is the fact that the County has not declared a state of *Financial Urgency*<sup>10</sup> pursuant to which the claimed unavailability of funds would be shared among all employees. Instead, reflecting a phenomenon described by William J. Fallon in a relevant monograph, the County is proposing placing the burden upon TWU 291 because, this time, they are the last in line:<sup>11</sup>

*I would characterize the "inability-to-pay" arguments, presented by these employers as the "last-in-line" argument; that is, after money has been allotted to all of the other creditors of the governmental unit involved—including whatever increases that have been allowed-- whatever is left may be applied to the employees in the bargaining unit, and if that is not enough to fund an increase in wages, which would otherwise be justifiable*

*when judged by all the traditional criteria, that is just too bad. The shortfall lands at the employees' doorstep.*

**Special Magistrate's Recommendation**

The County derives 26% of its funding for the DTPW from its General Operating Fund.<sup>12</sup> The Special Magistrate finds that the County has not attempted to prove and, prima facie, has not proven that the County's General Operating Fund lacks the money with which to pay the increment<sup>13</sup> represented by the retroactive 4% ATBPI to the members of this bargaining unit. The Special Magistrate recommends that a 4% ATBPI be made retroactive to October 1, 2016.

- 
- 1 Per County exhibit 12, total wages paid to TWU 291's members during calendar 2016 was \$165 million. A 4% increase to that sum would be \$6.6 million.
  - 2 County Exhibit 27. A County witness testified that the causes for the declines are not definitively known, but that one cause may have been that, with the improving economy, more Miami-Dade residents are able to purchase their own cars and eschew public transit.
  - 3 These are surtax derived funds to be used for specified transit and roadway improvements under a People's Transportation Plan or "PTP."
  - 4 The TWU ATBPI was budgeted at about \$7.8 million, or about .46% of the County's General Operating Fund FY 2016-17 total expenses. Source: Union Exhibit 06RR – FT 2016-17 Proposed Budget and Multi-Year Capital Plan, page 7.
  - 5 Union Exhibit 06HHH. Mayor Giménez stated, inter alia, the following:
 

*Our budget is sustainable, resilient and forward-looking. In fact, for the first time in five years, we were able to reward County employees for their past sacrifices and hard work by awarding a 4 percent across-the-board cost-of-living adjustment in 2016...*

*At 5 percent, our unemployment rate is the lowest its been since I was first elected in 2011. Down from around 10 percent actually...*

*The private sector has created more than 168,000 jobs since 2011, and our economic growth has continued to outpace our population growth...*

*NBC Universal Telemundo Enterprises is... building its \$250 Million global headquarter right here in Miami-Dade County. Telemundo is committing to creating 150 new permanent jobs... and approximately 3,000 additional construction jobs.*

*Fed-Ex is also constructing a new building... that... is expected... to bring a minimum of 50 new permanent jobs in the first year of operations...*

*And... our economy is about to get even better...*

*...Miami-Dade County also broke records for overnight visitors, too – welcoming 15.8 million people to Miami-Dade County. That's a two percent increase over the previous year...*

*[Miami International Airport] welcomed 44.5 million travelers, and broke records for air passenger traffic for the seventh consecutive year. M.I.A. also added 10 new airlines and welcomed the first non-stop passenger trip from Asia to Miami.*

*...PortMiami not only welcomed nearly 5 million more multi-day cruise passengers – That's a world record... Also, Royal Craibbean will invest approximately \$200 million in a new terminal that will allow us to accommodate the new generation of mega-cruise ships. And MSC Cruises will be bringing their second ship to Miami-Dade in December... and... a third ship in 2019.*

**ALL THIS MEANS EVEN MORE JOBS AND ECONOMIC BENEFITS FOR MIAMI-DADE COUNTY RESIDENTS!**
  - 6 Union Exhibit 06SS, page 12, inter alia:
 

*Evaluating all the likely developments in major areas of the economy leads to a forecast that the Miami-Dade economy appears poised to continue growing through FY 2017, similar to the previous fiscal year. There is expected to be continued improvements on the local economic front with somewhat slower growth rates, as the economy reaches closer to full capacity. The degree of expansion will depend upon the stability in government employment, moderate growth in the tourism, real estate and construction sectors and growth rates in Central and South America and the Caribbean.*

7 Source: Union Exhibit 06UU.1

Rank	System	Fare Revenues	Passenger Miles	Fare \$ / Pass'r Mile	% Deviation from Miami-Dade
1	San Francisco	\$ 213,327,914	460,587,164	\$ 0.463	139.40%
2	Washington	\$ 773,485,768	2,014,330,504	\$ 0.384	98.47%
3	Boston	\$ 398,768,135	1,068,309,508	\$ 0.373	92.93%
4	Pittsburgh	\$ 91,712,299	259,931,474	\$ 0.353	82.37%
5	Newark	\$ 387,197,059	1,132,075,242	\$ 0.342	76.78%
6	New York	\$ 4,278,384,377	12,621,809,131	\$ 0.339	75.20%
7	Philadelphia	\$ 323,839,413	1,028,164,855	\$ 0.315	62.80%
8	Oakland	\$ 67,174,890	214,981,019	\$ 0.312	61.51%
9	Seattle	\$ 159,838,049	534,374,653	\$ 0.299	54.60%
10	Chicago	\$ 591,366,583	2,147,039,829	\$ 0.275	42.36%
11	Minneapolis	\$ 92,489,781	350,282,301	\$ 0.264	36.48%
12	Portland	\$ 114,593,736	494,137,514	\$ 0.232	19.87%
13	Denver	\$ 116,787,390	574,823,719	\$ 0.203	5.01%
14	Baltimore	\$ 75,849,236	382,837,606	\$ 0.198	2.40%
15	Atlanta	\$ 141,848,773	729,789,308	\$ 0.194	0.46%
<b>16</b>	<b>Miami</b>	<b>\$ 113,522,590</b>	<b>586,766,752</b>	<b>\$ 0.193</b>	<b>0.00%</b>
17	St. Louis	\$ 50,039,788	284,353,302	\$ 0.176	-9.04%
18	Los Angeles	\$ 351,648,303	2,067,664,979	\$ 0.170	-12.10%
19	Dallas	\$ 57,221,950	389,792,676	\$ 0.147	-24.12%
20	Houston	\$ 65,052,695	480,915,468	\$ 0.135	-30.08%

8 Richard I. Bloch, Arnold M. Zack and Roberta Golick in Emergency Board Report No 234 to President Jimmy Carter.

9 Quoting a part of the Emergency Board Report, Union Exhibit 06VV at page 6:

*We recognize and accept the difficult political, financial and fiscal quandary in which Amtrak finds itself in seeking to provide the country with essential passenger transport while maintaining the loyal and cooperative services of its bargaining unit employees. We also recognize the Carrier's good faith effort in continuing to provide COLA improvements while seeking [Brotherhood of Maintenance of Way Employees] BMWWE endorsement for its strategic efforts at survival.*

*...the issue of Amtrak's survival lies properly in Congress. That issue should not be confused with the obligation of the employer to continue to provide standards of fair compensation as it has in the past based on the traditional tests of cost of living, comparability, and inter- and intra-industry inequities. Once those standards of fairness are prescribed, it is within the authority of Congress to provide the funding so vital to Amtrak's ability to continue providing passenger train service. Congress has the ability to fund Amtrak's request; the issue is whether it has the willingness to do so.*

*Our obligation is to recommend a fair and equitable package of compensation for maintenance of way employees, and then leave to the funding authorities the issue of whether or not they wish to fund that package. We cannot, in good conscience, shirk that responsibility to the parties and to the collective bargaining process by surrendering to what might be characterized as political expediency...*

10 Florida Statute §447.4095 Financial urgency.

*In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency. If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred, and one of the parties shall*

---

*so declare in writing to the other party and to the commission. The parties shall then proceed pursuant to the provisions of s. [447.403](#). An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.*

- 11 “Interest Arbitration: Can the Public Sector Afford It? Developing Limitations on the Process”, “An Arbitrator’s Viewpoint”, *The Proceedings of the National Academy of Arbitrators*, 1981 at page 266.
- 12 According to its FY 2016-2017 Adopted Budget (Union Exhibit 06PP, page 4 [page 137 of the Adopted Budget]), the General Fund was to furnish \$195 million of the DTPW’s \$748 million revenues.
- 13 This conclusion was corroborated by County Budget Director, Jennifer Moon, who testified that the requisite \$7million would be available, albeit that it would entail some layoffs of County personnel and cuts in reserve accounts. [Tr 339-341]

**Article 3 – General Working Conditions**  
**Article 03.1 Labor-Management Committees**

**Article 3.1.B – Joint Citizen/Passenger Service Committee (or “JCPSC”)<sup>1</sup>**

The Union proposes the addition of a new committee – the Joint Citizen/Passenger Service Committee (or “JCPSC”) – to be comprised of six persons: two TWU members, two people selected by the TWU<sup>2</sup>, and two people selected by the MDT. The JCPSC would make recommendations to MDT about (1) transit services to be rendered, (2) access to and (3) the safety of those services, all with an eye toward (1) the avoidance of invidious discrimination and (2) compliance with the laws against such discrimination. The JCPSC would also make recommendations to MDT regarding the People's Transportation Plan or “PTP,” an existing program for improving major highways, roads and neighborhoods that is funded by a voter-approved half-cent surtax.

Under the JCPSC proposal, MDT would be required to provide “any documents” to the JCPSC that would serve them in their deliberations. The JCPSC would be “permitted to advertise and hold public forums to address transit service issues” and its members would be able to meet as often as they wished<sup>3</sup>, including during working hours, in which event the Committee’s Union members would not be required to report to their assignments but would continue to be paid by the MDT.

The Union describes the JCPSC purposes as being to facilitate dialogue and increase cooperation and “collaboration” between MDT, its employees and the citizenry, and to thereby improve MDT.

**Special Magistrate’s Recommendation**

The Special Magistrate recommends that this proposal be rejected. The assessment of public needs, access, safety, and statutory compliance is best left to the MDT’s managerial staff trained in making such policy decisions, and not to TWU members or their selectees who, under the Union’s proposal, need not have expertise in the subjects; whose demands for production of documents would be unrestrained as to quantity and subject matter; whose efforts, however sincere, might yield counter-productive and erroneous conclusions; and who would be seen, by reason of their being an MDT committee, as speaking with MDT imprimatur on matters with which MDT management might disagree.

- 
- 1 The following is the text of the Union's proposed Article 3.1.B:
    - B. *There shall be a Joint Citizen/Passenger Service Committee ("JCPSC") consisting of two employee members and two citizen/passenger members designated by the Union, and two employee members designated by the MDT Director. The JCPSC should reflect diversity of race, ethnicity, income level, age, and disability.*

*The purpose of the JCPSC meetings shall be to discuss and make recommendations regarding improvements and efficiencies to the services provided by Miami-Dade Transit to the community; to discuss and make recommendations with regard to compliance with the laws, including Title VI, which prohibits discrimination on the basis of race, color or national origin in programs and activities receiving federal financial assistance, to discuss and make recommendations regarding the sufficient, equitable and fair access to services by all sections of the community, regardless of race, ethnicity, disability or income; to discuss and make recommendations regarding the People's Transportation Plan (PTP) for which the citizens of Miami-Dade County approved a ½ Cent Charter County Sales Surtax, and to discuss and make recommendations regarding the safety and condition of the services provided by Miami-Dade Transit.*

*The JCPSC members will be provided with any documents that will serve or aid them in their discussions and deliberations on a timely basis, including, within 6 months of ratification of this Agreement, an audit showing all revenue and expenditures of the ½ Cent Charter County Sales Surtax from 2009 to date, and will be permitted to advertise and hold public forums to address transit service issues.*

*The JCPSC shall meet on a monthly basis or at other times by mutual consent. These meetings shall be held during working hours, without loss of pay to Union representatives, who are not on leave of absence under Article III.2 hereof. Committee members who attend these meetings will not be required to report to their regular assignments that day. Committee members who are off-duty on the day a JCPSC meeting is held will receive an alternate day off not later than the end of the pay period subsequent to the one in which the meeting was held.*
  - 2 The JCPSC proposal does not preclude these two persons, as well, from being TWU members.
  - 3 The right to meet at any time and for any duration inheres in the statement that the committee can meet "at other times by mutual consent." Assuming that "mutual consent" means the consent of a majority of the six person committee, of whom four are MDT members or appointees, such "mutual consent" could result in a state of perpetual meeting.

