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**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**TRANSPORT WORKERS UNION OF AMERICA  
LOCAL 1**

**AND**

**METRO REGIONAL TRANSIT AUTHORITY**

**SERB CASE # 04-MED-05-0615**

**ADVOCATE FOR THE TRANSIT AUTHORITY:**

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## INTRODUCTION

The bargaining unit is represented by the Transport Workers Union Of America, Local 1 (hereinafter "Union" or "TWU") and the Employer is the Metro Regional Transit Authority (hereinafter "Employer" or "Metro"). The bargaining unit is comprised of approximately 240 bus operators, vehicle service employees and salaried personnel staff. The previous Collective Bargaining Agreement (hereinafter "Agreement") between the parties expired on July 31, 2004. A fact-finding hearing was held on December 20, 2004 over the following issues:

### **Listing Of Unresolved Issues:**

1. Wages (Article 10)
2. PERS Pickup (Article 10)
3. Sales Tax Wage Adjustment and Bonuses (Article 10)
4. Wage Progression (Article 10)
5. Attendance and Accident Incentives (Article 10)
6. Medical Coverage During Leave of Absence (Article 13)
7. Personal Level/Two Tier Structure (Article 13)
8. Collection of Fares by Special Service Operators (SSOs) (Article 21)
9. Martin Luther King and July 4 Holidays (Article 13)
10. Sick Card Occurrences – Article 8, Section 1 (j)
11. Pull-out time.

It needs to be said that the times the parties find themselves in are anything but ordinary. This report reflects the need for the parties to take bold steps to address the economic realities that Metro must confront to maintain a position of strength. Both Advocates represented their respective parties well and clearly articulated the position of their clients on each issue in dispute. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of the parties' proposals on each issue, but will instead reference the

Position Statement of each party along with a summary. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS. In addition, the parties graciously extended to the fact-finder two additional days to issue his report. The report will be postmarked January 21, 2005.

## **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 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. WAGES**

### **Union's Position**

The Union proposes that all bargaining unit positions be given across-the-board wage increases according to the following schedule:

Effective **August 1, 2004**, the pay scale for all bargaining unit positions shall be increased by **3%**.

Effective **August 1, 2005**, the pay scale for all bargaining unit positions shall be increased by **3%**.

Effective **August 1, 2006**, the pay scale for all bargaining unit positions shall be increased by **3%**.

The Union also seeks an economic "me-too" clause.

Wages are provided for in Article 10 of the Agreement, and in Article 22 of the Agreement for salaried office personnel.

### **Employer's Position**

The Employer's position calls for a freeze on wage increases.

### **Discussion**

The Employer provided a convincing argument that at this juncture in its history there needs to be a freeze on wages until Metro can recover from its decline in revenues. While it is recognized the

Employer is asking for a considerable sacrifice on the part of the Union, there is little doubt the viability of the Company and the preservation of jobs are priorities during these difficult economic times. It is clear this is a difficult step for all concerned. The Company has made numerous cuts in several areas, yet the cost of doing business continues to increase in such areas as fuel, maintenance, benefits and wages. Casualty and Liability Insurance costs have increased 151% since 2000, an increase of approximately 30% per year. And, the cost of providing medical insurance to employees has increased 28%.

One of the important statutory criteria for evaluating issues is the interest and welfare of the public. Metro provides a vital service to Summit County and a segment of the public depends on it for a variety of reasons.

### **FACTFINDER'S DETERMINATION**

**The Employer's position is adopted in regard to pay increases. There shall be no across-the-board increases to the employee pay scale. This does not effect progression through the existing pay scale, which shall remain unchanged.**

**The Union's position is adopted in regard to a "me-too" clause insofar as it pertains to wage increases only. In the event any other bargaining unit obtains an across-the-board pay increase, an identical increase to the TWUA pay scale will be granted.**

### **ISSUE 2. PERS PICKUP**

Per Article 10, Section 1 of the 2001-2004 Agreement, and Article 22, Section 8 of the Agreement, a 3% PERS pickup was provided to employees in two 1.5% increments.

#### **Union's Position**

Maintain PERS pickup of 3%

#### **Employer's Position**

Eliminate or freeze PERS pickup

## Discussion

This is an important benefit won by the Union in prior negotiations. After the parties have lived with this provision for a considerable length of time, it is difficult to justify permanent elimination of such a foundation benefit. However, as previously stated above these are extraordinary economic times for Metro, which is facing the most difficult economic times in anyone's memory. Again, the preservation of Metro's service and bargaining unit work is critical. I find a freeze is called for while Metro seeks to stabilize its finances.

