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**FACT FINDER'S REPORT****IN THE MATTER OF:**

The Amalgamated Transit Union, Local 1385.

And

The Greater Dayton Regional Transit Authority

Case Numbers:  
03-MED-01-0040Before Fact Finder  
N. Eugene Brundige**PRESENTED TO:**Dale A. Zimmer, Administrator  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup>. Floor  
Columbus, Ohio 43215-4213

And

Peter J. Rakay, Advocate for the  
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And

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N. Eugene Brundige was selected by the parties to serve as Fact Finder in the above referenced cases and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 ©(3).

The parties informed the Fact Finder that time extensions would be filed. A hearing date of May 2, 2003 was subsequently established and utilized.

Appearances for the Union included Pete Rakay, Attorney and Advocate, Robert Stevens, Claude J. Huff, Robert H. Baker, Sr., Mike Sparks, Leo McManahan, Scott Baker and Devin Frazier.

Appearances for the Employer included Tom Hock, Advocate, Dale Crutcher, Judith Pepper, Mary K. Conkez, Binh V. Dinh, Wayne Barnett, and John W. Brown.

A good faith effort was made to mediate outstanding issues. This effort was made to comply with the language of ORC 4117 and also due to the significant number of unresolved issues.

The parties were unable to effectively use the mediation process primarily based upon the significant degree of distrust that did, and does exist between them.

In their pre-hearing filings and during the first part of the hearing, one or more of the parties identified the following issues, and/or contract provisions as being unresolved: <sup>1</sup>

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<sup>1</sup> It should be noted that management proposed several "policies" for the consideration of the Fact Finder which would not modify the language of the Collective Bargaining Agreement, but which they wish to resolve while the window of negotiations was open.

The task of listing the open issues is a difficult one in that the parties utilized different approaches to identify them. The Union listed contract articles and management listed themes that were reflected in various sections of the Agreement.

During the hearing the parties did agree that this list constitutes a total list of the open issues:

**ARTICLE I LABOR-MANAGEMENT COMMITTEES**

**ARTICLE II, Section 3 UNION SHOP**

**ARTICLE IV, SUBCONTRACTING**

**ARTICLE IV A, PROJECT MOBILITY OPERATORS**

**ARTICLE IV B, COMBINATION DRIVERS**

**ARTICLE VII, HOLIDAYS**

**ARTICLE IX HOSPITALIZATION**

**ARTICLE XXI, AUTHORITY SICKNESS AND GROUP**

**SICKNESS AND ACCIDENT PROTECTION**

**ARTICLE XXII, LIFE INSURANCE <sup>2</sup>**

**ARTICLE XV, VACATIONS**

**ARTICLE XIX, HOURS OF WORK – WORKING**

**CONDITIONS – TRANSPORTATION.**

**ARTICLE XXI, PICKING RUNS OR SIGN-UPS**

**ARTICLE XXVI, UNIFORMS**

**ARTICLE XXVIII, TOOL ALLOWANCE**

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<sup>2</sup> During the course of the hearing both parties agreed to retain current language in this Article. It is so recommended.

**ARTICLE XXIX, WAGES**

**ARTICLE XXXIII, PART TIME OPERATORS**

**LONGEVITY <sup>3</sup>**

**ARTICLE XXXVI, TERM OF AGREEMENT**

**PAYMENT OF TRAVEL**

**MEMORANDUM OF UNDERSTANDING ON**

**CERTIFICATION**

**NEW ABSENTEE POLICY**

**LIGHT DUTY PROGRAM**

**INSURABILITY POLICY**

In this report the Fact Finder has made a good faith effort to capture all of the issues, and sub-issues and make recommendations but based upon the sheer volume of open issues errors or omissions are likely. In such case I urge the parties to attempt to resolve their differences through honest exchange.

At hearing the parties had an opportunity to state and argue their positions on each issue and present documents for the consideration of the Fact Finder.

