

STATE EMPLOYMENT
RELATIONS BOARD

2001 JUN 25 A 11: 02

IN THE MATTER OF FACT-FINDING

BETWEEN

STARK AREA REGIONAL TRANSIT AUTHORITY

AND

AFSCME AFL-CIO
OHIO COUNCIL 8, LOCAL 1880

BEFORE: Robert G. Stein

SERB CASE NO. 00 MED 10-1245

PRINCIPAL ADVOCATE FOR THE UNION:

Robert L. Thompson, Regional Director
2nd Chair, Gino Carbenia, Staff Representative
AFSCME Ohio Council 8
1145 Massillon Rd.
Akron OH 44306

and

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

Gust Callas, Esq.
BLACK McCUSKEY
1000 United Bank Plaza
220 Market Avenue South
Canton OH 44702

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INTRODUCTION

The Employer is the Stark Area Regional Transit Authority (hereinafter referred to as "SARTA," "Authority," or "Employer"). It provides public transportation to the greater Stark County area. The bargaining unit consists of approximately 180 bus operators and service and maintenance employees.

The parties held several bargaining sessions prior to declaring impasse. They were able to resolve or narrow many of the bargaining issues. The fact-finding hearing was held on May 23, 2001 in Canton, Ohio. There are 11 unresolved issues and each party was provided an opportunity to present evidence and testimony in support of their positions on each of the issues.

By mutual request of the parties the fact-finding report is to be issued on June 22, 2001. In this report the term "EPS" refers to Employer's Position Statement and the term "UPS" refers to Union's Position Statement. The position of each party on all impasse issues shall not be restated but will be referenced by these terms.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for Fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are somewhat limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 Article 6 SUBCONTRACTING, Section 2

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Authority is seeking changes to this Article. It is seeking to employ disabled individuals from the community. The individuals gain work experience at no cost to SARTA and it represents a service to the community.

The Authority is also seeking to contract out expanded paratransit services. The Authority argues that it is common in the transit industry for such service to be contracted out due to the frequency of litigation issues. It argues the above changes will not result in displacing any bargaining unit positions.

The Employer made a strong case for the need to consider employing disabled employees for several sound reasons. First and foremost, SARTA is a highly visible service and must be sensitive to its public image. It is important for an Authority of this nature to demonstrate sensitivity to all segments of society and the disabled (or more appropriately the "differently-abled" community) are an important segment that deserves to be given opportunities to be productive citizens. They are also a segment of society that greatly depends upon public transportation. The Union contends the workforce will be slighted because MRDD hours are generally more ideal hours to work. In general the

Union is not opposed to the idea of providing meaningful work opportunities to disabled people.

The Union voiced its concern about lawsuits, but indicated that it should not be made to make changes unless this issue becomes a reality. It points out that SARTA has been the sole provider of this transportation in the public arena, however, it would be willing to discuss this issue if the law changes or the Authority faces the possibility of harmful litigation.

The litigation factor regarding the transportation of the disabled is also a serious matter for agencies who must watch their budgets closely. The bargaining unit should be equally as concerned about lawsuits given the fact that funds expended to defend SARTA are likely to come out of funds that could impact salaries and benefits. However, I agree that at this point litigation is a matter of speculation.

Recommendation

Article 6 SUBCONTRACTING

Section 1 current language

Section 2

It is also understood that this clause does not apply to original warranty work or **the use of the Disabled community to the extent they do not replace any bargaining unit members on any shift or are not used when bargaining unit members are on layoff recall lists. If the law regarding paratransit services changes or if SARTA begins to experience legal problems by continuing to operate paratransit services in-house, the Employer shall have the right to propose the contracting out of such services. The Union agrees it shall consider such a change. If the parties do not agree on revised language to this section, the issue shall go to an independent neutral, chosen by the parties, to render a final and binding decision.**

ISSUES 2 Article 24 NEW EQUIPMENT, Section 2B

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

SARTA argues that in order to gain better control of its costs it must return to the industry standard of paying employees for training, vacations, holidays, etc. on the basis of a forty (40) hour workweek. This is one step to return the Authority to fiscal soundness, argues the Employer. This change along with other issues represents a shift from the past. The Employer's position is supported by the common concept of a forty hour workweek. When an Authority finds itself in a situation where it must shore up its financial future, some difficult decisions must be made. Either you reduce services and reduce your workforce, which normally makes things worse, or you change the way you do things in order to secure the jobs of bargaining unit members who have invested years of their lives with an employer.