**ARTICLE 3.1 LABOR-MANAGEMENT COMMITTEE  
IN-HOUSE GEARBOX OVERHAUL MEMORANDUM**

CBA Article 3.1 provides for the existence of a Labor-Management Committee whose mission is to identify cost savings and determine whether work can be done in-house.<sup>1</sup> Under the auspices of that Article, on June 27, 2014, the parties signed the following memorandum:

*MEMORANDUM OF UNDERSTANDING ON JOINT LABOR MANAGEMENT EFFICIENCY  
PROJECTS PER ARTICLE III.1*

*WHEREAS the TWU and the County have agreed to continue with and/or embark on  
cost savings projects:*

*IT IS THEREFORE AGREED AS FOLLOWS: [inter alia]*

*(1) The parties agreed to the following:*

*a) The County shall perform gear box overhaul in-house utilizing TWU  
bargaining unit employees.*

The memorandum pertains to Metrorail car gearboxes. The parties did not implement or enforce this memorandum after it was signed, and the County proposes its discontinuation for the reasons that

- the fleet of cars equipped with the gearboxes to which the memo pertains is being retired starting in 2017, and none will require an overhaul prior to retirement;
- the fleet of new, replacement cars has an overhaul interval of 1 million miles, or approximately one overhaul every sixteen years; and, to quote its post-hearing brief,
- The County's proposal restores the County's management right to contract out for goods and services without the useless mandate to create, staff and use an in-house gearbox facility that makes no sense.

The County estimates that the facilities and tool costs to perform gearbox repairs on the new cars would be between \$2.8 and \$5.0 million, and that overhauls would not commence until 2022 (i.e., 5 years after delivery of the first of the new cars).

The Union counters that the County's representations are unsubstantiated, that the overhaul facilities have already been budgeted for, that the required tools are presently available, and that the rail technicians are competent to do the work. The Union argues that its members should be permitted to attempt to do the work and that only if they prove to be unable to do it should the memorandum be discontinued.<sup>2</sup> The Union also opines that the replacement cars are unlikely to arrive on schedule because nothing ever does; that the old cars will likely need to have



their gearboxes overhauled before their replacements are in operation; and that the Union can save MDT money on those overhauls, which savings were the premise upon which the original understanding was based.<sup>3</sup>

#### SPECIAL MAGISTRATE'S RECOMMENDATION

Circumstances have changed since the *Gearbox Overhaul Memorandum* was signed and, given the high degree of speculation about whether, when and in what number old gearboxes will need to be overhauled, the purpose of Article 3.1 – to develop “*cost savings projects*” – will not be served by committing – now – to a project with so many uncertainties. Nor would the Special Magistrate, whose knowledge about such operations is nil, undertake to make a business recommendation based upon the scant information with which he was presented. Instead, the Special Magistrate recommends that the parties adopt language along the following lines:

*As and when the overhaul of gearboxes on Metrorail cars appears imminent, the County will so notify the Union and the parties will jointly develop a feasibility study pertaining to having the work performed in-house. Thereafter, the determination as to feasibility will be made by the County, which will advise the Union of its determination prior to the overhaul work being contracted out. The Union may grieve the County's determination on the grounds that the County has failed to exercise reasonable business judgment.*<sup>4</sup>

- 
- 1 ARTICLE III - GENERAL WORKING CONDITIONS, Article 111.1 Labor-management Committee  
*There shall be a Labor-management Committee consisting of members designated by the Union and the MDT Director. The Labor-management Committee shall meet on a monthly basis or at other times by mutual consent.. The Labor-management Committee shall have as its specific mission to:*
    - 1) *Identify cost savings system-wide.*
    - 2) *Evaluate all work before it is contracted out to insure we do not have the capabilities of performing the work in-house....*
  - 2 Quoting Union counsel, Transcript at Page 544:  
*And it just seems strange that when the parties agree to do gearbox work in-house and they don't do it, they should be rewarded by getting out of the contract? Go attempt to do it. If it can't be done, it's fine. But it shouldn't be done by way of alleged unsubstantiated representations we can't do it.*
  - 3 Quoting Union counsel, Transcript at Page 544-545  
*Lastly, new cars are coming in. We believe they'll never come in on time, because nothing has ever come in on time here. And we'll still be doing these when we can save money for the agency. And by the way, if we can't save the money, we don't get the work. This is one of those examples where they signed an agreement to let us do this because they knew it was cost effective, and Mr. Martin, their guy, shows exactly how it is cost effective. So we believe that you should say, y'all figure it out, live up to your agreement.*
  - 4 The parties are currently arbitrating the enforceability of this MOU. The Union has argued that the County cannot use the Special Magistrate process to circumvent that arbitration. The Special Magistrate observes that breach of contract grievances are retrospective, and that any change in the CBA resulting from this impasse proceeding will affect only the remedy and will not circumvent the arbitration. If arbitration of a contract provision could take it off the table of the Special Magistrate proceeding, all sorts of mischief could ensue.

**Article 3 – General Working Conditions**  
**Article 3.2 Authorized Leave for Union Activity**  
**Article 3.3. Stewards**

CBA Article 3.3 – Stewards – sets forth the number of full-time Union stewards to be employed and the number of hours per day for which they will be paid.<sup>1</sup> (The CBA states that the number of hours per week is, variously, the duration of the longest associated division run or 45 hours.) Currently, 11 bargaining unit members spend their entire workday as Union stewards. No prior approval of a supervisor is required for these bargaining unit personnel to do so.

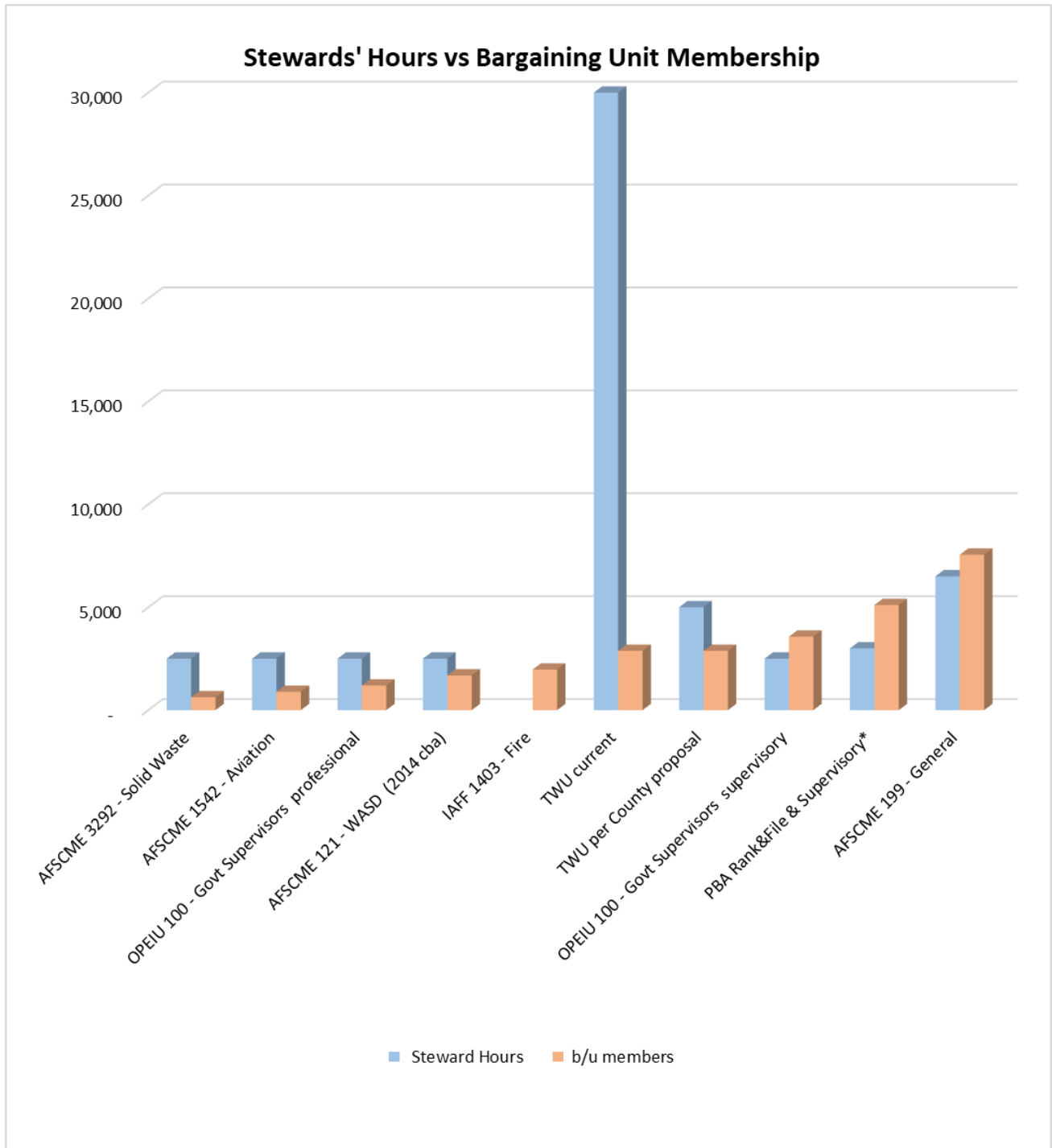
The above 11 bargaining unit members do not include the Local President, 4 Union MAP counselors, or up to seven bargaining unit members who are paid to attend contract negotiations pursuant to CBA Article 3.2, *Authorized Leave for Union Activities*. The following twelve employees are paid for approximately 30,000 hours of funded release time annually.

	<b>Name</b>	<b>Position</b>
1	Clarence Washington	President
2	Andrew Alcindor	Shop Steward
3	Richard Dunbar	Shop Steward
4	Antonio Gonzalez III	Shop Steward
5	Calvin Stewart	Shop Steward
6	Kevin Craig	Shop Steward
7	Andrew Wilson	Shop Steward
8	Joseph D'Elia	Shop Steward
9	Winnecca Montgomery	Shop Steward
10	Maurice Dixon	Shop Steward
11	Jeffrey Mitchell	Shop Steward
12	Jeffrey Wright	Shop Steward

The County calculates that, during FY 2015-2016, it paid about \$3 million in wages for the employees of its ten bargaining units to engage in union-related work. The TWU's 2,900 members constitute about of 11% of MDT's 25,000 employees but, according to the County's numbers, they received about 40% of that \$3 million (inclusive of the MAP counselors).

Eight of the County's ten bargaining units have an annual ceiling on the aggregate number of hours of MDT-paid Union-related activities. Those eight are identified in the chart below.<sup>2</sup> The same unions require that stewards obtain the prior approval of a supervisor before investigating grievances.