Each party was adequately represented with management bringing six administrators plus the Advocate, and the Union Advocate was accompanied by eight persons representing the Local and the International.

**BACKGROUND:**

This case involves a bargaining unit comprised of approximately 550 bus operators and mechanics.

The parties met on seven occasions beginning February 20, 2003. They reached agreement on three items

The format of this report will be to list an article and the sub issues within that article. A brief review of the position of each party will follow and then a discussion of that issue. My recommendation will be listed and, if new contract language is required to effectuate that recommendation, that language will be provided.

**ARTICLE I.** The only open issue in Article 1 is Section 5 “Union/Management Committee. The parties agree upon the language except the Union desires to add a specific reference to *“run cuts and working conditions.”*”

**Discussion:**

Adding specific references to the language on Union/Management committees will not achieve the desired results. Joint committee work when both parties commit to use them as a problem solving forum.

It appears to this Fact Finder that the current climate between the parties is filled with such distrust that it would be difficult to resolve many difficult issues.

The current language is broad enough to permit discussion of “run cuts” or any other problem areas the parties agree upon.

I do strongly recommend that the parties utilize an outside sources to assist them in joint union management committee training that would teach an interest based approach to their relationship. The State Employment Relations Board offers such services as does the Federal Mediation and Conciliation Service or a neutral trained in Interest Based Decision Making.

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<sup>3</sup> During the hearing the parties agreed that there are no open issues regarding Longevity.

**FACT FINDER'S RECOMMENDATION:**

Based upon the above discussion, I recommend current contract language for Article 1, Section 5.

**ARTICLE II, Section 3:** Management proposes to deal with a problem of absenteeism that is created when employees are on disability. Their solution is to delete the words "These vacancies are defined as being created by the termination of hourly employees, and their separation from the seniority lists." This action would save significant overtime.

The Union opposes any change in this article. They argue that management can add additional employees anytime it desires to do so.

**Discussion:**

In this Article, as in many others, this Fact Finder fails to see a willingness of the parties in this situation to recognize and meet the needs of the other. This is a public entity and the taxpayers and riders expect a certain efficiency and reasonableness in how their funds are managed and spent.

A mechanism needs to exist whereby employees on long term illness or injury leave can be replaced without the necessity of paying overtime

This is best accomplished when the two parties sit down and work together to find solutions to such problems. Since that has not occurred, In this case I will recommend a possible solution:

**FACT FINDER'S RECOMMENDATION:**

Article II, Section 3 shall be amended at the end by adding:

***“When the employer is made aware that an employee will be on extended leave due to illness or injury, the employer may declare a temporary vacancy for the position held by that employee and hire a temporary employee to fill the temporary vacancy. The temporary employee shall serve no longer than the time the regular employee is off work plus the time necessary to fill the permanent vacancy. The permanent vacancy shall be filled pursuant to this agreement and the temporary employee shall have no guarantee of continued employment.”***

**ARTICLE IV** Management seeks to remedy another problem by removing the words *“deprive the members of the bargaining unit to work heretofore normally and regularly performed by them.”* They would add an affirmative statement that says *“Where the authority is short handed in the janitorial classification due to illness, injury, long term absence and everyday absenteeism.”* They believe the impact of this language change would be to allow the Authority to contract out janitorial services when they are short handed. They would not lay off any employees due to such a decision to sub-contract.

The other problem management seeks to address through this change is to gain the flexibility to purchase some reconditioned parts rather than have all of them rebuilt in house.

By management’s estimate \$131,000 per year could be saved on purchasing reconditioned Diesel Engines. Another \$72,000 could be saved on

alternators. If one adds in fuel pumps, water pumps, turbochargers and air compressors, they estimate the savings to be \$241,000 dollars.

The Union favors current language. They note they have secured the right to do this work by previous negotiations and have protected it through various victories in arbitration. They are not willing to give it up.

