

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING PROCEEDINGS
STATE EMPLOYMENT
RELATIONS BOARD

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REPORT & RECOMMENDATIONS
OF THE FACTFINDER

2002 MAR -5 A 10: 20

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AS ISSUED
MARCH 1, 2002

IN THE MATTER OF:

Ohio Turnpike Commission <i>(Employer)</i> <i>-and-</i> United Electrical, Radio and Machine Workers of America, Local 791 <i>(Union)</i>	SERB Case No. 01-MED-10-1052
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APPEARANCES:

On Behalf of the Union:

Alan Hart	UE Field Organizer
Polly Halfkenny	UE General Counsel
Lisa Frank	UE Research Director
Shawne P. Wise	President, Local 791
Sally Harlan	PT Toll Collector – Gate 5
Donna Trusky	PT Toll Collector – Gate 13
Alisha Urbina	PT Toll Collector – Gate 5
Charles Reed	PT Toll Collector – Gate 8

On Behalf of the Employer:

Thomas Amato	General Counsel
James T. Steiner	CFO/Comptroller
Dan Castrigano	Deputy Executive Director
Sharon Isaac	Director of Toll Operations
William Hock	Western District Toll Supervisor
Fran Couch	Central District Toll Supervisor
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SUBMISSION

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in a contract obtaining until March 1, 2002. Two sessions to negotiate a successor agreement resulted in a number of tentative agreements, while leaving seven issues at impasse. Therefore, in accordance with the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter, effective on January 30, 2002.

The Parties waived mediation of issues at impasse, and an evidentiary hearing was held on February 15, 2002 at the Radisson Hotel in Middleburg Heights, Ohio at which the Parties were afforded an opportunity to present evidence and testimony supporting their respective positions. The matter was declared closed as of the date of hearing, with the Parties mutually requesting issuance of the Report and Recommendations of the Fact Finder on March 1, 2002.

ISSUES AT IMPASSE

The Parties identified and presented the following seven issues as remaining unresolved.

1. **Article XIII – Promotions**
2. **Section 14.1 – Hourly Rates**
3. **Section 14.2 – Pay Progressions**
4. **Longevity Pay**
5. **Health Insurance**
6. **Vacation Benefit**
7. **Termination of Agreement**

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations delineated in OAC 4117-9-05(K):

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(2)** Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 4117-9-05(K)(3)** The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND

The Ohio Turnpike Commission (Commission or the Employer) is statutorily charged with administration and operation of the Ohio Turnpike (Turnpike) the state's only toll road, running more than 200 miles from the Pennsylvania border across the breadth of Ohio to the Indiana line. The Turnpike is located on the most direct route linking the commercial hubs of New York and the east coast with Chicago. On this corridor, the Turnpike is intermediary in a system of tollways including the Illinois Tollway; the Indiana Toll Road; the Pennsylvania Turnpike; the New Jersey Turnpike; the New York Thruway; and the Massachusetts Turnpike.

Access and egress from the Turnpike is controlled at 30 toll plazas, staffed by approximately 325 full-time and 289 part-time toll collectors. The United Electrical, Radio and Machine Workers of America (UE, or the Union) represents both full-time and part-time toll collectors, who comprise separate and independent bargaining units, and work under discrete

collective bargaining agreements. While the job duties for both bargaining units are the same, the part-time toll collector position is primarily designed to substitute for full-time collectors absent or on leave; part-time collectors accordingly work fewer and irregular hours on an on-call, as-needed basis. Concomitantly, part-time toll collectors determine their own availability for work, on an ad hoc basis. As might be expected, the position draws students, teachers, retirees and others for whom the flexibility and self-determination afforded by the schedule are advantageous.

The Commission has been very successful in its operation of the Turnpike. While total revenues declined some \$8.5 million from FY 2000 to FY 2001 and net income for the Turnpike dropped from approximately \$47 million to \$37 million in that year, the Turnpike's net worth increased some \$36.5 million in the same period. Much of this increase was due to an ambitious capital improvement program that began in 1995 and included the addition of a third lane in each direction over most of the length of the toll road; re-construction or renovation of service plazas; construction of new interchanges; and other projects. To finance these capital improvements, the Commission issued bonds totaling \$845 million; debt service for 2001 was some \$49 million. Moody's, Fitch IBCA and Standard & Poors rate the Turnpike AA. An economic slowdown may be reflected in slight revenue reductions for the Turnpike during some of the period contemplated by the contract now under negotiation. However, there is no indication of inability to pay wage increases sought by the Union here, under accepted application of the language of § 4117-9-05(K)(3).