## FACTFINDER'S DETERMINATION

**The Employer's position is adopted to a limited extent. Commencing with the start of the first pay period that commences in February 2005, the PERS pickup will be held in abeyance. However, effective August 1, 2006, the 3% PERS pickup will be restored for all TWUA unit employees. This will put the parties back to the position that they were in at the start of this three-year Agreement (8/1/04).**

### **ISSUE 3. SALES TAX WAGE ADJUSTMENT AND BONUS. "SOLA"**

The Collective Bargaining Agreement provides for "SOLA" wage adjustments and bonuses based upon sales tax revenues received by the Company. The following provisions also apply to salaried office personnel per Article 22, Section 5 of the Agreement.

Article 10, Section 2 provides (in pertinent part) for the wage adjustment:

SECTION 2. A wage adjustment shall be paid based upon sales tax revenues received by the Company. Wages shall be increased **1¢ per hour** for every \$35,000 increase in Company tax revenues over the previous year for the first \$500,000 in increases, and **1¢ per hour** for every \$50,000 in increases thereafter. This Adjustment shall be made utilizing a base year of July 1 to June 30 and shall be paid beginning the first payroll period after August 1 of each year. Any annual decrease in sales tax receipts shall be offset, based upon the same formula against amounts due under this section in future years.

Article 10, Section 4 provides for the SOLA bonus:

SECTION 4. A bonus will be paid on December 15<sup>th</sup> (if the 15<sup>th</sup> falls on the weekend it will be paid the following Monday) for **December 2002** and **December 2003** based upon sales tax revenues received by the company. This bonus will utilize a base year of July 1 to June 30 of the prevailing year. **One cent per hour** for every \$50,000 increase in company tax revenue over the previous year. The bonus will be based on a standard work year of 2,080 hours. The bonus will be prorated for employees working less than 80% of 2,080 hours in the previous year.

### **Union's Position**

The Union proposes to amend Article 10 Section 2 to provide a SOLA wage adjustment of **2 cents per hour** (in substitution for the 1 cent per hour of the current Agreement) and to amend Article 10, Section 4 to provide for a 2¢ per hour adjustment each successive December per the formula set forth in the Agreement.

### **Employer's Position**

To suspend or delete SOLA payments.

### **Discussion**

While it is clear Metro is facing extraordinary economic times, the Union made a convincing argument that its proposal on SOLA should be considered as a good faith commitment that the bargaining unit will share in gains in tax revenues. Hopefully a recovering economy in Summit County will translate into increases in tax revenues. There are already signs that revenues may be improving, yet it is common knowledge the state of Ohio is facing a major (in the billions of dollars) shortfall in revenue as it approaches the next biennium budget period. This shortfall will eventually impact local governmental entities. The Union, which will make temporary sacrifices in wage adjustments, should maintain its position to gain from increases in tax revenues over the next three years. It is also noted that August SOLA last paid .17 per hour and the determination made below will increase this sum if conditions remain favorable. It is also noted that the determination made below restores half of the "Year-end SOLA" that expired under a

sunset provision. This determination is made to help offset changes made regarding other financial issues in this report.

**FACTFINDER'S DETERMINATION**

The position of the Union is adopted to a limited extent. In years two and three of this Agreement only the SOLA wage adjustment under Article 10, Section 2 will be increased. Effective August 1, 2005, the SOLA wage adjustment will be paid at 1.5 cents per the formula set forth therein, and effective August 1, 2006, it will be paid at 2 cents. However, the formula shall revert to the 1-cent level at the conclusion of the term of the Agreement. This will put the parties back in the position they were in at the start of this three-year agreement (8/1/04).

In addition the SOLA bonus of Article 10, Section 4, which expired under the prior Agreement, will be continued to be paid each successive December based upon .5 cents per hour per the formula set out in Section 4. This continuation is in consideration of the elimination of the attendance and accident incentive bonuses set out in Article 10, Section 3.

**ISSUE 4. WAGE PROGRESSION**

Article 10, Section 1 of the Collective Bargaining Agreement provides the following wage progression for Operators:

1 <sup>st</sup> YEAR	2 <sup>nd</sup> YEAR	3 <sup>rd</sup> YEAR	4 <sup>th</sup> YEAR	5 <sup>th</sup> YEAR
60% of Top Rate	65% of Top Rate	70% of Top Rate	75% of Top Rate	100% TOP RATE

**Union Position**

The Union proposes to collapse the wage progression to reach the top scale in three years according to the following schedule:

1<sup>st</sup> year                      2<sup>nd</sup> Year                      3<sup>rd</sup> Year

80%

90%

100%

### **Employer Position**

No change to current progression.

### **Discussion**

During the current financial difficulties that include a determination of a wage freeze consideration of an enhanced wage progression is not warranted.