**Discussion:**

First let me address the issue of janitorial service.

Ordinarily the right to employ casual labor would exist under the reserved management rights concept. In this Agreement it appears that right was given away long ago.

This fact finder failed to see convincing evidence as to why this change is needed.

Further, the addition of the "temporary vacancy" should assist to address this problem.

The matter of the cost of reconditioning in house is another matter. It is true that the Union has prevailed in arbitration and that is noteworthy in that the Union has apparently read the Collective Bargaining Agreement correctly.

There may be a greater underlying issue and that is the public's trust and confidence in the parties.

If (emphasis added) the figures advanced by management are correct, the public will not forever stand by and allow such over expenditures. It is in the shared best interest of the Authority and the employees to work to resolve any

perception that they are not jointly exercising good stewardship of the public and rider funds.

This Fact Finder is not prepared to recommend a “shotgun” fix as proposed by management, but does offer another recommendation that should encourage the parties to work together to resolve this problem or perception of the problem.

**FACT FINDER’S RECOMMENDATION:**

I recommend that current contract language be maintained with the following addition at the end of the first paragraph:

**The Authority shall not lease or otherwise transfer its buses, or use buses leased or otherwise obtained from other companies or persons, the effect of which would be to deprive the members of the bargaining unit to work heretofore normally and regularly performed by them *except that if either party believes there is a significantly more economical. option, such as purchase of reconditioned parts vs. in-house rebuilding, that party shall approach the other in a union management meeting and present the option along with cost estimates for savings. There shall be a full and complete sharing of data and estimates. If there is disagreement regarding estimates, the parties may mutually agree upon a neutral expert to review the data and estimates and offer an opinion on the correctness of them.***

***If there appears to be a significant savings by utilizing the proposed option or a variation of it, then both parties will consent to the option. Such consent will not be unreasonably denied.***

***The utilization of such an option will not result in the layoff of any bargaining unit employee(s).***

***The joint union management committee may discuss the expenditure of any funds saved through the utilization of the option.<sup>4</sup>***

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<sup>4</sup> This is a novel concept. If the parties adopt this report, the Fact Finder urges them to improve the language to meet their needs while maintaining the basic concept of mutually working together to resolve such problems.

**ARTICLE IV A, Project Mobility Operators:**

The Union makes a case to illustrate the status of Project Mobility Operators as they relate to traditional operators. They propose equity for Mobility Operators with other employees.

Management seeks to change this article by adding combination drivers to the "forced list" and would add a requirement of a Commercial Driver's License.

The Union notes that this matter was arbitrated and decided and management is trying to reverse the effect of that arbitration.

**Discussion:**

Fact Finder David Stanton discussed the addition of the Mobility Operators and wisely advised the parties to negotiate their inclusion into the unit. Apparently the parties followed that advice by means of the Memorandum of Understanding signed by the parties on July 14, 1995.

While this Fact Finder has great empathy for those persons in this category, it is difficult to award significant increases in these very challenging financial times. Further, this Fact Finder has very limited factual data from which to determine the appropriate levels of benefits.

While this Fact Finder understands that management would like the additional flexibility of being able to assign Project Mobility Operator's, I fail to be convinced of the necessity of such action especially in light of no proposal to improve the financial status of these operators.

Management also proposed a change to the sick leave reference in this section. On its face it appears reasonable to have the same sick leave provisions apply to Mobility Operators as other employees. But, since these employees are not treated the same in other aspects, I hesitate to alter the deal that was reached in 1995 regarding these employees.

**FACT FINDER'S RECOMMENDATION:**

I recommend Article IV A remain at current contract language.

**ARTICLE IV B, Combination Operators**

The Union's position mirrors the arguments advanced regard Project Mobility Operators. It is noted that, while combination operators are compensated higher than Project Mobility Operators, they are still below traditional drivers in pay and benefits.