FINDINGS AND RECOMMENDATIONS

WAGES

UE Position:

The Union maintains that part-time toll collectors perform exactly the same duties on the job as do their full-time counterparts. Accordingly, urging, "equal pay for equal work" the UE proposes increasing wages of bargaining unit members 10% in the first year of the new agreement, and 5% in each of the following two years. Such increase, says the Union, would compensate part-time collectors at the top, or Step D of the wage scale comparably with full-time collectors at the post-probationary Step B.

In support of its position, the Union asserts that under the current contract the gap between part-time, Step D toll collectors and Step B, full-time employees is 22%, or \$2.83. Under its proposal, the UE contends, that gap would be reduced to 11% or \$1.70 as compared to the fact-finder's recommendation for the full-time unit. By contrast, the Commission's proposal, it says, would increase the part-time/full-time gap to 25%, or \$3.53.

The wage increases afforded bargaining unit members over the course of the current contract lag behind those enjoyed by employees of other toll roads, and state employees in Ohio, according to the Union. Moreover, it presents evidence that the CPI-U Midwest rose 9.6% over the past three years, while bargaining unit members wage increases amounted to only 9% over the same period. For these reasons, the Union urges that its wage proposal be recommended.

Commission Proposal:

The Commission proposes an increase in the base wage rate for part-time toll collectors of 3% in each of the three contract years, beginning on the first day of the pay period following ratification of the agreement.

Debt service and payment from revenues for the capital improvements of the past several years, combined with projected revenue reductions due to economic slowdowns combine to restrict the Commission's ability to increase wages and benefits, it says.

The Employer asserts that wage increases afforded part-time toll takers have exceeded the CPI over the previous contract. More, it says, indications are that the economic slowdown will chill inflation, as well – the CPI has dropped each month since September, 2001, the Commission maintains.

Wages currently paid bargaining unit members compare favorably with part-time toll collectors in other states; Pennsylvania, it says, is the only mid-western state to pay a higher rate than does Ohio. Likewise, the wages paid part-time toll collectors compare well with those of similar occupations. Bureau of Labor Statistics figures indicate the mean wage for part-time cashiers is \$7.22; part-time bank tellers is \$9.00; and public service attendants \$8.20, according to the Employer. More, a considerable differential between part-time and full-time workers is the norm, the Commission argues. Bureau of Labor Standards reports indicate that all part-time workers, excluding those in sales, earn 54% of the wages of comparable full-time workers.

For these reasons, the Employer asserts that the present bargaining unit members are appropriately compensated, and that the Commission's wage proposal is both equitable and

reasonable. It also asks that the wage increase be recommended to commence on the first day of a payroll period, rather than mid-period, in the interest of administrative efficiency.

Discussion and Recommendation:

The Union bases its wage proposal on an urging of “equal pay for equal work”. And, in fact, the wages paid full-time Turnpike employees performing exactly the same duties would seem to be the most comparable indicator of an equitable market wage rate for the position. Such internal parity is widely used in negotiations in which the actual job duties and requirements differ far more than they do between the two bargaining units represented by the UE. Neither toll road operations in other states, nor private sector clerical jobs can reasonably be presumed to compare adequately with part-time toll collectors in Ohio.

Moreover, there is some indication, discussed elsewhere herein, that employees willing and able to work the on-call, as-needed schedule required of bargaining unit members might be difficult to attract and possibly to retain. Because, as the Commission seems to imply, such candidates take the position almost entirely for the hourly wage, with little need for other benefits, it might be reasonable to conclude that a higher wage would assist in the recruitment and retention of viable candidates for the position.

The cost estimates of the parties for each proposal vary widely, as might be expected. There is no question as to the Commission’s ability to pay the wage increases sought by the UE here, although such increases would almost certainly require reallocation of resources. However, it is also reasonable to conclude that Turnpike revenues are likely to at best remain stagnant over the foreseeable future, and that debt service obligations will continue to constrain the Commission. Under these circumstances, it is not reasonable or prudent to impose on the Employer the need to reach internal parity among its toll collectors in one step. Consequently, a wage increase of 6% in the first year of the new contract; 6% in the second year; and 6% in the third contract year is recommended. The Commission’s request that in the interest of administrative efficiency any increase be implemented at the beginning of the first pay period following acceptance of this recommendation would seem a reasonable accommodation, and is also recommended.