	<b>Steward Hours</b>	<b>b/u members</b>	<b>Hours per b/u member</b>	<b>cba negotiating hours</b>
<b>AFSCME 3292 - Solid Waste</b>	2,500	626	4.0	included
<b>AFSCME 1542 - Aviation</b>	2,500	891	2.8	included
<b>OPEIU 100 - Govt Supervisors professional</b>	2,500	1,195	2.1	included
<b>AFSCME 121 - WASD (2014 cba)</b>	2,500	1,685	1.5	included
<b>IAFF 1403 - Fire</b>		1,972	-	
<b>TWU current</b>	30,000	2,880	10.4	not included
<b>TWU per County proposal</b>	5,000	2,880	1.7	included
<b>OPEIU 100 - Govt Supervisors supervisory</b>	2,500	3,569	0.7	included
<b>PBA Rank&amp;File &amp; Supervisory*</b>	3,000	5,105	0.6	not included
<b>AFSCME 199 - General</b>	6,500	7,551	0.9	included
* The combined PBA contracts call for a maximum cumulative 250 hours a month of Union time.				
All contracts but the IAFF's require the prior approval of the supervisor or, in the case of AFSCME 1542's cba, the written approval of the director of labor relations at least a week in advance.				
All contracts except those of the PBA and IAFF include the time spent bargaining within the annual total hours limitation.				



Under FS §447.501(1)(e), public employer payment of release time for union personal is considered an unfair labor practice if not used for direct representational activities.<sup>3</sup> In a recent decision, the Florida Public Employees Relations Commission ruled that a public employer must have “objective corroboration” that its shop stewards are using their funded release time for solely those activities.<sup>4</sup>

The County is proposing the full-time release of two Union officials but, beyond that,

- an annual limitation of 5,000 hours (inclusive of cba negotiating time) of stewards’ activities on the clock, with prior supervisory approval required for stewards’ time spent handling grievances, and
- elimination of the attendance of up to seven TWU bargaining unit members to attend contract negotiating sessions.

The County would accomplish this by

- (1) eliminating CBA Article 3.2, Authorized Leave for Union Activity;<sup>5</sup>
- (2) eliminating from Article 3.3, Stewards, the designation of persons as being, exclusively, full-time stewards (see endnote 2);
- (3) adding to Article 3.3, Stewards, the 5,000 hour limitation and the requirement for prior supervisory approval;<sup>6</sup> and
- (4) eliminating Article 3.2. B, Contract Negotiations, which provides for the paid attendance of seven bargaining unit members at contract negotiations. (See endnote 4.)<sup>7</sup>

The Union responds that no other County Unions have experienced a reduction in their released personnel, and that TWU 291 would be the only union for which the imposition of a formula like that applied to those other unions would result in a loss of full time release hours (“FTR”). The Union argues that no evidence has been presented to prove that its representatives have not been performing direct representational activities while on FTR and that the burden of proof is on the County to demonstrate otherwise. The current CBA language provides that each division in the department has at least one steward with offices at each location, and those stewards have, in fact, been rendering valuable services to the Union members.<sup>8</sup> The stewards have been “an extension of the County... part of a joint operational partnership.”<sup>9</sup>

### SPECIAL MAGISTRATE'S RECOMMENDATIONS

No Union-related workload information (including regarding the grievance caseload) was proffered to support either party's position as to what would constitute a reasonable number of aggregate hours for the TWU stewards. And there appears to be no hourly tracking of how stewards are spending their time. Absent that data, the Special Magistrate cannot judge how many hours the TWU stewards reasonably require to competently satisfy the representational needs of their bargaining unit. Nonetheless, prudence in the spending of the public's money and the constraint imposed by FS §447.501(1)(e) as interpreted by PERC makes a quantitative limitation necessary.

With no other touchstone available, the Special Magistrate bases his recommendation upon the MDT cbas now extant other than the TWU's. They average 1.6 hours annually per bargaining member. The TWU's is currently about 10.4 hours per bargaining unit member. The County's proposal of 5,000 hours would bring that down to 1.7 hours/member, which would be in line with the other MDT bargaining units. The attendance of up to seven bargaining unit members at negotiating sessions would be included within the 5,000 hour limitation. To effectuate the foregoing, the Special Magistrate recommends adoption of the County's Article 3.2 and 3.3 proposals, with the exception of the following:

- Article 3.2.A. permits but does not mandate the release of MDT employees to work for the Union full time on the Union's payroll while preserving their employment status for the Longevity Bonus Award. (The CBA says that such employees "may be granted" such leaves of absence without pay.)

*Article 3.2.A. Authorized Leave for Union Activity – Leave of absence without pay may be granted to a permanent employee for the purpose of accepting a position with the Union representing the employees of MDT. Full-time union officials granted an extended leave of absence shall be considered in pay status for Longevity Bonus Award purposes, as provided in Article VII.2B herein. This shall apply retroactively.*

The Special Magistrate recommends the retention of Article 3.2.A. because the employment release it contemplates is within MDT's exclusive discretion. MDT can effectively nullify the provision by not granting such releases, but it will still have the discretion to issue the leave.

- Absent exigent circumstances, the scheduling of stewards' representational activities while on-the-clock should be subordinate to the operational needs of MDT. For that reason, and to assure the "objective corroboration" required by §447.501(1)(e), the

Special Magistrate recommends that the County's proposal – that supervisory authorization be a precondition to investigating grievances – be adopted.

- The following provision seems self-evident, but the Special Magistrate does not want his recommendation of the discontinuation of Article 3.2.B. to be construed as a recommendation of its discontinuation as well:

*Article 3.2. B. Employees Conducting Union Business - Except for full-time Union officials granted an extended leave of absence, employees given time off to conduct Union business will be considered in pay status.*

- The Special Magistrate recommends retaining Article 3.2.B., Contract Negotiations, as amended here:

*Article 3.2. B. Contract Negotiations - MDT shall pay for up to seven (7) bargaining unit members identified by the Union (other than the chief shop stewards) to attend labor contract negotiating sessions. Employees will be paid for time in attendance at the meetings, plus appropriate travel time if they are traveling from or returning to work before or after the meeting. The attendance of those members will be included in the annual 5,000 hour limitation.*

- Article 3.2.B.<sup>10</sup> – *Daily Overtime* – deals with daily overtime while “booked off” on Union business. It requires that MDT pay a bargaining unit member who has been “booked off” to spend their entire day engaged in Union business be paid what they would have earned had they worked their regular run. (If that run entails regularly scheduled overtime, then the employee would be paid what they would have earned, inclusive of that overtime.) The Special Magistrate recommends the retention of this provision because, with the new requirement of prior supervisory approval for grievance processing, supervisors can avoid the “booking off” of a steward for an entire day but, if the supervisor nonetheless elects to book the employee off for the day (or if exigent circumstances would make it unreasonable for the supervisor to deny such a request) then that steward will not suffer a cut in pay for having performed his/her representational duties. (For the same reason, the Special Magistrate recommends retaining the Article 3.2.B, subparagraph titled “Weekly Overtime.”)
- The Special Magistrate recommends the retention, without change, of CBA Article 3.2.C. *Union Time Pool.*

---

## 1 Article 3 – General Working Conditions, Article 03.3 – Stewards

*The Union has the right to select employees from within the Bargaining Unit, as herein defined, to act as Union Stewards. The names of employees selected shall be certified, in writing, to MDT by the Union. It is agreed to and understood by the Union that Union Stewards shall process grievances and conduct their other duties in such a manner as to not disrupt normal MDT activities, work production, and services as follows:*

- a) *One bus operator at each existing, (Central, Northeast, Northwest, Coral Way), and any other newly created Transit division as full-time stewards five (5) days per week. Payment shall be equivalent to the amount paid for the run with the highest run hours available to bus operators at their existing or newly created division during each line-up period, with the exception of the Central Division. The steward assigned to the Central Division shall serve as the Chief Bus Operations Shop Steward and shall be paid the equivalent of the highest run hours available to all MDT bus operators.*
- b) *One bus maintenance employee on first shift at each existing (Central O & I, Major Overhaul, Northeast, Northwest, Coral Way) and any other newly created Transit division as full-time stewards, five (5) days per week. In addition to the standard forty (40) hour work week, as a result of the elimination of part-time stewards and to facilitate effective shift coverage, bus maintenance stewards shall receive one (1) hour of daily overtime pay (with the exception of the Central O & I steward who shall be paid 50 hours per week. Payment for any hours over forty (40) per week shall be at the applicable rate.*
- c) *One rail employee as full-time steward, five (5) days per week. Payment shall be equivalent to that amount paid for the run with the highest run hours during each line-up period.*
- d) *One rail employee (Maintenance/Mover) as full-time steward, five (5) days per week. In addition to the standard forty (40) hour work week, to facilitate effective shift coverage, the rail maintenance/mover steward shall receive*
- e) *one (1) hour of daily overtime pay. Payment for any hours over forty (40) per week shall be at the applicable rate. It is noted that the two (2) full-time rail stewards will share office space.*
- f) *One Field Engineering Systems Maintenance (FESM) employee on first shift as full-time steward five (5) days per week. In addition to the standard forty (40) hour work week, to facilitate effective shift coverage, the FESM steward shall receive one (1) hour of daily overtime pay. Payment for any hours over forty (40) per week shall be at the applicable rate.*
- g) *One Transit Revenue Collector (TRC) employee on first shift as full-time steward five (5) days per week. In addition to the standard forty (40) hour work week, to facilitate effective shift coverage, the TRC steward shall receive one (1) hour of daily overtime pay. Payment for any hours over forty (40) per week shall be at the applicable rate.*
- h) *If it is necessary for a shop steward to attend a Labor Management Meeting, this would be allowed to exceed the stated hours. Such attendance shall be by mutual agreement of MDT and the Union.*

- 2 The following are provisions of MDT's cbas pertaining to union time. Bold font emphases are the Special Magistrate's.

### **AFSCME 121 – Water & Sewer**

*Article 10. Union Stewards and Representatives*

...

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 and Compensation.*
5. *The Union President, Vice President and Secretary-Treasurer and two (2) additional bargaining unit members, designated in writing by the Union President to the Director of the Labor Management and Compensation, will be released from duty with pay to administer this agreement. The Union President and any additional*



employees released from duty 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 evaluation ratings received prior to serving in such capacity. In addition to the standard forty-hour work week, all employees on full-time release shall receive one (1) hour of daily overtime pay. In addition, hours worked by employees who have been authorized to be released from duty to administer this agreement ("Y" time) shall be considered hours worked and included in the overtime calculation.

Article 11. Attendance at meetings

1. The President, Vice President and three (3) officers or other representatives of the Union shall be allowed time off without loss of pay from their regular employment, when necessary, to negotiate with the County regarding terms and conditions of employment. These employees shall be designated in writing to the Department Director and the Director of Labor Management and Compensation. The Union shall give reasonable notice to the employee's supervisor.
2. Three (3) representatives of the Union shall be authorized time off without loss of pay to attend any of the following conventions:

An International Convention of AFSCME which is held every second year; State Convention of AFSCME Council 79 which is held once a year.

State AFL-CIO Convention which is held once a year.

The maximum number of days allowed per convention per person shall be: Five (5) days to attend the International Convention of AFSCME, three (3) days to attend the State Convention of AFSCME Council 79 and four (4) days for the State AFL-CIO Convention. These employees shall be designated in writing to the Department Director. The Union shall give reasonable notice to the employee's supervisors.

3. Time off with pay shall be permitted to the Union President (or his/her designee) to attend any County Commission or Department meetings concerning Union affairs.