Management wishes to amend section 6, paragraph 2 after the third sentence: ***"if work remains, the work will be assigned in inverse seniority order off of the PMOB/Combination Operator seniority list. The next forced assignment will begin when the last forced assignment ended."***

This Fact Finder, like many others, follows the practice that the party who advances a change in the Collective Bargaining Agreement, bears the burden of persuasion regarding that proposed change. The parties have failed to fulfill that that burden regarding this provision.

**FACT FINDER'S RECOMMENDATION:**

For these reasons and those stated related to Article IV A, I recommend the language remain the same as contained in the preceding Collective Bargaining Agreement.

**ARTICLE VII Holidays**

The Union seeks to add President's Day, Veteran's Day and one Personal Leave day.

Management wants to make the use of holiday leave more restrictive by removing the provision that allows for an excuse to be used when the employee is off before or after the holiday.

**Discussion:**

In that neither party provided me with comparables or evidence that would justify a change when applied to the statutory criteria, I see no reason to change the deals previously made.

**FACT FINDER'S RECOMMENDATION:**

I recommend the status quo language of the previous Collective Bargaining Agreement.

**ARTICLE IX Hospitalization**

The Union seeks 100% payment of premium.

Management seeks to eliminate specific benefits as enumerated in Appendix B.

**Discussion:**

It appears to this Fact Finder that this is one article where the parties have cooperated in order to hold down costs. I commend them for their efforts. The cost of future health care as acquired through negotiations reported to the Fact Finder at the hearing, would evidence the success of these efforts.

In these days of escalating health care costs it is unreasonable to believe that the employer will pay the total cost of premiums.

The 70/30 arrangement over \$625 monthly premium is fair and provides an ongoing incentive for the Union to cooperate in the selection of different carriers.

I appreciate the management position that being tied to a specific list of benefits makes negotiations more difficult. This is a very rich plan. Employees should appreciate the uniqueness of benefits like no "in plan deductible" and "unlimited lifetime maximums."

However, at this time it appears the Union has been cooperative in seeking reasonably priced Health Care.

I do not recommend a change in the premium arrangement. I do recommend minor changes in the article as noted below:

**FACT FINDER'S RECOMMENDATION:**

I recommend Article IX remain unchanged except that Section 2 be amended to read:

The Authority has the right to provide *reasonably* comparable benefits through another agency(ies).....

Further I recommend the addition of a new Section 3:

***During the term of this agreement the parties will form a joint Health Care Committee composed of representatives of management, ATU and any other Bargaining Unit. The purpose of the committee will be to seek ways to contain Health Care costs, and find creative alternatives to provide the best health care for employees as the lowest rates possible. The committee may consider alternative minimum benefit plans and recommend same back to the union and management, if it seems appropriate.*** <sup>5</sup>

#### **ARTICLE XI Sickness and Accident**

The union believes there is a need to update Section 1, (A) in order to preserve the days earned by their bargaining unit members.

If I understand their point correctly, there is no need to make this change. The April 6, 1997 date had significance because there was a change in how sick leave would be carried over.

After that change has been accomplished, employees will not lose days they have already accumulated under previous agreements <sup>6</sup>

Management seeks to increase the number of days the employee must work to earn leave from 15 to 18, and would change the waiting period from 45 to

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<sup>5</sup> The parties may, of course, mutually agree to delete or modify this recommendation but this Fact Finder has seen great results achieved through the efforts of such a joint committee

<sup>6</sup> If the parties disagree with the Fact Finder over the necessity of changing this language in order to insure current employees retain the leave they have earned, then they should fashion language to do so, for it is my intent to recommend each bargaining unit member retain previously earned leave.

60 days. Finally they would be able to request a certificate from the Doctor immediately instead of waiting for three days.

**Discussion:**

Management advances a “take back” agenda without offering anything in exchange. I recognize the importance of addressing absenteeism issues, but cannot, in good faith, recommend this type of an approach.