The Union contends there has been a long-standing way to pay wages at SARTA. It acknowledges wages are above the FLSA. The Union recognizes the need for training and the quid pro quo may be a reduction in accidents that benefits employer and employee alike. The Union states the Employer has sole right to set up routes and dictate the number of hours. Employees bid on runs 4 times a year, contends the Union.

However, training, unlike a negotiated benefit, is scheduled by the Employer. There is no guarantee how much training will be done or who will participate. Therefore, if incremental changes are to be made to transition to a 40 hour workweek this is one area that seems appropriate for a change at this time.

Recommendation

Article 24 NEW EQUIPMENT

Section 2

- A. Current language
- B. **Periodically, SARTA will conduct on-going training for all operators to improve operating efficiency and effectiveness. All required (job improvement) training will be paid at prevailing wages based on a forty (40) hour workweek.**

ISSUE 3 Article 28 ACCIDENT REPORTS, Section 1

Union's positions

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Employer is willing to provide employees with up to thirty minutes of time to complete accident reports as currently provided for in the current agreement. However, this is another area where the Employer is trying to create greater economic efficiency by limiting the time involved in reporting accidents. The Union does not have a substantial

objection to considering a 30 minute limit for accident reporting or to the elimination of some of the accident requirements contained in Article 28.

Recommendation

Article 28 ACCIDENT REPORTS

SECTION 1

Any accidents or incidents in any way related to the operation of the Employer's vehicle shall be reported immediately to the dispatcher and according to the guidelines of the Bureau of Motor Vehicles. Additionally, a fully completed report of the accident/incident must be turned in to the dispatch office no later than 24 hours following the time of the accident/incident. Any operator, after submitting full, complete, and proper report, who shall be required to appear at the office or in court for additional report or examination, shall be paid for time based on a 40 hour workweek. Operators must immediately report all disturbances/altercations on any bus to the dispatcher on duty. The dispatcher will inform the operator if a report will be required for the incident. Operators will be paid for thirty (30) minutes for all completed accident/incident reports.

ISSUE 4 Article 30 BUDDY SWITCH PROGRAM, Section 1E

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

The Employer argues that the Buddy Switch program is suffering from abuse. It has led to employees manipulating the system in order to qualify for more overtime (i.e. pyramiding), according to the Employer. The Union acknowledges there may be some people who take advantage of the program, but the program is important to employees. It allows them the flexibility to switch shifts when necessary. The Union does not want the system to be abused. However, it objects to allowing the Employer to make this determination without negotiating over it.

Given the complexity of daily life and the additional strain that is placed upon families, a program like this can be very important to employees and employers alike. There are simply some family matters that require attention, and if an employee can avoid missing work by switching shifts the employee and the Authority benefit. Abusers of a system like the "Buddy Switch" threaten its very existence. They are best dealt with on an individual basis. Buddy Switch is a negotiated benefit and any changes should be by mutual agreement.

Recommendation

Article 30 BUDDY SWITCH PROGRAM

- E. **Any employees abusing the "Buddy System" may be denied any request for same by the dispatcher.**

ISSUE 5 Article 32 HOLIDAYS, Section 3

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Employer argues that it is the industrial standard to pay 8 hours for holidays. It argues that SARTA should go to industrial standard and add to what was changed last contract with bereavement. The Union contends extra board people do extra work that falls between the gaps. An employee cannot necessarily manipulate this process to their advantage, according to the Union. The Employer has made some convincing arguments to return to a forty-hour workweek in several areas. However, in bargaining, regaining language and rights comes at a price. Unlike training or accident reports, holidays are benefits that are normally won on an incremental basis over several years of bargaining. The Employer is not in a financial position to buy back the language that has been negotiated and has remained as a fringe benefit over several years.

Recommendation

Maintain current language

ISSUE 6 Article 33 VACATIONS, Section 2

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Employer argues that it has already agreed to lower the number of hours in Section 1, to 128 hours from 90%. It is now much easier for an employee to get vacation. The Employer argues that it made this change in an effort to go to the 40 hour workweek concept. The Union argues that this is a "hot button" issue that represents too much of a change toward the 40 hour workweek concept. The Union also points out that this benefit has been in place for more than twenty-five years.

Vacation, similar to holidays, is a major benefit negotiated by the bargaining unit. A change in a benefit that has existed for more than a quarter of a century requires a substantial concession of equal magnitude on the part of the Employer. The Employer moved part way to liberalizing the benefit with an offer to change the 90% requirement to 128 days. However, this does not represent a "quid pro quo" exchange for what the Employer is seeking. There is no doubt that the Employer is attempting to correct many problems of the past and it should be applauded for its efforts. However, when changing benefits of a collective bargaining agreement slow and consistent change that is perceived as necessary by a majority of employees will help maintain a positive labor relations environment.