**AFSCME Local 1542 – Aviation Dept**

Article 11. Labor-Management conferences

... The Union shall be represented by the **President, Vice President, and not more than five (5) Union Representatives**. Names of representatives shall be certified to the Aviation Department Director and the Director of Labor Relations of Miami-Dade County. The Department will allow Union Representatives up to **one (1) hour**, without loss of pay, to prepare items of discussion prior to the scheduled meeting, and a **half (1/2) hour after** the meeting for debriefing. The time required to **travel to and from these meetings** shall be additionally afforded.

Article 13. Attendance at meetings

1. **Five (5) officers or other representatives** of the Union shall be allowed **time off** without loss of pay from their regular employment, **when necessary, to negotiate** with the County regarding terms and conditions of employment. These employees shall be designated in writing to the Department Director and the Director of Labor Relations for Miami-Dade County. The Union shall give reasonable notice to the employees' supervisors.
2. **Two (2) representatives** of the Union shall be authorized time off without loss of pay to attend any of the following **conventions and meetings**:

An International Convention of AFSCME which is held every second year.

State Conventions of the AFL-CIO which are held twice a year.

Council 79 State Executive Board meetings which are held quarterly.

**The maximum number of days allowed per convention per person shall be five (5)**. These employees shall be designated in writing to the Department Director. The Union shall give reasonable notice to the employees' supervisors.

3. **The Union President and Vice President** will be released from duty with pay to administer this Agreement. **Additionally**, the County will authorize **up to 2,500 hours** for each year of the Agreement, time off with pay for union representatives to participate in union approved activities **providing that the Union**

**President requests the leave in writing to the Director of Labor Relations no less than one (1) week in advance** of the scheduled time off. The hours allocated per year shall not be cumulative. These authorized hours are **inclusive of the hours granted in Article 12** Union Stewards and Representatives.

4. In addition to the standard forty-hour work week, **the Union President, Vice President, and any employee released from duty for a minimum of 40 hours per work week, shall receive one (1) hour of daily overtime pay.** In addition, hours worked by employees who have been authorized to be released from duty to administer this agreement ("Y" time) shall be considered hours worked and included in the overtime calculation...

#### **AFSCME Local 199**

##### *Article 13. Union stewards and non-employee union business representatives*

*...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 shall not be unreasonably withheld. It is agreed to and understood by the parties to this Agreement that there shall **not be more than two hundred (200) stewards** within the Bargaining Unit, as herein defined. It is agreed to and understood by the Union that Union Stewards shall process grievances and conduct their other duties in such a manner as to not disrupt normal County activities, work production and services. Distribution of Union Literature shall not be done in work areas during work times.*

*Every effort will be made, by both the County and the Union, to allow Union Stewards to investigate grievances as rapidly as possible, preferably on the same date as the grievance becomes known and at least within twenty-four (24) hours. The investigation of a pending grievance or persona! conduct of employees during work times by Employee Representatives, Union Stewards or Non-employee Union Business Representatives shall not be done without first receiving prior approval from an employee's supervisor. Approval shall not be unreasonably withheld...*

*The total amount of time granted to the Union Representatives cumulatively to process grievances and to attend **union functions shall not exceed the 6,500 hours** in total for each contract year of this Agreement **in accordance with Article 32.** Time taken off under this provision shall be charged to the Union Activity Leave.*

*... The Union agrees that activities by the Union Representatives shall be carried out in such manner as not to disrupt normal Departmental or Agency activities, work production and services.*

##### *Article 32. Leave without pay*

3. **Seven (7) employees will be permitted, when necessary, to participate in collective bargaining negotiations** with the County. These employees shall be designated in writing to the Elected/Appointed Agency Official or Department Director and the Director of Labor Relations for the County. The employees shall give reasonable notice to their supervisors.
4. **The Union President and Vice President** or equivalent Union designee will be released from duty with pay to administer this Agreement...
5. **Employees designated by the Union to attend Union functions.** The total amount of time granted to all employees cumulatively seeking leave under this provision and Article 13 shall not exceed **6,500 hours** for bargaining unit employees in any contract year.

#### **AFSCME Local 3292** – Solid Waste Employees

##### *Article 13. Union stewards and non-employee Union business representatives*

*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 shall not be unreasonably withheld. It is agreed to an understood by the parties to this agreement that there shall not be more than **thirty-four (34) Stewards** to include one (1) Chief Steward within the Bargaining Unit, as herein defined. It is agreed to and understood by the Union that Union Stewards shall process grievances and conduct their other duties in such a manner as to not disrupt normal County activities, work production and services...*

*Every effort will be made, by both the County and the Union, to allow Union Stewards to investigate grievances, preferably on the same date as the grievance becomes known and at least within twenty-four (24)*

hours. The investigation of a pending grievance or personal contact of employees during work time by Employee Representative, Union Stewards or non-employee Union Business Representatives shall not be done without first receiving prior approval from an employee's supervisor. Approval shall not be unreasonably withheld.

The total amount of time granted to Association Representatives cumulatively **to process grievances and to attend union functions** shall not exceed **2500 hours** in total for each year of the Agreement. Time taken off under this provision shall be charged to Union Activity Leave...

Union Representatives, i.e., Non-employee Union Business Representatives, shall be certified, in writing, to the Director of Labor Relations for Miami-Dade County by the Union. The Union agrees that activities by the Union Representatives shall be carried out in such a manner as not to disrupt normal Departmental activities, work production and services.

Article 29. Leave without pay

**Four (4) employees will be permitted, when necessary, to participate in collective bargaining negotiations** with the County. These employees shall be designated in writing to the Department Director and the Director of Labor Relations for the County. The employees shall give reasonable notice to their supervisors.

The Union President and Vice President will be released from duty with pay to administer this Agreement. Additionally, **the County will authorize up to 2500 hours for each year of the Agreement**, time off with pay for union representatives to participate in union approved activities providing that the Union President requests the leave in writing to the Director of Labor Relations no less than one (1) week in advance of the scheduled time off. The hours allocated per year shall not be cumulative. **These authorized hours are inclusive of the hours granted in Article 13 Union Stewards and number 3 of this article.**

Employees designated by the Union to attend Union functions. The Union shall request approval from the appropriate supervisor at least 48 hours in advance of the leave. **The total amount of time granted to all employees cumulative seeking leave under this provision shall not exceed 2500 hours for each year of the Agreement.** The hours allocated per year shall not be cumulative. **These authorized hours are inclusive of the hours granted in Article 13 Union Stewards and number 2 of this article.**

**Gov't Supervisors of Florida – Professional – OPEIU Local 100**

Article 12. Association Representatives

...It is agreed to and understood by the parties to this Agreement that Association Representatives may, without loss of pay, with prior approval of their supervisor, process grievances. It is agreed to and understood by the parties to this Agreement that there shall **not be more than twenty-five (25) representatives** within the Bargaining Unit, as herein defined. The supervisor's approval shall not be unreasonably withheld. It is agreed to and understood that Association Representatives shall process grievances and conduct their other duties in such manner as to not disrupt normal County activities, work production and services. Distribution of Association literature shall not be done in work areas during work time.

Every effort will be made, by both the County and the Association, to allow Association Representatives to investigate grievances as rapidly as possible, preferably on the same date as the grievance becomes known and at least within twenty-four (24) hours. The investigation of a pending grievance or personal contact of employees during work time by Association Representatives, or non-employee Association Business Representatives shall not be done without first receiving prior approval from an employee's supervisor. Approval shall not be unreasonably withheld.

The total amount of time granted to Association Representatives cumulatively to process grievances and to attend union functions **shall not exceed 2500 hours** in total for each year of this Agreement. Time taken off under this provision shall be charged to Union Activity Leave.

... The Association agrees that activities by the Association Representatives shall be carried out in such a manner as not to disrupt normal Departmental activities, work production and services.

Article 26. Leave without pay

Leave with pay shall be authorized in accordance with the County Leave Manual for the following reasons:

1. **Seven (7) employees will be permitted, when necessary, to participate in collective bargaining negotiations with the County.** These employees shall be designated in writing to the Department Director and the Director of Labor Relations for the County and the Public Health Trust. The employee shall give reasonable notice to their supervisor. Such time spent at Collective Bargaining negotiations will be considered as time worked.
2. Employees designated by the Union to attend **Union functions.** The total amount of time granted to all employees cumulatively seeking leave under this provision **shall not exceed 2500 hours in any contract year...**
4. The Association **President and one (1) additional County bargaining unit** employee will be released from duty with pay to administer this Agreement. This leave with pay benefit for the Association President and one (1) additional bargaining unit employee is also provided for in the Government Supervisors Association of Florida/OPEIU, Local 100-Supervisory Employees Collective Bargaining Agreement and is not meant to be duplicated. **Additionally, the County will authorize up to 2500 hours for each year of the Agreement, time off with pay for union representatives to participate in union approved activities** providing that the Union President requests the leave in writing to the Director of Labor Relations no less than one (1) week in advance of the scheduled time off. The hours allocated per year shall not be cumulative. **These authorized hours are inclusive of the hours granted in Article 13 Association Representatives and number 2 of this article.**

#### Gov't Supervisors of Florida – Supervisory – OPEIU Local 100

##### Article 12. Association Representatives

...It is agreed to and understood by the parties to this Agreement that Association Representatives may, without loss of pay, with prior approval of their supervisor, process grievances. It is agreed to and understood by the parties to this Agreement that there shall **not be more than twenty-five (25) representatives** within the Bargaining Unit, as herein defined. The supervisor's approval shall not be unreasonably withheld. It is agreed to and understood that Association Representatives shall process grievances and conduct their other duties in such manner as to not disrupt normal County activities, work production and services. Distribution of Association literature shall not be done in work areas during work time.

Every effort will be made, by both the County and the Association, to allow Association Representatives to investigate grievances as rapidly as possible, preferably on the same date as the grievance becomes known and at least within twenty-four (24) hours. The investigation of a pending grievance or personal contact of employees during work time by Association Representatives, or non-employee Association Business Representatives shall not be done without first receiving prior approval from an employee's supervisor. Approval shall not be unreasonably withheld.

The total amount of time granted to Association Representatives cumulatively to process grievances and to attend union functions **shall not exceed 2500 hours** in total for each year of this Agreement. Time taken off under this provision shall be charged to Union Activity Leave.

... The Association agrees that activities by the Association Representatives shall be carried out in such a manner as to not disrupt normal Departmental activities, work production and services.

##### Article 26. Leave without pay

Leave with pay shall be authorized in accordance with the County Leave Manual for the following reasons:

1. **Seven (7) employees will be permitted, when necessary, to participate in collective bargaining negotiations with the County.** These employees shall be designated in writing to the Department Director and the Director of Labor Relations for the County and the Public Health Trust. The employee shall give reasonable notice to their supervisor. Such time spent at Collective Bargaining negotiations will be considered as time worked.
2. Employees designated by the Union to attend **Union functions.** The total amount of time granted to all employees cumulatively seeking leave under this provision **shall not exceed 2500 hours in any contract year...**
4. The Association **President and one (1) additional County bargaining unit** employee will be released from duty with pay to administer this Agreement. This leave with pay benefit for the Association President and one (1) additional bargaining unit employee is also provided for in the Government Supervisors Association of Florida/OPEIU, Local 100-Professional Employees Collective Bargaining Agreement and is not meant to be duplicated. **Additionally, the County will authorize up to 2500 hours for each year of the Agreement,**

**time off with pay for union representatives to participate in union approved activities** providing that the Union President requests the leave in writing to the Director of Labor Relations no less than one (1) week in advance of the scheduled time off. The hours allocated per year shall not be cumulative. **These authorized hours are inclusive of the hours granted in Article 13 Association Representatives and number 2 of this article.**

#### **IAFF Local 1403** – Fire Fighters

##### Article 22. Union stewards

22.2 **Six (6) members** shall be designated as Union representatives **for attendance at labor-management committee meetings and for renegotiation of this collective bargaining agreement. Three (3) representatives** shall be allowed time off with pay **for attendance at the Department Health and Safety Committee meetings.**

22.3 The Union shall designate **nine (9) employees** (no more than three (3) per shift), including a grievance committee chairman, **to act as grievance representatives.** Grievance representatives may investigate and process grievances during working hours. One (1) grievance representative may be allowed time off with pay to attend each grievance hearing. Two (2) Union grievance representatives will be allowed time off with pay to attend arbitration hearings conducted pursuant to Article 5.