### **FACTFINDER'S DETERMINATION**

**The Employer's position is adopted in regard to Wage Progression. The current wage progression shall continue unchanged.**

### **ISSUE 5. ATTENDANCE AND ACCIDENT INCENTIVES**

Article 10, Section 3 of the Agreement provides for Attendance and Accident Incentives. Per Article 22, Section 5, this provision is not incorporated into the salaried office staff provisions. It provides as follows:

SECTION 3. An incentive pay program shall be utilized to reward superior performance beginning with calendar year 1992. To qualify an employee must work 80% of expected hours for a full-time operator, i.e., 1,664 hours per year. Effective December 2001 this performance incentive will be paid annually on the fifteenth of December (if the 15<sup>th</sup> falls on the weekend it will be paid the following Monday) as a lump sum based on hours worked December through Novembers. (Except payment for December 2001, which will be based on hours worked January 2001 through November 2001) All incentives earned to date shall be frozen at their current amount.

Items considered when calculating annual attendance incentives are sick days, misses, report offs, leaves of absence, suspensions and etc. (Basically, unpaid time-off). When a dispatcher excuses an operator from duty because of an excess of workforce, that

excused absence will not be treated as disqualifying time when calculating this incentive.

SICK DAYS AND MISSES (COMBINED TOTAL)	
0	5¢
1-2	4¢
3-5	3¢
DRIVING RECORD	
0 PREVENTABLE ACCIDENTS	5¢ PER HOUR

### **Union's Position**

The Union's position is that the incentives provided in Article 10, Section 2 should henceforth, as they were in the 1997 Agreement, be rolled into each employee's base wage.

### **Employer's Position**

The Employer proposes to eliminate or suspend the payment of incentives.

### **Discussion**

The gain made by the Union in SOLA provides a more reasonable and equitable substitute for the elimination of this provision, which does not affect all employees equally. Furthermore, FMLA leave, when introduced in the early 1990s had the effect of complicating incentives of this nature. It is also recognized that the accident incentive had unintended consequences, not the least of which placed bargaining unit employees' jobs in jeopardy if they failed to report accidents because of pressure to remain qualified for a bonus payment.

## **FACTFINDER'S DETERMINATION**

The position of the Employer is adopted and the incentives in Article 10, Section 3 are eliminated. However, as noted, restitution of a year-end SOLA bonus will be made in substitution for the incentives.

### **ISSUE 6. MEDICAL COVERAGE DURING MEDICAL LEAVES**

The current Agreement provides for the loss of medical benefits for individuals with less than two years seniority after the employee is off work for more than six months Article 15 Section 4(b) of the Agreement provides:

Effective August 1, 2001, any new employee in the first two years of employment that is off work more than six (6) months will lose medical benefits. Once the employee comes back to work, benefits will be reinstated based on insurance carrier policies. Continued insurance benefits may be provided through COBRA.

Currently, other employees receive medical coverage during medical leaves for up to two years.

#### **Union Proposal**

The Union proposes no change

#### **Employer Proposal**

The Employer proposes that all employees lose medical coverage after being off work for three consecutive months except for employees on leave because of Workers Compensation, whose medical coverage will lapse after six months.

#### **Discussion**

Metro provided convincing evidence and testimony that this benefit needs to be modified in order to move it closer to what other public entities in Ohio may still provide to their bargaining unit employees. However, it is uncommon to find a public or private employer who is contractually obligated to provide medical coverage for two years of leave. And, in this era of cost cutting both employers and unions are scrutinizing such benefits as a way of preserving other health care coverage. Unfortunately, it appears

that most employees who are on leave for two years do not return to work. In the experience of this neutral once employees are off of work for more than one year the likelihood they will return to the bargaining unit is greatly diminished. However, rather than an immediate modification changes of this nature are normally revised in a manner that provides bargaining unit members with advanced notice. With these changes, Metro can realize some cost savings of \$22,000 dollars per year (based upon est. of 3 individuals off on long-term sick leave at the family insurance rates) while minimally impacting the vast majority of bargaining unit employees.

### **FACTFINDER'S DETERMINATION**

**The Employer's proposal to cap medical coverage during medical leaves is granted to a limited extent. Effective with medical leaves beginning on or after year two of the Agreement (i.e. August 1, 2005), medical coverage will continue for up to eighteen months, rather than for two years. This does not affect anyone on a medical leave that commences prior to August 1, 2005.**

### **ISSUE 7. PERSONAL LEAVE – TWO TIER STRUCTURE**

The current Agreement provides for a two-tier personal leave structure. Article 12, Section 1 provides in pertinent part:

Effective August 1, 1997, employees **hired before 07/01/97** will received one (1) additional personal leave day. Effective 1, 1998, employees **hired before 07/01/97** will receive another personal leave day. Beginning in 1998, two (2) of the six (6) personal leave days are to be taken on the day after Thanksgiving and/or Christmas Eve, if not scheduled to work. Employees scheduled to work on one or both of these days will be paid a straight time, and the unused personal leave days can be scheduled anytime thereafter subject to scheduling requirements. Employees who work the day after Thanksgiving and/or Christmas Eve may request to be paid for one or both of these days in any pay period following these days.