I do offer, in what is becoming a recurring theme, a vehicle by which management could address absentee concerns. That is by engaging the union in the effort. If the parties will faithfully utilize this collaborative approach, I urge them to include such language in their Agreement. If they will not then they should mutually agree to delete this recommendation:

**FACT FINDER’S RECOMMENDATION:**

I recommend the addition of a part K in Section 1:

**Recognizing the impact of significant absenteeism on efficiency, public trust and the morale of employees who regularly come to work, the parties pledge to work together to reduce absenteeism, while caring for the legitimate needs of bargaining unit members.**

**To assist in this effort the parties will form a joint committee which will address ways of reducing absenteeism. The parties will study and recommend strategies which may include recognition of employees with outstanding attendance and strategies that have worked in other jurisdictions to improve attendance.**

**ARTICLE XII Life Insurance:**

During the course of the hearing the parties agreed to current contract language. It is so recommended.

**ARTICLE XV VACATIONS:**

The Union proposes current language.

Management would amend Article XV (B) (2) from 180 scheduled days to 216 days and would delete the second paragraph of this section.

**Discussion:**

Management has failed to convince this Fact Finder of any major operational problem that must be fixed by changing the number of days. Absent such rationale it appears as merely another take back without a quid pro quo.

I heard no testimony or argument regarding the problem with the second paragraph.

**FACT FINDER'S RECOMMENDATION:**

I recommend current contract language.

**ARTICLE XIX HOURS OF WORK:**

The Union proposes current language.

Management proposes to change section 11, (C2) by deleting part-time combination drivers. Further, they would delete from (C3) the words "*of those with 15 years or less seniority. That list of 15 years or less seniority would rotate.*"

Management notes that there were 30 part-time drivers when the language was inserted. Now there are only 2. Likewise, they believe there is no

reason for the 15 year restriction and removing it would make the distribution of overtime more efficient.

**Discussion:**

Management's arguments sound reasonable. The Union's only statement seemed to be "we have never done it that way before."

**FACT FINDER'S RECOMMENDATION:**

I recommend the two changes proposed by management in this article.

**ARTICLE XXI, PICKING RUNS**

During the course of the hearing the Union agreed to withdraw this item and submit the subject matter to discussion in the Union Management Joint Committee. Management agreed to discuss the matter in that forum. Therefore I recommend current contract language.

**ARTICLE XXV UNIFORMS:**

Management recommends current language. The union proposes an increase to \$400.

Management notes that the employees often do not utilize the entire amount of the allowance.

**Discussion:**

The Article contains appropriate safeguards to assure the money is expended wisely. The only question relates to whether the amount needs to be increased. For most employees it appears the current amount is adequate. For new employees it would not be.

The requested \$400 is clearly out of line but some adjustment may be appropriate.

**FACT FINDER'S RECOMMENDATION:**

I recommend Section 1 be amended to read: ***"A cash voucher will be issued to each full-time operator on the effective date of the Agreement each year as follows: \$335 for the first year, \$350 for the second and subsequent years thereafter for maintenance/upkeep."***

**ARTICLE XXVIII TOOL ALLOWANCE:**

Currently the tool allowance for employees in the Mechanical Classifications of Maintenance is \$290 per year. The Union proposes to increase this by \$10 each year of the agreement.

During th hearing the Union stated its desire to have Inclement Weather gear considered as a proper expenditure under Section 2. Management agreed to such an addition.

My recommendation is based upon that understanding and agreement.

**Discussion:**

The proper amount seems to this Fact Finder to be \$300 per year. I am not persuaded that there is a necessity to buy so many tools that an inflation factor must be built in.

**FACT FINDER'S RECOMMENDATION:**

I recommend Section 1 be amended to read: ***The Authority will issue by October 31 during the term of this Contract, to each employee holding***

***Mechanical classifications in Maintenance, and on the active payroll at October 1, each year a tool allowance voucher in the amount of \$300.***

#### **ARTICLE XXIX WAGES:**

Management offered an interesting position. They propose a one time lump sum payment of \$350 plus a share of the saving on any of their proposals that would generate savings.