22.4 Two (2) members of the Union's Executive Board shall be given time off with pay to attend the Dade County Association of Firefighters meetings in Miami-Dade County, the South Florida AFL-CIO meetings in Miami-Dade County, the South Florida Council of Firefighters meeting in Miami-Dade County, and any regularly scheduled Miami-Dade County Commission meeting.

22.5 **Twelve (12) members** of the Union shall be allowed time off with pay **to attend the bi-annual convention** of the International Association of Firefighters, AFL-CIO, C.L.C. (Not to exceed forty-eight (48) hours per employee.)

22.6 **Twenty-five (25) members** of the Union shall be allowed time off with pay **to attend the Annual Professional Firefighters of Florida Convention and ten (10) members the Florida AFL/ CIO Annual convention** (not to exceed twenty-four (24) hours per employee)....

22.8 In addition to the sections above, association representatives may receive **up to 400 hours of administrative leave per month** to be used at the mutual agreement of the Association President and the Department Director for the benefit of the County and Fire-Rescue Department personnel....

23.1 There shall be a **labor-management committee** which shall consist of a total of twelve (12) members; six (6) members designated by the Union President of which no more than **five shall be on duty personnel** and six (6) members designated by the Fire Chief. The labor-management committee shall meet **on a monthly basis**, or less often by mutual consent, and such meetings shall be held **during business hours.** The purpose of these meetings will be to discuss problems and objectives of mutual concern, not involving grievances or the terms and conditions of this Agreement.

#### **PBA Rank & File**

##### Article 6. Services to the Association

###### B Officers and Representatives

1. ... **The President of the Association**, if a County employee, **shall be released from duty with pay** to administer this Agreement. Furthermore, the Association President may select **three (3) bargaining unit employees** to be **released from duty with pay** to assist in the administration of this Agreement.
2. The Association has the right to select up to **sixty (60) employees** from within the bargaining unit, as herein defined, **to act as Association representatives.** The names of employees selected shall be certified in writing to the Directors of their respective departments and the Director of Labor Relations and Compensation of Miami-Dade County by the Association.

It is agreed to and understood by the parties that Association representatives may spend **up to a cumulative total of two hundred and fifty (250) hours per month**, without loss of pay, with the prior

approval of their supervisor, in the processing of grievances, administration of the Agreement not for the purpose of soliciting membership. The supervisor's approval shall not be unreasonably withheld.

3. **Six (6) Association representatives and The Association President**, if an employee, shall be allowed **time off with pay for attendance at collective bargaining sessions** with the County if such meetings fall within the employee's regularly scheduled work shift. Time spent at collective bargaining shall not be deducted from the time allowed in paragraphs numbered one and two above.

#### **PBA Supervisory Unit**

##### Article 6. Services to the Association

##### B Officers and Representatives

1. The Association has the right to select up to **six (6) employees** from within the bargaining unit, as herein defined, **to act as Association representatives**. The names of employees selected shall be certified in writing to the department director and the Human Resources Director of Miami-Dade County by the Association. The President of the Association, if a County employee, shall be released from duty with pay to administer this agreement. It is understood by the parties that Article 6.B(1) of the Rank and File Collective Bargaining Agreement shall apply in the same manner and with the same restrictions with regard to selection of bargaining unit employees.

It is agreed to and understood by the parties that Association representatives may spend up to **a cumulative total of two-hundred and fifty (250) hours per month**, to be allocated equally between the Miami Dade Police Department and the Miami Dade Corrections and Rehabilitation Department, without loss of pay, with the prior approval of their supervisor, in the processing of grievances, administration of the Agreement, but not for the purpose of soliciting membership. The supervisor's approval shall not be unreasonably withheld.

2. **Six (6) Association representatives** shall be allowed time off with pay for attendance at collective bargaining sessions with the County, if such meetings fall within the employee's regularly scheduled work shift. Time spent at **collective bargaining shall not be deducted from the time allowed in paragraph number one**.

#### **Government Supervisors OPEIU Local 100**

##### Article 26. Leave without pay

Leave with pay shall be authorized in accordance with the County Leave Manual for the following reasons:

1. **Seven (7) employees** will be permitted, when necessary, to participate in **collective bargaining negotiations** with the County. These employees shall be designated in writing to the Department Director and the Director of Labor Management and Compensation for the County and the Public Health Trust. The employee shall give reasonable notice to their supervisor. Such time spent at Collective Bargaining negotiations will be **considered as time worked**.
2. Employees designated by the Union **to attend Union functions**. The total amount of time granted to all employees cumulatively seeking leave under this provision shall **not exceed ten (10) working days** in any contract year.
3. Administrative Leave shall be granted to employees to take County and Public Health Trust Civil Service **exams** and to appear for job interviews in connection therewith as well as for job interviews related to positions not filled through competitive examination.
4. **The Association President and two (2) additional County bargaining unit employees** will be released from duty with pay to administer this Agreement. Effective the beginning of the first pay period immediately following ratification and approval of this Agreement by the Board of County Commissioners, **one (1), additional County bargaining unit employee**, designated in writing by the Association President to the Director of Labor Management and Compensation and concerned department director, will be released from duty **with pay to administer this Agreement**. This leave with pay benefit is also provided for in the Government Supervisors Association of Florida/OPEIU, Local 100-Professional Employees Collective Bargaining Agreement and is not meant to be duplicated.

---

3 FS 447.501 Unfair labor practices.—

(1) *Public employers or their agents or representatives are prohibited from:*

(e) *Dominating, interfering with, or assisting in the formation, existence, or administration of, any employee organization or contributing financial support to such an organization.*

4 In *Allen v. Miami-Dade College Bd. of Trustees*, 43 FPER ¶16 \* at 7 (2016), the Florida Public Employees Relations Commission ruled that a public employer must have “objective corroboration” that its shop stewards on funded release time are used solely for representational activities.

*Public employers must ensure that employer funded release time is only used by unions for direct representational activities and that it has objective corroboration of a union’s direct representational activities.*

5 **Article 3 – General Working Conditions, Article 3.2 Authorized Leave for Union Activity**

A. *Leave of absence without pay may be granted to a permanent employee for the purpose of accepting a position with the Union representing the employees of MDT. Full-time union officials granted an extended leave of absence shall be considered in pay status for Longevity Bonus Award purposes, as provided in Article VII.2B herein. This shall apply retroactively.*

B. *Employees Conducting Union Business* - *Except for full-time Union officials granted an extended leave of absence, employees given time off to conduct Union business will be considered in pay status, provided the Union verifies in writing the names, dates and hours for such persons.*

*Daily Overtime* - *If an employee is booked off for TWU business for the entire day, the employee will be paid his/her regular day's pay.*

*If an employee, who has a five-day work week, is booked off for TWU business for part of the day and then works beyond the eighth hour (those with a four-day work week the 10th hour), the overtime premium will be paid by the party for whom the employee is working the overtime.*

*Weekly Overtime* - *If an employee conducts union business on his/her off day, then MDT will make no payment, nor charge TWU for this time.*

*If an employee performs his/her job duties on his/her off day, and earns premium pay by doing so, then MDT shall pay the overtime premium, regardless of whether the employee has booked off for TWU during his/her regular days on.*

*Contract Negotiations* - *MDT shall pay for up to seven (7) bargaining unit members (other than the chief shop stewards) to attend labor contract negotiating sessions. Employees will be paid for time in attendance at the meetings, plus appropriate travel time if they are traveling from or returning to work before or after the meeting.*

C. *Union Time Pool* - *Each Bargaining Unit employee shall be allowed to voluntarily contribute to the pool, at the end of their leave year prior to conversion, one of the first six days of unused sick leave earned during the leave year. Employees who have used the first six days of sick leave during their leave year may contribute a day of earned annual leave. Employees shall also be allowed to voluntarily contribute all annual leave in excess of the maximum accrual. Each day contributed to the pool will be converted to the equivalent dollar value based on an employee's end of leave year base hourly pay rate.*

*The time in the pool may be utilized by elected and appointed officials of the Union, (excluding the President), and other bargaining unit employees designated by the Union President. When a day is used by a bus operator or train operator their regular run will be paid. All other bargaining unit employees, who have a five-day work week, will be paid for eight (8) hours for each full day used, (ten (10) hours for those with a four-day work week). If the number of hours used by an employee is less than a full day, the charge to the Union Time Pool will be on an hour for hour basis.*

*Each employee who wishes to donate time to the Union Time Pool will use a Time Pool donation form which will be provided by MDT. This form shall include language releasing MDT and/or Dade County from any and all liability to pay for any time contributed by the employee to the Union Time Pool. All requests for payments to be made from the Union Time Pool shall be made on the forms provided by MDT. Such forms shall be signed by the bargaining unit employee and the Union President or his designee.*

*Employees shall be released from duty for Union pool time only if the needs of MDT permit but such release shall not be unreasonably denied. If MDT determines an employee cannot be released at the time desired, the Union may request an alternate employee be released from duty during the desired time. All applicable rules, regulations, and orders shall apply to any person on Union Time Pool release. Violation of such rules shall subject the employee to the regular disciplinary process. When reporting an employee's absence as a result of utilizing the Union Time Pool, the attendance record shall reflect: Union Activity (Y).*

*Any injury received or any accident incurred by an employee whose time is being paid for by the Union Time Pool, or while engaged in activities paid for by the Union Time Pool, shall not be considered to have sustained an on-the-job injury, nor shall such injury or accident be considered to have been incurred in the course or scope of his/her employment by MDT or Miami-Dade County, within the meaning of Chapter 440, Florida Statutes as amended.*

*MDT and/or Miami-Dade County reserve the right to rescind the provisions of this Article in the event any portion of the Article is found to be illegal.*

*The Union agrees to indemnify and hold MDT and the County harmless against any and all claims, suits, orders, or judgments brought or issued against MDT or the County as a result of any action taken or not taken by the County or MDT under the provisions of this Article.*

*This Article shall not be subject to the grievance and arbitration provisions of this Agreement.*

6 The County proposes the following for Article 3.3:

*The Union has the right to select employees from within the Bargaining Unit, as herein defined, to act as Union Stewards. The names of employees selected shall be certified, in writing, to MDT **and the Director of Labor Relations** by the Union. It is agreed to and understood by the Union that Union Stewards shall process grievances and conduct their other duties in such a manner as to not disrupt normal MDT activities, work production, and services ~~as follows~~:*

1. *It is further 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.*

2. *Every effort will be made, by both the County and the Union, to allow Union Stewards to investigate grievances as rapidly as possible, preferably on the same date as the grievance becomes known and at least within twenty-four (24) hours. The investigation of a pending grievance or personal contact of employees during work time by Union Stewards shall not be done without first receiving prior approval from an employee's supervisor. Approval shall not be unreasonably withheld.*