SECTION 14.2 – PAY PROGRESSION

UE Proposal:

The Union proposes an additional 5% scaled increase in the pay progression, and an effective reduction in the hours required for bargaining unit members to advance between “steps”.

The UE argues that 43% of part-time toll collectors are at Step D, or the top level of the wage scale. It projects that an additional 12% will “top out” at the close of the agreement now in fact finding. The addition of a 5th step, it says, is needed to open room at the top to adequately reward the Turnpike’s most loyal and experienced workers.

Commission Position:

The Commission argues that the Union’s proposal attempts to gain an unwarranted additional 5% pay increase for those bargaining unit members positioned at Step D. The Employer counters with a proposal to increase the number of hours between steps, from the current 1,500 to 2,080 in the next agreement.

Discussion and Recommendation:

There is little or no basis for the Employer’s proposal to increase the number of steps in the pay progression – no assertion is made or evidence proffered to indicate that bargaining unit members are moving through the progression too rapidly. However, there is little evidence that an additional step is needed in order to retain experienced workers – that argument is belied by the Union’s own contention that in excess of 40% of the bargaining unit have remained in the employee of the Turnpike long enough to reach Step D. As both an additional step and a decrease in the number of hours between steps would necessarily come at the expense of hourly wage increases already discussed, retention of the current contract language is recommended.

ARTICLE XIII – PROMOTIONS

UE Proposal:

The Union proposes language that would require the Commission to post all openings for full-time toll collectors, and to fill no less than 75% of all full-time openings through promotion of part-time bargaining unit members.

Such a policy, says the UE, is “instinctive and ubiquitous” and requires no elaborate justification. Bargaining unit members, it says, sometimes feel that their loyal service is held against them by the employer. In order to address the Commission’s past concerns expressed by the Employer, the Union maintains that its current proposal mandating only a percentage of promotions, attempts flexibility in enabling the Turnpike to determine the gates, times and specific employees whole will be promoted.

Commission Position:

The Employer opposes any requirement that mandates promotion, asserting that such a practice would disrupt operations, impede the hiring of qualified personnel, as well as the Commission’s attempts to diversify its workforce. Part-time employees are notified on hire that they will not automatically be considered for full-time employment, and are required to re-apply specifically for full-time positions, says the Commission. For these reasons, it request current contract language be retained.

Discussion and Recommendation:

Implicit in the Commission’s position is a reasonable presumption that the flexibility in schedule and availability required of part-time toll collectors makes their recruitment more problematic than those seeking more regular full-time employment. It is reasonable to believe that the Employer is accordingly reluctant to be required to dip into the relatively rarified waters of its part-time pool to fill the more available reservoir of full-time workers. This is not, however, an unreasonable business approach.

In practice, evidence presented indicates that significant numbers of part-time employees are promoted to full-time. While they disagree somewhat as to the specific numbers, both parties here agree that promotion from within is a beneficial policy, observed in fact, if not in

requirement at the Ohio Turnpike. Therefore, the Commission's arguments being persuasive, retention of current contract language is recommended.

LONGEVITY PAY

Union Proposal:

The UE proposes a schedule of longevity benefits, to be included at Section 14.3, providing for wage premiums based on number of hours worked. The schedule, it says, replicates that found in the full-time contract. It would, according to the Union, reward bargaining unit members enjoying exceptionally long careers with the Commission.

Commission Position:

Arguing that the purpose of part-time toll collectors is to substitute for absent full-time collectors, and that the incentive to work is for additional or supplemental income, not longevity, the Employer opposes the Union's proposal.

Discussion and Recommendation:

The evidence presented here, including the number of bargaining unit members of some longevity, indicates that, as the Commission argues, part-time toll collectors take the positions simply because the flexible schedule enables them to work largely on their own terms. As any longevity bonus would necessarily come at the expense of additional recommended wages, current contract language should be retained.

HEALTH INSURANCE

UE Proposal:

The Union proposes that any part-time collector having worked 800 hours in the preceding year receive health care benefits provided other Turnpike employees, with a 20% co-payment.