The Union proposes 4% per year for each year of a 3 year agreement.

As with most aspects of this negotiations, the parties viewed the economic situation from different poles.

Management asserts that they have a significant "ability to pay" issue. The sales tax collections have remained flat or decreased. Since sales tax revenues provide 60% of the Authority's income, there is great cause for concern.

The Union has an optimistic belief that the economy will improve and thus revenues will improve. They also note the Authority has over \$43 million in investments.

They note that in the midst of this financial situation the Authority not only gave its Executive Director a \$28,000 increase but also allowed her to retire and rehired her after paying out her accumulated leaves.

The Union also provided information on the controversial remodeling of the Authority's Board room at a cost of \$1.4 million.

Finally, they note that management's projections included a high increase in Health Care Costs and the current negotiations with carriers illustrates that this will not be necessary.

Management notes that another Fact Finder viewing this same information in a different unit froze wages for the first year of their agreement in favor of a \$350 per employee one time payment.

Management provided comparable information on the salaries of employees in Cincinnati, Cleveland and Columbus

**Discussion:**

The Fact Finder has reviewed the financial statements provided by the parties with particular emphasis on the report of the Independent Auditor.

Several observations and conclusions come to mind.

While it is true the Authority has significant investments, the bottom line is revenue is flat or declining. This is based in part, on the tragedy of September 11, 2001 and the current sluggish economy.

This Fact Finder shares an optimism that the economy must turn around soon but as of the date of this writing that turnaround has not begun.

While the Authority could fund 4% increases from its reserves, that would be fiscally irresponsible.

Ordinarily this Fact Finder does not give much weight to the salary paid to the Chief Executive Officer. The significant expenditures in this case do illustrate that the Authority apparently does not view the situation as the "sky is falling." If

such expenditures are authorized by the Board, then there certainly has to be confidence that a reasonable increase can be granted to employees.

The employer should realize some savings through the utilization of the language proposed regarding temporary vacancies, and the joint effort to save money regarding rebuilding vs. purchase.

The final consideration lies in the outstanding work that has been done in securing favorable Insurance premiums. In the hearing the employer intimated that there would be room for some modest raises based upon these numbers.

**FACT FINDER'S RECOMMENDATION:**

I recommend Annual % increases be:

2.0% effective the pay period that includes July 1, 2003.

2.5% effective the pay period that includes April 1, 2004

3.0% effective the pay period that includes April 1, 2005

and that all pay tables be adjusted to reflect these recommendations.

(The only other salary issue to be considered is the supplements addressed in Appendix C. Those will be addressed when Appendix C is considered.)

**ARTICLE XXXIII PART TIME**

The Union is seeking 100% of single coverage plus \$20 toward family coverage.

Management responds that there are so few persons in this category that there is no justification for such a change.

**FACT FINDER'S RECOMMENDATION:**

I fail to be convinced that there is justification for such a change. I recommend current language.

**LONGEVITY**

During the course of the hearing the parties agreed to withdraw this proposal.

**ARTICLE XXXVI TERM OF AGREEMENT:**

The Union proposes a 3 year agreement arguing that the regular term is necessary to provide a measure of labor peace.

Management has two reasons for seeking a one year agreement. The first is due to the financial uncertainty of the current times.

The second is to provide additional opportunities to bargain changes in the Collective Bargaining Agreement and policies. They feel that this more frequent opportunity to bargain is necessary based upon recent SERB decisions.

The Fact Finder finds merit in the first concern but has addressed the financial situation in the Article on wages. The economy certainly should be turning around by the third year of the agreement or all employers will have to find other avenues to manage expenses.