Recommendation

Maintain current language.

ISSUE 7 Article 35 HOSPITALIZATION

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Employer agrees that there should be some increase in the amount of disability payment contained in Section 1. The Employer contends that early on it gave to the Union a rich plan that provides excellent coverage. "We have paid out more in benefits, more than we have collected," contends the Employer. The Employer points out that it has a terrible census that has resulted in a 30% increase and the future bodes the same types of increases. The Union contends that the Employer has been paying \$190 under Section 1 since 1979 and that the employees do not have short-term sick leave. The Union proposes an increase to \$275.

There is no question that a benefit set in 1979 has been eroded away by 19 years (from the end of the 1979 contract) of inflation. Fortunately, the amount of inflation, particularly during the last decade has remained relatively low. A change in Section 1 is justified; however, given the Employer's financial condition any change must take into account the fact that neither party bargained an improvement in this benefit for the past two decades. At this point in time a 20% change in the benefit appears to be reasonable.

Recommendation

Article 35 HOSPITALIZATION

Section 1

For total disability due to an accident or sickness, commencing on the first day, if due to an illness, for a maximum of twenty-six weeks, the following amount will be paid: \$ 228.00 per week.

Sections 2 through 5 maintain current language.

ISSUE 8 Article 37 OPERATOR'S WORKING CONDITIONS, Section 2-Sign-ups, Paragraph G.

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Union argues that if the application of this provision was administrated consistently (how it was intended to be used) there would be no need to delete this provision. It agrees that elimination of this paragraph may not address the problem. The Union contends that seniority is a key factor and this area may need to be looked at more carefully. The Union also recognizes that the current administration is making an honest attempt to correct problems of the past.

The Employer argues that the buses need to run. The Employer flatly states that it does not have enough drivers and in part this is due to excessive absenteeism. It contends that who is getting overtime is the issue and the parties should sit down and work this out without a language change.

This is obviously an important issue to the Union, however, I do not find sufficient evidence exists to alter language that even the Union admits may not address the problem. There is a new administration in the Authority and hopefully a new labor relations environment will develop in the coming years. The parties will be facing many challenges in the future, including the passage of a levy. I strongly suggest that this subject be relegated to a labor-management committee for discussion and resolution.

Recommendation

Maintain current language

ISSUE 9 Article 41 WAGES/HOURS

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Employer contends that the cost of family health care has increased and it must be factored into any increase in wages. It asserts that the Agency must pass a levy in June of 2002 in order to avoid serious financial problems. It proposes a wage increase, but contends that it would be justified in offering no wage increase given its financial condition. It argues that SARTA must remain in business and it must operate on a breakeven basis. However, the Employer recognizes the need for mechanics to have an inequity adjustment. In addition, the Authority also proposes that operators be paid whatever they work and not be guaranteed work in excess of 40 hours.

The Union contends bargaining units have been receiving 3 to 4% across the board wage increases in the state of Ohio. In the last contract the employees received a 2.5% increase, a bonus, and a 2.5% increase. On the ballot next year will be renewal of levy. The Union agrees that the administration's efforts in seeking new opportunities to improve SARTA are encouraging.

In addition the Union thinks its mechanics deserve a bump in wages. Union witness, Brenda James, stated SARTA mechanics have been trained in handling things like transmissions, work that had been previously contracted-out at a much higher cost. She testified "...this has saved the agency money, they have to maintain the buses and deserve an additional wage increase." The Union also maintains that in times of full-employment employers must provide a competitive wages to recruit and retain people.

This Fact-Finder is very familiar with SARTA and the efforts it has made over the past several years to become a premier transportation Authority that serves the transportation needs of Stark County. Growth is never easy and getting the public to pay for such a system is even more difficult.

It is clear that at this particular point in time the Authority is not a typical public employer. A common wage increase cannot be used as a reasonable comparable in determining a fair wage increase for SARTA. It is more reasonable to consider a wage increase within the context of the general financial condition of SARTA. SARTA is facing extraordinary financial problems that it is attempting to correct. Its move back to a 40 hour workweek is one example of this effort and portions of this report recognize this need for a change. To its credit SARTA maintained the level of healthcare benefits in spite of a dramatic increase in premiums. SARTA provides an essential community service to the citizens of Stark County. Thousands of people depend on its reliability for their livelihood. Likewise, some two hundred bargaining unit and non-bargaining unit employees of SARTA have an employment investment.