3. *The total amount of time granted, cumulatively, to process grievances and to attend union functions shall not exceed 5000 hours in total for each year of this Agreement. Time taken off under this provision shall be charged to Union Activity Leave. The hours allocated per year shall not be cumulative. [The Special Magistrate has corrected a typographical error in the first sentence.]*

4. *In no event shall the Department layoff, discharge or discriminate against a Steward for action taken in the proper performance of his duty as a Steward.*

5. *The Union President and one Vice President will be released from duty with pay to administer this Agreement. Pay while released from duty to administer this Agreement will be equivalent to only the base pay, as if the employee was performing his regular job duties, with no run pay, differentials or overtime premiums. Employees released from duty with pay under this provision shall be exempted from layoff bumping while released.*

*The Union President and one Vice President released from duty 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 evaluation ratings received prior to serving in such capacity.*

7 CBA Article 3.2. B, Contract Negotiations:

*Contract Negotiations - MDT shall pay for up to seven (7) bargaining unit members (other than the chief shop stewards) to attend labor contract negotiating sessions. Employees will be paid for time in attendance at the meetings, plus appropriate travel time if they are traveling from or returning to work before or after the meeting.*

8 The Union describes those services thus in its post-hearing brief:

*Stewards resolve issues with picks and help design and plan routes, schedules, and runs to ensure that buses are dispatched on time. Tr. 371: 1-12. They help bring transit grants to MDC. Tr. 373: 1-22. ...[They] have strong institutional knowledge that allows them to assist supervisors and the County. Stewards use these skills to help train employees, handle issues before they happen, answer employee questions, and take care of employee complaints.*

The Union did not document the foregoing; its evidence was the descriptive testimony of its member witnesses.

9 Quoting the Union's post-hearing brief.



---

10 Article 3 – General Working Conditions

Article 03.2 Authorized Leave for Union Activities

- B Employees Conducting Union Business** - Except for full-time Union officials granted an extended leave of absence, employees given time off to conduct Union business will be considered in pay status, provided the Union verifies in writing the names, dates and hours for such persons.

**Daily Overtime** - If an employee is booked off for TWU business for the entire day, the employee will be paid his/her regular day's pay.

If an employee, who has a five-day work week, is booked off for TWU business for part of the day and then works beyond the eighth hour (those with a four-day work week the 10th hour), the overtime premium will be paid by the party for whom the employee is working the overtime.

**Weekly Overtime** - If an employee conducts union business on his/her off day, then MDT will make no payment, nor charge TWU for this time.

If an employee performs his/her job duties on his/her off day, and earns premium pay by doing so, then MDT shall pay the overtime premium, regardless of whether the employee has booked off for TWU during his/her regular days on.

### ARTICLE 3.29 COMMUNITY MENTORING INITIATIVE

The County proposes a new Article – Article III.29 – under which employees could be granted administrative leave to serve as mentor and tutoring volunteers or to engage in community service programs.<sup>1</sup> The Union endorses the concept of a mentoring program, but objects to its introduction simultaneously with the County’s proposals to reduce Bus and Train Operator’s daily sick and annual leave payments and also reduce stewards’ time, both in the name of achieving economies.<sup>2</sup>

#### SPECIAL MAGISTRATE’S RECOMMENDATION

The Special Magistrate believes it best to judge each of the contractual provisions – the mentoring initiative, sick leave and annual leave pay, and the reduction in Stewards’ time – on its own merits. The mentoring initiative should be adopted because both parties have expressed their belief that it may benefit both members of the bargaining unit and the public.

---

1 The proposal states as follows:

*Community Mentoring Initiative shall be authorized in accordance with Administrative Order 7-40 and upon approval by the Department Director, employees will be granted one (1) hour of administrative leave per week, up to a maximum of five (5) hours per month, to volunteer at one or more of the following activities assuming that such volunteer work is performed during normal scheduled work hours:*

- *Community volunteer activities such as mentoring, tutoring, guest speaking or providing any related services at the direction of the program or volunteer coordinator;*
- *Community service programs that meet child, elder or other human needs, including but not limited to, Guardian Ad Litem, Big Brother/Big Sister, Senior Corps and Adult literacy.*

2 Quoting Union counsel during the Special Magistrate hearing [Transcript pages 81-82]:

*While they're proposing to take away our leave,\* which is probably a million dollars a year total... They come in and say, we want to give you this community mentoring program. It's a good thing to mentor... where every worker can get up to an hour a week to mentor, with permission. But assuming... it's open to everybody... if everybody did it, it would eight to ten times more hours, more or less, than our shop stewards' hours... mentor -- a good thing. I can't say one bad thing about it [mentoring], but I can't agree with this if this is going to become now the substitute [for stewards' time].*

*\*The transcript mistakenly referred to “our leave” as “our lead.”*

### Article 7.14 and 7.17 – SICK LEAVE & VACATION LEAVE PAY

Both sick leave and vacation leave are earned in whole days based on longevity. The normal work days of many Transit Operators include scheduled overtime and pay differentials. (The average overtime is 46 minutes.<sup>1</sup>) The FY 2011-2014 status quo CBA provides that both the sick leave and the vacation leave rates of pay are to be the amount that the employee would have earned on those normal work days. This means that if the Operator's normal paycheck is for a route that includes scheduled overtime and a 5% night differential, his/her sick leave and vacation leave pay check is in that normal paycheck amount; it is not reduced to match the earnings of an employee whose route does not include overtime or a pay differential.<sup>2</sup> MDT proposes that the reduced amount be paid. The respective status quo CBA provisions for sick leave and annual leave read as follows:

#### Article 7.14 – Sick Leave

##### (1) Inter alia

*Sick Leave Payment - Each transit operating employee shall be entitled to receive the same full rate of pay for a sick leave day as he would have received for a day worked. Except, however, that no Bus Operator or Train Operator shall be entitled to the use of, or payment for, any fractional portion of a day.*

#### Article 7.17 – Vacations

*Vacation Payment - Each transit operating employee shall be-entitled to receive the same full rate of pay for a vacation day as he would have received for a day worked. No Bus Operator or Train Operator shall be entitled to the use of, or payment of, any fractional portion of a day.*

MDT proposes that both of these provisions read as follows:

***Full-time Transit operating employee shall be entitled to use leave hour for hour at their regular rate of pay in accordance with the length of their run (with no differentials or overtime premiums). Non-Bus/Rail employees working a 5/8 or 4/10 schedule shall be charged annual leave hour for hour for full-day absences.***<sup>3</sup>

The County's rationale is that bus and train operators should not be paid overtime for time they are not moving passengers through the community. The County asserts that "no other County employee gets such a free ride on overtime."

### SPECIAL MAGISTRATE'S RECOMMENDATION

The Special Magistrate recommends that these portions of Articles 7.14 and 7.17 remain unchanged. The overtime and differential portions of those Operators' regular paychecks were the reasons that they sought and accepted those routes. The regular, recurring amounts of their paychecks are premised on the regular, recurring durations and times of day of their routes. Overtime has not been shown to have been an integral part of the shift duration of any other County employee. By deconstructing the elements of Operators' compensation and then selectively excluding the portions for sick and annual leave, the MDT deprives the Operators of a significant part of the bargain they made. Ultimately, MDT can control the amount of overtime built into its routes – and thereby the amounts paid of sick and vacation leave – by restructuring the routes.

The value of the productivity achieved by MDT's operators' willingness to work long hours<sup>4</sup> should continue to be reflected in the wages they receive when on sick and vacation leave. Similar arrangements for determining the paycheck amount of annual leave exist in Broward County and Jacksonville.<sup>5</sup> Some Florida transit entities do not include overtime increments in their leave pay, but the cba's for those locations do not indicate that their Operators have runs that incorporate regular overtime.<sup>6</sup>

---

1 Testimony of Thomas R Roth, president of an independent consulting firm representing the Union. Transcript page 549.

2 Per County Exhibit 12, during calendar 2016, the regular pay of TWU 291's members was \$127 million, and overtime was \$38 million, for a total of \$165 million. Some of that overtime was regularly scheduled and some not. No separate figure for the cost of regularly scheduled overtime was proffered.

3 The full text of the relevant paragraphs of MDT proposals follow:

Article 7.17

***Vacation Payment*** *Each Full-time transit operating employees shall be entitled to use leave hour for hour at their regular rate of pay in accordance with the length of their run (with no differentials or overtime premiums.). Non-Bus/Rail employees working a 5/8 or 4/10 schedule shall be charged annual leave hour for hour for full day absences. receive the same full rate of pay for a vacation day as he would have received for a day worked. No Bus Operator or Train Operator shall be entitled to the use of, or payment of leave, any fractional portion of a day. Leave usage shall be in accordance with the Miami-Dade County Leave Manual.*

The MDT also proposes changing these articles references to the "Dispatcher" to the "transit Operations Supervisor" The Arbitrator assumes that this is a change in designated title only, and not a substantive operational changes and, based upon that assumption, recommends its adoption.

4 The Special Magistrate assumes there is value in having operators work the longer work days, or the County would not have them doing so.

5 **Jacksonville** – Professional Transportation Incorporated – UPSEU Local 1222, CBA: April 1, 2015 – March 31, 2018  
*Article 8 – Vacations, Section 2. Vacation Pay*

---

*Vacation pay will be an amount equal to the employee's year to date average weekly earnings prior to the scheduled vacation period. Vacation payment will be made on the pay date immediately prior to the employees scheduled vacation period.*

**Broward County**– Broward County Board of County Commissioners and Amalgamated Transit Union, Local 1267, CBA: FY 2016-2017

*Article 16, Vacations, Section 2*

*Regular Operators*

*The normal number of hours in the regular weekly assignment representing straight time and regular overtime in the regular weekly work assignment immediately prior to the vacation.*

*Extra Operators*

*The average weekly earnings for the four (4) weeks preceding the vacation period, but not less than forty (40) hours per week.*

6 Palm Tran (Palm Beach County); LYNX – Central Florida Regional Transportation Authority (Orlando).

## Article 7.14 and 7.17 – SICK LEAVE & VACATION LEAVE PAY

### Fractional Days

CBA Articles 7.14 and 7.17 for (respectively) sick and vacation leave provide that bus and train operators can use and be paid for only whole days of leave. The Union proposes to delete that provision in its entirety; MDT proposes that it be retained. Here is the sentence at issue in each Article:

*Except, however, that no Bus Operator or Train Operator shall be entitled to the use of, or payment for, any fractional portion of a day.*

While the County described how fractional days off have a disruptive effect on the allocation of personnel, and how covering for an absent employee generally entails incurring costly overtime, the Union described the impact that the fractional day prohibition imposes, uniquely, on Operators:

*... if any other worker needs two hours to go for dialysis, they can take two hours off. They make a bus operator or train operator take the whole day... What are you going to do when I say... "I'm leaving. I'm taking the next two hours. I'm sick. I'm puking..."<sup>1</sup>*

The Union counsel acknowledges that there is a conflict between the operational and cost benefits of having employees adhere to their normal schedules, and a valid personal need that may sometimes compel an Operator to be absent for a short duration. Union counsel referred to that conflict as a "conundrum."<sup>2</sup>

During the Special Magistrate hearing, MDT counsel stated his willingness to delete the fractional day provision in exchange for the non-payment of the scheduled overtime and differential components of vacation and sick leave.<sup>3</sup> (The Special Magistrate recommends against reducing those vacation and sick leave payments.)