The second argument, while a valid concern, is better addressed in attempting to work with the Union to resolve many of these troublesome issues. More frequent bargaining within the constraints of the current labor management relations climate will merely frustrate the parties rather than lead to positive change.

**FACT FINDER'S RECOMMENDATION:**

I recommend a three year agreement. The parties should Amend Article XXXVI to reflect this term.

**PAYMENT OF TRAVEL:**

During the hearing the Union stated its desire to put current ATA practice into the Collective Bargaining Agreement. Management agreed. Management is to prepare the language for Union review. I so recommend.

**APPENDIX C:**

The Union proposes current language with the increases in compensation for receiving certifications that were discussed under the wage article.\

Management proposes to amend the MOU to reflect current practices.

Management also recommends an amendment to Article II, Section 5 to make this a condition of employment.

**Discussion:**

There seems to be little disagreement regarding this program. Based on the comparable information provided, I am recommending a small increase in the amounts contained in the MOU. I do not recommend the inclusion of the amendment of Article ii, Section 5.

**FACT FINDER'S RECOMMENDATION:**

I recommend Appendix C be amended as follows:

***APPENDIX C - Memorandum of Understanding***

The Authority and the Union desire a workforce that is proficient in its skill and has knowledge to operate safely.

For purposes of qualifying for positions in the Maintenance and Line Department, the following procedure will be used:

**Maintenance Department:**

- A. Candidates who have demonstrate that they meet the minimum educational, experience and licensing requirements will be given the opportunity to advance by taking the National Occupational Competency Testing Institute (NOCTI) exam. The successful candidate must have a composite score of 64.79 or above to be considered for the position.**
  
- B. Any candidate failing to pass the NOCTI exam must wait a minimum of six (6) months before reapplying for the position and retaking the NOCTI exam.**
  
- C. For those already employed at RTA as Mechanics:**
  1. ASE Certification will be used.
  2. RTA will pay for and make available the study manuals for the test.
  3. RTA will pay employees one time for the time required to take the ASE test and subsequent renewals.
  4. RTA will pay for the cost of the test itself.
  5. ASE study material and testing will be for medium/heavy duty trucks.
  6. For each two (2) certifications, an employee passes, the employee will receive an additional fifteen (15) cent per hour. An employee passing all eight (8) tests will receive a total of seventy-five (75) cents per hour. All classifications except the following are eligible for the premium: line crew, buildings and grounds, janitors, utility cleaners and fuelers.
  7. To maintain the hour qualification premium, the employee must keep the ASE certification current.
  8. An employee passing one or more tests must present the certification documentation to the RTA Human Resources Department.

**Line Shop:**

**Candidates who have demonstrate that they meet the minimum educational, experience and licensing requirements will be given the opportunity to advance by taking the Electrical Line Workers Test (ELWT) as administered by the Human Resources Department and graded by an independent third party. The successful candidate must score a minimum of 80% to be considered for the position.**

**Any candidate failing to pass the ELWT must wait a minimum of six (6) months before reapplying for the position and retaking the exam.**

**NEW ABSENTEEISM POLICY:**

The employer desires to promulgate a new policy on absenteeism and, based on SERB decisions, believe they must do so while the Agreement is open. The new policy would make all absences chargeable and would result in what they term a "no fault" policy.

The Union sees no need to change the existing absenteeism policy.

**Discussion:**

The Fact Finder recognizes the importance of controlling absenteeism and tired to address it under sick leave. However, I am not prepared to recommend a policy change that would be as far reaching as this.

I recommend the proposed policy and its elements be discussed in the proposed Joint Committee on Absenteeism.

**LIGHT DUTY POLICY:**

The employer proposes eliminating the "Light Duty" policy because there is no meaningful work that employees can do.

The Union wants to continue the program as a benefit to its members.

**Discussion:**

The employer told stories of employees who do no work but are compensated for full time pay.