This benefit, says the Union, is available to the Commission's full-time employees, and should likewise be afforded those part-time collectors working a considerable number of hours

for the Employer. In support of this position, the Union presents evidence that other toll road operators provide some health care benefits or assistance under various systems.

Commission Position:

The Employer argues that part-time toll collectors are a supplemental work force, the majority of whom enjoy medical coverage through spouses, retirement programs, or other schemes. Moreover, says the Commission, insuring part-timers creates a number of administrative problems. Among these are a determination of eligibility; premium collection; and adverse selection resulting in unpredictable and excessive costs.

Discussion and Recommendation:

The evidence presented by both parties indicates that implementation and administration of the scheme proposed by the Union would be problematic. Despite the potential problems, provision of needed health benefits might be a worthwhile consideration, if a significant number of bargaining unit members would benefit. The evidence, however, indicated that only a relatively few bargaining unit members had an interest in health care benefits over wages, and it may be concluded that even fewer might actually qualify for the provision. Accordingly, the Union's proposal is not recommended.

VACATION BENEFIT

UE Proposal:

The Union proposes provision of a vacation benefit for part-time toll collectors, based on one day for each 208 hours worked. In 2001, says the UE, 41% of bargaining unit members worked a significant number of hours, and are accordingly deserving of some type of paid leave. In support of its position, the UE presents evidence that some other toll roads provide various types of paid time off or other leave on a pro rata basis.

Commission Position:

The Commission argues that paid leave is inappropriate for part-time Employees able to determine their own schedules. Members of the present bargaining unit, says the Commission, are substitute workers, and requiring the Turnpike to provide vacation leave would place them,

“in the illogical position of hiring substitutes for substitutes.” It contends that toll roads in Kansas, New York, New Jersey, Indiana, Maryland and Pennsylvania do not offer vacation benefits.

Discussion and Recommendation:

As the Employer asserts, bargaining unit members have the ability to grant themselves time off, including extended leave, at their discretion. Implementation and administration of a vacation scheme for these employees would therefore result in administrative costs with little or no corresponding benefit to bargaining unit members. Better, it would seem, to award the benefit directly, in the form of wage increases elsewhere recommended. The proposal is accordingly not recommended.

TERMINATION OF AGREEMENT

UE Proposal:

The Union proposes a change in the termination date of this collective bargaining agreement, and accordingly successor agreements, to correspond with that of the full-time bargaining unit, i.e. January 1, 2005. The interests and conditions of employment of the two units are inextricably intertwined, says the Union, and coordinated bargaining would consequently be more efficient for both parties.

Commission Position:

The Employer argues that its full- and part-time toll collector bargaining units do not share sufficient mutual interests to facilitate joint bargaining. The present bargaining schedule taxes limited staff during a difficult holiday period; joint bargaining would burden management employees sufficiently to disrupt Turnpike operations, it maintains. The Commission charges that the Union is attempting her to consolidate the bargaining units it represents, or to compel the Employer to engage in multi-party bargaining.

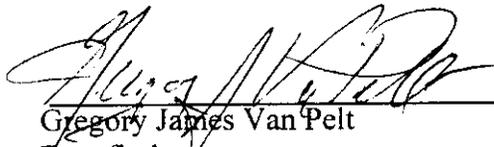
Discussion and Recommendation:

While it is possible the Employer’s assertions that the Union is attempting through this proposal to consolidate the full- and part-time bargaining units, such determination does not need to be reached here. No demonstration was made by the UE to support its assertion of intertwined bargaining interests sufficient to overcome the Employer’s argument that those members of the Commission staff engaged in the collective bargaining process would be overloaded if required to negotiate both contracts concurrently. Current contract language is recommended.

SUMMARY OF RECOMMENDATIONS

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|---|----------------------------------|
| 1. Article XIII – Promotions | Current Contract Language |
| 2. Section 14.1 – Hourly Rates | 6%-6%-6% |
| 3. Section 14.2 – Pay Progressions | Current Contract Language |
| 4. Longevity Pay | Current Contract Language |
| 5. Health Insurance | Not Recommended |
| 6. Vacation Benefit | Not Recommended |
| 7. Termination of Agreement | Current Contract Language |

Respectfully submitted, this 1st day of March, 2002
At Shaker Heights, Cuyahoga County, Ohio



Gregory James Van Pelt
Fact-finder
State Employment Relations Board