### SPECIAL MAGISTRATE'S RECOMMENDATIONS

The Special Magistrate believes that these are exigent circumstances in which the health of the Operator, and possibly of his/her passengers, should be given paramount attention without the Operator suffering the financial penalty of a full day's sick leave and without passengers being placed at risk by an Operator who, while physically compromised, cannot afford to work less than his/her full route. The Special Magistrate recommends no change to the fractional day prohibition insofar as it pertains to vacation leave, but recommends the following provision for sick leave:

*No Bus Operator or Train Operator shall be entitled to the use of, or payment for, any fractional portion of a day. Exceptions shall be made, however, (1) for absences for medical appointments for which the prior written approval of the Operator's supervisor has been obtained (which approvals shall not be unreasonably withheld) and (2) when, after the start the Operator's workday, the Operator (a) concludes that he or she is too ill to continue and (b) notifies his/her supervisor of that fact. In the latter circumstance, the supervisor may require the Operator to furnish written documentation confirming that he or she has the infirmity claimed. The pay for a fractional day off shall be determined by the Operator's normal paycheck by a fraction, the numerator of which his/her hours on sick leave and the denominator of which is the total hours of his/her assigned route.*

---

1 Transcript pages 82-83.

2 Attorney Richard, transcript at page 87:

*They make a bus operator or train operator take the whole day and we get that. It sucks but we get it because of this conundrum we're in.*

3 Attorney Rodriguez, transcript at pages 132-133:

*Look, we understood from the Operators, over the years, that this is something the Union wanted. ...[If] they don't want it, we'll take it out... But the point is ...you're only going to get [vacation and sick leave paychecks based on] your straight time. You're not going to get overtime when you're on vacation or on leave. We thought, well, if they want [fractional days], we'll give that up.*

## Article 7.17 – VACATION LEAVE PAY

### Maximum Accrual

The Union proposes increasing the maximum accrual of annual leave from 500 hours to 620 hours, but offered no rationale for the change.

#### SPECIAL MAGISTRATE'S RECOMMENDATION

For the sake of maintaining consistency with every other MDT collective bargaining agreement, all of which place the maximum accrual at 500 hours<sup>1</sup>, the Special Magistrate recommends no change to this language of Article 7.17.

---

1 Here are relevant excerpts from those other collective bargaining agreements:

#### **Aviation Department – AFSCME Local 1542**

##### ARTICLE 38, ANNUAL LEAVE

1. *The present annual leave policy as stated in the Personnel Rules and the County's Leave Manual shall remain in force and effect Employees may accrue annual leave up to a maximum of 500 hours.*

#### **AFSCME Local 199 – General Employees**

##### ARTICLE 27, ANNUAL LEAVE

3. *The maximum accumulation of annual leave shall be 500 hours.*

#### **AFSCME Local 3292 – Solid Waste Management**

##### ARTICLE 26, ANNUAL LEAVE

3. *Employees may accrue annual leave up to a maximum of 500 hours.*

#### **OPEIU Local 100 – Professional Employees**

##### ARTICLE 21, ANNUAL LEAVE

3. *Employees may accrue annual leave up to a maximum of 500 hours.*

#### **OPEIU Local 100 – Supervisory Employees**

##### ARTICLE 21, ANNUAL LEAVE

3. *Employees may accrue annual leave up to a maximum of 500 hours.*

#### **Firefighters Local 1403**

##### ARTICLE 10.4 ANNUAL LEAVE

- F) *Annual leave may be accrued to 500 hours and will be paid upon separation in accordance with the Leave Manual or the applicable provisions of the Deferred Retirement Option Program (DROP). Any employee having a balance in excess of the maximum accrual of 500 hours at the end of the Department Vacation year will forfeit and lose such excess annual leave accrual. The Department will take necessary steps to insure that employees with excessive accumulations use such leave and reduce outstanding balances.*

#### **PBA Rank & File**

##### ARTICLE 22, LEAVE

3. *Employees may accrue annual leave up to a maximum of 500 hours.*

#### **PBA Supervisory**

##### ARTICLE 22, LEAVE

3. *Employees may accrue annual leave up to a maximum of 500 hours.*



---

**AFSCME Local 121 – Water & Sewer**

## ARTICLE 36, ANNUAL LEAVE

1. *The present annual leave policy as stated in the County Personnel Rules and Leave Manual shall remain in force and effect. Employees may accrue annual leave up to a maximum of 500 hours.*

**ARTICLE 7.14 (2) and (3)**  
**PAYOUT OF ACCRUED UNUSED SICK LEAVE**

The County proposes increasing the duration that a full-time County employee hired on or after January 1, 2015 must serve in order to become eligible to receive 100% payment of their accrued unused sick leave balance from 30 years to 33 years. The change would bring the CBA in line with the terms of all other County bargaining units and with the terms of the Florida Retirement System. The Union did not voice vigorous objection.

**Special Magistrate's Recommendation**

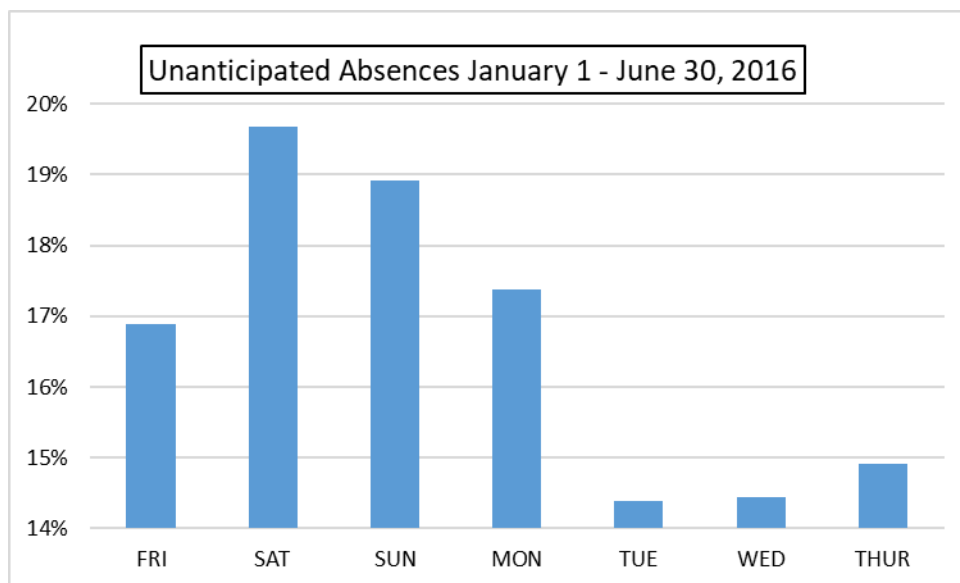
The Special Magistrate recommends adoption of the County's proposal.

## UNSCHEDULED ABSENCES

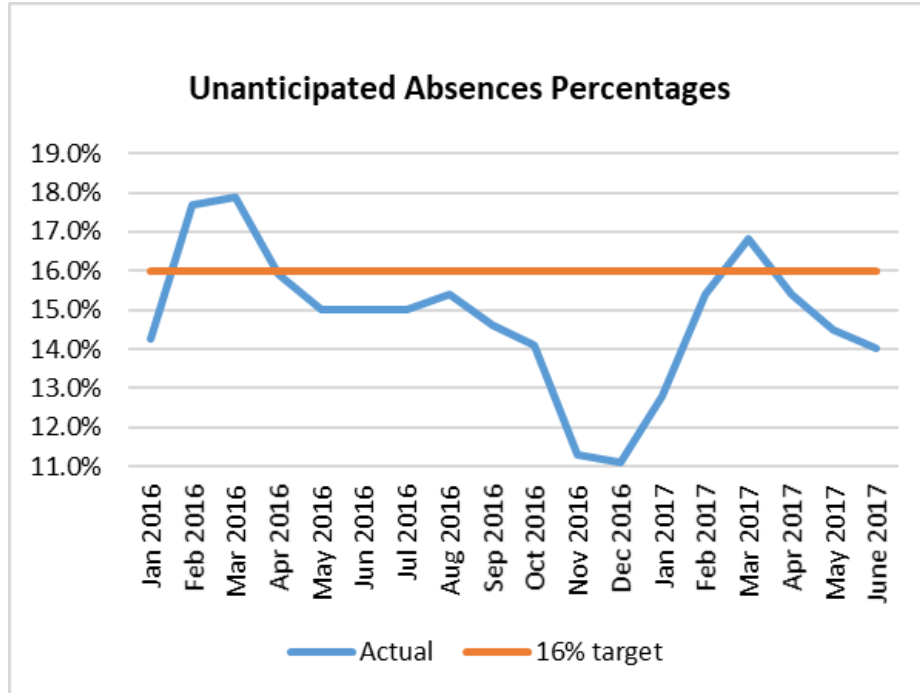
MDT has experienced a persistently high rate of Bus Operator absenteeism, which has disrupted MDT route staffing and increased operating costs. (Replacement Operators are usually employed on overtime). The causes of the absenteeism include

- (1) high incidents of illness<sup>1</sup> such as cardiovascular disease (including hypertension), gastrointestinal illnesses, and musculoskeletal illnesses including neck and back pain resulting from the stresses of the job's physical demands, long hours, exhaust pollutant inhalation, scheduling constraints, traffic and passenger interactions (including battery and verbal assault), social isolation and a high degree of occupational powerlessness and
- (2) the fact that a large proportion of the Operators are single mothers who sometimes lack the resources with which to carry out both their parental and occupational demands.

But, as shown on the following two graphs, personal choices are also a major factor. Unanticipated absences average below 15% on Tuesdays, Wednesdays and Thursdays; about 17% on Fridays and Mondays; and about 19% on Saturdays and Sundays, and appear to be seasonal.



See footnote 2.



See endnote 3.

From October 2016 through May 2017, the absenteeism rate was 21%.

The parties created two programs to address the problem of unanticipated absences. Their acronyms are MAP and PACE.

### The Membership Assistance Program (MAP)

In 1998, the parties created the membership assistance program, pursuant to which MDT agreed to release four bargaining unit members to assist employees in improving their attendance. The program's stated objective was to achieve an absenteeism rate of not more than 16%. The program was formalized in a February 6, 2002 Memorandum of Understanding titled the *Membership Assistance Program... Providing a "MAP" for the Future*. Here are relevant excerpts. Bold font emphases are the Special Magistrate's:

*...The MAP program is designed to identify and counsel employees in need of assistance and then guide them to available in-house or third party resources.*

*...Through the United Way's Labor Liaison, TWU leaders were trained in general counseling and service skills.*

*The duties of the five (5) MAP counselors include [inter alia]:*

- 1. Being trained by United Way.*
- 2. Advertising MAP services to employees.*
- 3. Serving employees who need assistance.*
- 4. Referring employees to appropriate third parties including EAP.*
- 5. Coordinating with the employee and third party providers.*
- 6. **Maintaining a confidential file on each member serviced.***
- 7. **Providing bi-annual reports (protecting confidentiality) to the TWU Coordinator and MDTA Director.***
- 8. Maintaining full work hours and reporting the counselor's work hours and absences to TWU Coordinator and MDTA Director. (MAP Counselors are not entitled to overtime for performing MAP duties. However, they may work overtime performing transit duties, outside their MAP hours, per the collective bargaining agreement.)*

*... TWU operates and manages the MAP Program. Advisory oversight is provided by the MDTA Director and [a labor-management] Oversight Committee...*

There are currently four Union members acting as full-time MAP counselors at a cost the County, inclusive of fringe benefits, of about \$290,000 annually.<sup>4</sup>

The County asserts that the MAP program has failed: the prevailing absenteeism rate remains above the 16% level; the counselors are not directly supervised by MDT management and may not be spending their time effectively; and the counselors' results are not worth their costs.<sup>5</sup> The County proposes to eliminate the program:

***Upon ratification of this agreement the Member Assistance Program (MAP) program shall be eliminated.***

The Union asserts that the MAP program is needed; that it is effective; that it has helped employees improve their attendance; that attendance would be still worse but for the program; that responsibility for the program resided with the MDTA Director, who was to have furnished oversight; and that the MAP should be retained. The Union presented the testimony of a single witness – Ms. Shenika Kemp – who had been helped by a bargaining unit member / MAP consultant.