If this is true it is another of those problems that must be remedied to keep faith with the public the authority serves. I recommend the following:

**FACT FINDER'S RECOMMENDATION:**

***Within sixty days (60) of the effective date of this Agreement a Joint Committee composed of an equal number of Union and Management representatives shall meet to discuss the continuation of the Light Duty Policy.***

***If the parties mutually agree, the Policy may be modified. If they do not agree, the program will be continued only if the parties can agree upon meaningful work that can be performed by the persons in the program.***

***If no meaningful work can be identified after good faith discussions, the Policy shall be deleted 120 days after the effective date of the agreement.***

**INSURABILITY POLICY:**

The employer proposes a new insurability policy that would establish stringent limits on the number of points that can be carried by Drivers either on or off duty.

**Discussion:**

Clearly there is an issue wherein employees must retain the proper licensure to operate Authority equipment. Employees who cannot maintain licensure should not be retained as employees of the Authority.

Having made those observations, the Policy proposed by the Authority seems to go beyond the legitimate interests of assuring maintenance of licensure.

I do not recommend the adoption of the proposed policy. I do recommend the parties discuss this matter in their Joint Union Management Committee and attempt to resolve it in that forum.

**BI-ANNUAL PHYSICALS:**

The employer proposes a policy based upon a belief that they must comply with US Department of Transportation Regulations wherein certain employees must be medically certified at least every two years.

The employer offers a letter from their legal counsel, Ron Linville, that concludes they are likely covered by the regulations.

The Union disputes this letter and offers an opinion letter of their own stating employees are not covered by the regulations.

**Discussion:**

This Fact Finder does not have a definitive answer as to whether or not employees are covered, but the Physicals sound like a good idea anyway. Many employees have had their lives saved by such physicals. The Authority should provide the time for the physical and pay the charges involved. I so recommend.

**FACT FINDER'S RECOMMENDATION:**

I recommend management's position:

**MEMORANDUM OF UNDERSTANDING**

**Bi-Annual Physicals**

**In an effort to ensure a safe and healthy workforce, the Authority and the Union agree to the implementation of DOT regulated Bi-annual physicals for all employees whose job require that they possess a Commercial Drivers License and/or employees who operate revenue service vehicles.**

**The Human Resources Department will be responsible for administering the policy. Employees will be compensated for two (2) hours pay at straight time. The cost of the physical will be borne by the Authority.**

**SUMMARY:**

The Fact Finder has made a good faith effort to address all the issues raised by either party but with the sheer number of open issues it is not possible to be totally sure if he has succeeded.

As an impartial observer I am less concerned about the contents of the agreement than I am about the relationship that exists between the parties. As stated earlier in this report, I urge the parties to seriously engage in joint training and efforts to improve that relationship and attempt to move their dealings to an Interest based, problem solving, model.

The people on both sides that this Fact Finder has met seem to be good people. Such an improved relationship would allow many mutual problems to be resolved for the well being of management, bargaining unit members and the riders and public they serve.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated on SERB Rule 4117-9-05(J) the Fact Finder recommends the provisions enumerated herein.

In addition, all agreements previously reached by and between the parties and tentative agreed to, along with any sections of the current agreement not negotiated and/or changed, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 6<sup>th</sup>. Day of June

2003.

  
N. Eugene Brundige,  
Fact Finder

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing **FACT FINDER'S Report** was served by Regular U.S. Mail (the parties waived service by Overnight Express Mail) upon Peter J. Rakay, Advocate for the ATU Local 1385, AFL-CIO, 11 West Monument Building, Suite 307, Dayton, Ohio 45402 and Thomas P. Hock, Advocate for the Greater Dayton Regional Transit Authority c/o Judith Petter, 600 Longworth Street, PO Box 1301, Dayton, Ohio 45401-1301, and Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup>. Floor, Columbus, Ohio 43215-4213, this 6<sup>th</sup>. Day of June, 2003.

  
N. Eugene Brundige,  
Fact Finder