To the Union's credit it appears willing to give the new administration an opportunity to correct the problems of the past. As a long time Neutral involved with the parties, I am encouraged by the positive regard the parties demonstrated toward one another at the fact-finding hearing. The Union's argument that SARTA cannot afford to lose its recruitment and retention edge by not offering a competitive wage increase is another factor that cannot be ignored. This would include a wage inequity adjustment for the maintenance classifications who perform mechanical and body work. Keeping this service in house appears to be cost effective and I find the Employer, even considering its economic restraints, is able to provide an inequity increase at this time.

A rational balance must be struck that provides a reasonable wage increase while giving the Employer a chance to return the Authority to a state of financial stability. At this time I find no justification to change Section 4 given the fact that only about 4

employees remain eligible under the practice described in subsections B. and C. In addition, there was insufficient data to justify a change in Section 7. **It is recommended that general wage increases of \$1.03 be provided over the next three years (See recommendation). In maintenance classifications that perform mechanical or body work, inequity increases shall be rolled into the general wage increase in the first year of the Agreement (See recommendations).**

Recommendation

Article 41 WAGES/HOURS

Section 1 WAGES

A. Motor Coach Operators shall be paid in accordance with the following schedule:

1. **Effective January 5, 2001 \$13.35 per hour**
2. **Effective January 5, 2002 \$13.70 per hour**
3. **Effective January 5, 2003 \$14.05 per hour**

B. The regularly hourly rate for all maintenance employees shall be as follows:

Classification:	2001	2002	2003
"A" Mechanic	\$14.04	\$14.39	\$14.74
"B" Mechanic	\$13.71	\$14.06	\$14.41
"C" Mechanic	\$13.50	\$13.85	\$14.20
Sheet Metal/Body	\$14.04	\$14.39	\$14.74
Service	\$12.80	\$13.15	\$13.50

C. delete

SECTIONS 2 through 7 shall remain current language.

ISSUE 10 New Article GRIEVANCE MEDIATION

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Union argues the proposal of using grievance mediation is related to a reduction of costs. It is an option that both parties must agree to and it won't change the status quo. The Union points out that more and more, arbitrators are urging parties to settle issues. The Union states that all it is asking for is the option for grievance mediation and it takes a mutual agreement to submit a grievance to such a process.

The Employer argues that it has made extraordinary efforts to resolve issues with the Union. It contends that the process of mediation would in all likelihood not increase the parties ability to resolve issues and is not needed.

Grievance mediation is an option that has been available to almost all State bargaining unit employees in Ohio for the past nine years. It does not replace grievance arbitration, but merely provides the parties with another way to resolve grievances. In addition, the City of Canton has had grievance mediation as part of its contract for years and it has successfully resolved a myriad of issues in an economic and efficient manner. Many private sector firms as diverse as Pizza Hut, United Airlines, and the Postal Service

offer mediation of disputes to their employees. In addition, many other cities and public entities in Ohio use grievance mediation.

The cost of grievance mediation, based upon figures supplied by the Federal Mediation and Conciliation Service and the Mediation and Education Research Project of Northwestern University Law School (of which the undersigned Neutral is a panel member and Vice President) is 1/10th of what grievance arbitration costs. Large unions such as AFSCME, SEIU, UMW, and the like have endorsed this approach as a cost effective method to both resolving problems and improving the labor relations atmosphere. It represents a non adversarial approach to resolving grievances that compliments the quality improvement movement that has revolutionized the operation of both the public and private sectors of America. This Neutral has had extensive experience in this process and has mediated over 2000 grievances in the past 10 years. If the parties are committed to solving problems and avoiding the cost (both economic and to the relationship) of arbitration, the option of grievance mediation has proven to be a very effective alternative for resolving disputes. The comparable data in Ohio and the trend for employers to use ADR (Alternative Dispute Resolute) methods to resolve employee disputes favors the Union's position.

I can understand the Employer's reluctance to enter into contract language that binds it to a process for which it has little experience. The City of Canton as well as many other unions and employers in Ohio and elsewhere used an approach of agreeing to a memorandum of understanding that allows them to experiment with the process without risk.

Recommendation

The language contained in Appendix A of this report is recommended as a Memorandum of Understanding and not part of the Agreement. Such language can only be invoked upon future mutual agreement of the parties.