**SPECIAL MAGISTRATE’S RECOMMENDATIONS**

The Special Magistrate recommends that the MAP program be discontinued. While its purpose is laudable – working individually with employees to resolve personal issues that manifest as attendance shortcomings – there is no evidence that it is being executed in a businesslike way. No documentary evidence was presented to demonstrate the program’s efficacy and thereby justify its continued existence. Such evidence would have been comprised of statistical data of the number of cases undertaken by the MAP Program counselors in the aggregate and by each counselor individually, the caseload success or failure of each counselor (with redactions of employee identities in order to maintain personal confidentiality), the nature of the cases undertaken, the duration of the counselor’s involvement in each, and other similar information about the types of cases the counselors have undertaken, how they have applied their time, and case outcomes. That evidence should already have existed in the confidential member files and bi-annual reports mandated by the MAP Memorandum of Understanding. (See above.) The absence of that information, and the presentation of sparse anecdotal testimony, suggests either that the employee files and reports have not been maintained or, if they have been, that they do not support the continuation of the program.

---

1 The following quotes articles from professional journals proffered by the Union. Although several of the articles are decades old, the Special Magistrate believes that the circumstances described still pertain. The Special Magistrate has not quoted articles he deems anecdotal or an article – Union exhibit 36.I – published by a labor advocacy organization.

- *... studies consistently report that bus drivers have higher rates of mortality, morbidity, and absence due to illness when compared to employees my wide range of other occupational groups. Increase disease rates have been found for drivers regardless of the use of different research and allergies, measurement techniques and comparison groups. International Journal of Epidemiology, 1988, volume 17: p. 255 (Union Exhibit 36.C)*
- *Driving a bus in an urban environment is considered to be an extremely 'stressful' occupation. The driver is responsible for manoeuvring an unwieldy and often noisy vehicle, accepting and discharging passengers, while ensuring that*

*fares are collected and passengers remain orderly. The urban bus driver must accomplish these tasks within a tight schedule, often in heavy traffic, with only infrequent opportunities for rest breaks...*

*In addition to the postulated stressful working conditions, bus drivers receive regular and continuous exposure to motor vehicle exhaust fumes, containing carbon monoxide (CO), sulphur dioxide, nitrogen oxides and suspended particulates. Occupational exposure to CO appears to increase risk of heart disease mortality, especially among people with pre-existing heart disease. Emissions of diesel engines, the predominant type of engine used in urban buses, contain significantly greater particulate concentrations than the emission product of petrol engines... The results of this study suggest that bus drivers may be at increased risk of mortality from ischemic are disease...*

*In addition to occupational stress and the potential for exposure to CO, other risk factors for heart disease including cigarette smoking, diet, obesity and sedentary living, may have contributed to the excess of ischemic heart disease. We were not able to ascertain the importance of these factors in this retrospective study. However, it is unlikely that the excess of ischemic heart disease seen here is attributable solely to cigarette smoking...*

*It is also plausible that people who are at an increased risk for cardiovascular disease self-select into bus driving as an occupation...*

*International Journal of Epidemiology, 1991, volume 20 No. 2, p. 399-400 (Union Exhibit 36.D)*

- *The evidence presented here shows that male bus drivers have rates of hypertension significantly higher than comparable groups of employed individuals from a wide range of occupations ...*

*International Journal of Epidemiology, 1987, volume 15 No. 2, p. 212 (Union Exhibit 36.E)*

- *Several characteristics of the work environment of urban public transport operators may contribute to the high levels of occupational stress and elevated health risks associated with city bus operation. City bus drivers report relentless time pressure and frustration over interference in the timely and safe operation over interference in the timely and safe operation of their vehicles because of traffic congestion. In addition to traffic congestion, drivers work in noisy and uncomfortable climatic settings and must sit for prolonged periods of time. The risks of physical assault and problems with unruly passengers are ever present for bus operators in many cities around the globe. Drivers also report conflicts created by their desires to serve the public in a safe and courteous manner on the one hand and pressures to remain on schedule on the other.*

*Drivers typically have little or no say over how work schedules are formulated or how timetables are designed. Thus urban public transit operators, particularly in major urban settings, function under a high degree of job strain - high workload demands coupled with low job control...*

*Another negative component of the work environment of bus operators is interference with home life and leisure activities. This interference stems from irregular work schedules and spill-over of fatigue from the demands of the job. Finally, bus driving maybe fairly characterized as a socially isolated occupation. Drivers have little opportunity for regular, predictable social interactions with coworkers, supervisors, or passengers.*

*Accident Analysis and Prevention, Volume 26, No.2, pp 181-193, 1994.*

- 2 The data source for the graph of unanticipated absence percentages by day, January 1, 2106 – June 30, 2016 was Union Exhibit 35C.

- 
- 3 The data source for the graph of unanticipated absence percentages by month, January 2016 – June 30, 2017 was County Exhibit 20.

	Actual	Target
Jan 2016	14.3%	16%
Feb 2016	17.7%	16%
Mar 2016	17.9%	16%
Apr 2016	15.9%	16%
May 2016	15.0%	16%
Jun 2016	15.0%	16%
Jul 2016	15.0%	16%
Aug 2016	15.4%	16%
Sep 2016	14.6%	16%
Oct 2016	14.1%	16%
Nov 2016	11.3%	16%
Dec 2016	11.1%	16%
Jan 2017	12.8%	16%
Feb 2017	15.4%	16%
Mar 2017	16.8%	16%
Apr 2017	15.4%	16%
May 2017	14.5%	16%
June 2017	14.0%	16%

- 4 County Exhibit 3.1.

- 5 County Attorney Eric Rodriguez, Transcript pages 491-492.

*...the MAP counselors don't have supervisors who basically get to supervise their performance on a daily basis. It's my understanding that, you know, a couple of the MAP counselors spend a lot of time at the Union hall instead of being assigned to a particular area. ...there is no reason ...[for] the County being forced to do the program in this manner. ...the stated purpose of having these releases is attendance. And... the attendance is not good.*



### Positive Attendance Control and Evaluation Program (PACE)

Through the following statement, the County proposes to eliminate an attendance control program, referred to as PACE, that has been in effect for more than three decades:

***Upon ratification of this agreement the Positive Attendance Control and Evaluation program shall be eliminated.***

The PACE program was adopted by the parties to reduce excessive absenteeism and sick leave abuse by defining what would be considered an unacceptable level, with recidivism resulting in progressive discipline. Quoting the PACE document:

*The ...concept is to insure that excessive absenteeism and sick leave abuse are minimized through a uniform and fair attendance control program.*

*Poor attendance patterns are typically reflected by high incident counts with a low number of days per incident. Non-abusive, true sickness is generally reflected by low incident counts and a high number of days per incident.*

The program's unit of measure is an "incidence" of absence, meaning an absence of four hours or more. The PACE program states that **incidents of less than four hours duration "will not be counted."** [Special magistrate's bold font.]

No. of Incidents during a rolling 12-month interval	Program Progression	Discipline
6-7 if not covered sick	Step 1	Informal Counseling
8	Step 1	Informal Counseling
9	Step 2	Formal Counseling
10	Step 3	1st Written Reprimand
11	Step 4	2nd Written Reprimand
12	Step 5	5-day Suspension
13	Step 6	10-day Suspension
14	Step 7	Termination

Step reductions are made whenever the number of incidents during the current 12-month interval are fewer than those of the previous 12-month interval.

In 2015, Arbitrator Thomas G. Humphries resolved a case in which the Union grieved the issuance of a 10-day suspension to a Bus Operator who had called in sick 13 times during the prior 12 months. Twelve of the 13 absences had been for durations of less than 4 hours. The Union challenged MDT's authority to discipline those absences at all since, under PACE, absences

of less than four hours “will not be counted.” MDT argued that the “will not be counted” statement meant that absences of less than 4 hours would continue to be governed by the CBA’s general managerial authority to discipline for just cause, which is found in Article 3.20.B.5.<sup>1</sup> The Union responded that PACE governed the entire category of “unacceptable attendance patterns,” and thus preempted management’s general disciplinary authority under the aforesaid Article 3.20.B.5. Arbitrator Humphries agreed with the Union. He stated that

*... PACE clearly exempted tardiness from the program's corrective measures... such employee absences are specifically established in PACE as those that would not be "counted," a term reasonably and commonly defined as not causing disadvantage to an employee. While such an employee does not receive pay for the period of his/her short-term absence, neither is the absence "counted" as a step in a disciplinary process. ...*

MDT appealed Arbitrator Humphries’ decision, but the 11<sup>th</sup> Circuit Court ruled that because Mr. Humphries had not exceeded his authority under the CBA, the decision would stand. Consequently, as of now, a bargaining unit member can accumulate an unlimited number of unscheduled absences of four hours or less without facing discipline.

MDT proposes to eliminate the entire PACE program for these asserted reasons:

- The high absenteeism rates of bus operators (21%) demonstrates that PACE is ineffective.
- The PACE program constitutes a partial waiver of its statutory right to discipline for cause and unduly burdens its right and responsibility to discipline unacceptable attendance.
- Arbitrator Humphries’ ruling causes scheduling tumult and requires absentee route coverage at overtime rates.
- PACE’s requirement that six to eight *incidents* occur before even an informal counseling to occur is unreasonable.
- Treating a prolonged uninterrupted absence (e.g., six months) as a single *incident* is unreasonable.
- Because it is based on a 12-month rolling calendar, sick incidents drop off after one (1) year and an Operator with perennially substandard attendance performance gets a fresh start. (MDT presented, as an example, a particularly egregious case.)
- The scope of the PACE program is narrow; only 10% of operators are in PACE.

### SPECIAL MAGISTRATE'S RECOMMENDATIONS

Controlling attendance is a basic managerial responsibility. With the PACE program, Management relinquished a portion of that responsibility to a negotiated program with fixed attendance standards and consequences. It did so for the stated purpose of insuring "that excessive absenteeism and sick leave abuse [would be] minimized through a uniform and fair attendance control program." Judging by the substantially higher rate of weekend over weekday absenteeism (as discussed previously in the MAP section) the program has failed. Worse, by reason of Arbitrator Humphries' decision, the program now shields a class of unscheduled absences from MDT discipline; a circumstance that can only exacerbate absenteeism abuse. The Special Magistrate recommends that the PACE program be discontinued.

---

1 Article 3.20 Management Rights and Scope of This Agreement

- A. *The Union recognizes that the County and MDT possess the sole right to operate and manage MDT and direct the work force, and the rights, powers, authority and discretion, which the County and MDT deem necessary to carry out their responsibilities and missions, shall be limited only by the specific and express terms of this Agreement.*
- B. *These rights and powers include, but are not limited to the authority to:*
  - 5) *The County may for just cause dismiss, suspend, reprimand, demote, reduce in grade, reduce in pay or otherwise discipline employees in accordance with applicable sections of the Miami-Dade County Code and Personnel Rules.*