ISSUE 11 Article 46 DURATION AND TERMINATION

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

Both parties agree that the length of the Agreement shall be 3 years.

Recommendation

See Appendix B

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties this 22nd day of June, 2001 in Portage County, Ohio.



Robert G. Stein, Fact-finder

Carolyn M. Smith 6/22/01

CAROLYN M. SMITH, Notary Public
Residence Summit County
Statewide Jurisdiction, Ohio
My Commission Expires Nov. 30, 2003

MEMORANDUM OF UNDERSTANDING

GRIEVANCE MEDIATION

Section 1.

- A. All grievances which have been appealed to arbitration will be referred to mediation unless either party determines not to mediate a particular grievance. Arbitration scheduling will give priority to cases which have first been to mediation.
- B. The parties shall mutually agree to a panel of mediators to serve in the capacity of grievance mediators. Panel members must be experienced mediators and/or arbitrators with mediatory skills. Mediation panel members may not serve as arbitrators.
- C. Each member of the mediation panel will be asked to provide a schedule of available dates and cases will be scheduled in a manner which assures that the mediator will be able to handle multiple cases on each date unless otherwise mutually agreed. The parties agree not to hear more than five (5) cases a day. Mediation shall be scheduled on a rotating basis among the panel members to the extent schedules allow.
- D. The grievant or steward, as designated by the Union, shall have the right to be present at the mediation conference. Each party may have no more than two representatives as a participant in the mediation effort. Persons representing the parties shall be vested with full authority to resolve the issues being considered.
- E. The mediator may employ all of the techniques commonly associated with mediation, including private caucuses with the parties, but the taking of oaths and the examination of witnesses shall not be permitted and no verbatim record of the proceeding shall be taken. The purpose of the mediation effort is to reach a mutually agreeable resolution of the dispute and there will be no procedural constraints regarding the review of facts and arguments. There shall be no formal evidence rules. Written materials presented to the mediator will be returned to the party at the conclusion of the mediation meeting.
- F. Mediation efforts will be informal in nature and shall not include written opinions or recommendations from the mediator. In the event that a grievance that has been mediated is appealed to arbitration, there shall be no reference in the arbitration proceeding to the fact that a mediation conference was or was not held. Nothing said or done by the mediator may be referenced or introduced into evidence at the arbitration hearing. Nothing said or done by either party for the first time in the mediation conference may be used against it in arbitration.
- G. At the mediation conference the mediator shall first seek to assist the parties in reaching a mutually satisfactory settlement of the grievance which is within the parameters of the collective bargaining agreement. If a settlement is reached, a settlement agreement will be entered into at the mediation conference. The mediator shall not have the authority to compel the resolution of a grievance.

- H. If a grievance remains unresolved at the end of the mediation session the mediator will provide an advisory opinion as to how the grievance is likely to be decided if it is presented at arbitration. This opinion is non-binding and inadmissible in any subsequent arbitration proceeding.
- I. If the parties do not accept the advisory opinion of the mediator, the Union may appeal the grievance to arbitration. All applicable time limits for appealing a grievance to arbitration contained in the parties collective bargaining agreement shall commence on the day the Union receives the mediator's advisory opinion.
- J. The dates, times and places of mediation sessions will be determined by mutual agreement of the parties. Each party shall designate a representative responsible for scheduling mediation sessions.

Section 2.

The fees and expenses to be charged by mediation panel members shall be negotiated between the panel participants and the parties. Fees and expenses for grievance mediation shall be shared equally by the parties.

_____ Date _____
Union

_____ Date _____
SARTA

ARTICLE 46
DURATION AND TERMINATION

APPENDIX B

The terms of this Agreement shall be effective January 1, 2001, except as changes, amendments, or supplements may be mutually agreed to during its term, this Agreement shall continue in full force and effect until 12:01 A.M. January 1, 2004, and from year to year thereafter unless either party shall at least sixty (60) days but not more than ninety (90) days prior to the expiration date of any anniversary thereof, notify the other party in writing of its desire to amend or terminate this Agreement.

In Witness Whereof, the following parties have signed this Agreement on the ____ day of _____, 2001.

STARK AREA REGIONAL TRANSIT
AUTHORITY

LOCAL 1880, AFSCME, AFL-CIO

Executive Director

President - Local 1880

Employer Chief Negotiator

Union Committee Member

Employer Committee Member

Union Committee Member

Employer Committee Member

Union Committee Member

Employee Committee Member

AFSCME Ohio Council 8
Regional Director/
Union Chief Negotiator