### **Union's Position**

The Union proposes to delete the phrase "hired before 07/01/97" from this provision to provide equal personal leave days to all employees.

### **Employer's Position**

No change.

### **Discussion**

The Union provided convincing testimony of the inadequacy of the two-tier personal leave system and the division it is now causing in the bargaining unit. During these difficult times, cooperation and understanding by employees is critical making it necessary for parties to a collective bargaining agreement to determine whether current understandings still meet current needs. It is not unreasonable or uncommon for parties to revisit former understandings/provisions that at one time made sense (based upon circumstances at the time) but now need to be revised as the makeup of the bargaining unit and the goals of the employer change. Therefore, it is reasonable to accept the Union's position in the third year of the Agreement.

### **FACTFINDER'S DETERMINATION**

**The position of the Union is adopted on a delayed basis. Effective August 1, 2006, the two-tier personal leave system will be eliminated, and employees hired after 7/01/97 will receive two additional personal days. This will be accomplished by removing the phrase "hired before 07/01/97" from Article 12, Section 1 of the Agreement.**

### **ISSUE 8. COLLECTION OF FARES BY SPECIAL SERVICE OPERATORS**

The Collective Bargaining Agreement provides at Article 21 for Special Service Operators (SSO's) funded by resources that do not require the collection of fares.

### **Union's Position**

Article 21 to remain the same.

**Employer's Position**

SSO's to be permitted to collect fares, remove farebox restrictions, so it can pick up more of its contracted service.

**Discussion**

The Company made a convincing case for creating more flexibility in the duties of SSOs. However, the Union argued that SCAT runs should be maintained. After considering the weight of each party's evidence and testimony, I find the facts justify a modest expansion of SSO duties that will result in Metro realizing increased savings.

**FACTFINDER'S DETERMINATION**

**The Employer's position is adopted to the extent of inserting the language bolded below into the first paragraph of Article 21 of the Agreement. It is the intent underlying this language that SCAT runs will not be reduced. The remaining language of Article 21, including the limitation on the total number of SSO's will remain the same.**

**ARTICLE 21  
SPECIAL SERVICE OPERATORS  
("SSO")**

In the event service can be designated to provide shuttle within major retail areas, the University of Akron Loop and downtown loop service that is funded by resources that do not require the collection of fares, Special Service Operators (SSO) shall be employed to perform that service. Other new service that is contracted to provide service funded by resources that do not require the collection of fares, shall also be performed by Special Service Operators. No current service performed by the full-time operators will be adjusted to conform to SSO

parameters, with the exception of service provided to the Chapel. The new service should be contracted for no less than two (2) consecutive months in length of time in order to SSOs to be utilized. **Additionally, SSO's shall be permitted to collect fares on trips utilizing vehicles that do not require that a driver have a Commercial Drivers License ("CDL"), so long as the use of such SSO's does not reduce any current SCAT runs.** Special Service Operations (SSOs) will be paid only for hours worked. SSO's will have the same medical benefit as EBFI operators. They shall be eligible for two (2) personal leave days per year. Pay for the personal leave time shall be equal to the total daily hours of the SSO's signed work, during the sign up that the personal leave day is taken.

## **ISSUE 9. MARTIN LUTHER KING AND JULY 4 HOLIDAYS**

Article 13, Section 1 of the Collective Bargaining Agreement provides in relevant part:

For the purposes of this Agreement, News Years Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and the employee's birthday (optional floater) shall be considered holidays.

### **Union's Position**

The above language should remain unchanged

### **Employer's Position**

Delete Martin Luther King and July 4 holiday.

### **Discussion**

July 4 and Martin Luther King day are significant holidays in most all public sector contracts. Although the position of Metro was understandable regarding the need to maintain service, these holidays are of such long standing worth that a change is unwarranted at this time.

**FACTFINDER'S DETERMINATION**

**The position of the Union is adopted. There shall be no change in the holidays provided under the Agreement.**

## **ISSUE 10. SICK CARD/OCCURRENCE**

Article 8, Section 1 (j) of the Agreement provides:

An operator will be permitted to put in a sick-card for any day and not forfeit his/her assignment for the following day, if by 1:00 PM he/she notifies that dispatcher of his/her availability for work the following day. Furthermore, notwithstanding the aforesaid, any operator who is repeatedly absent for any reason will be subject to more severe discipline up to and including discharge. The use of the sick-card is for legitimate illness only, and any employee found to be using same to absent himself from duty for any other reason will be subject to discipline up to and including discharge. If the operator has not been released to return to work after three months and every three months thereafter, another sick card will be entered.

### **Union's Position**

No change in existing language.

### **Employer Position**

Cap the length of a sick card/occurrence to a maximum of 25 days.

### **Discussion**

There is insufficient evidence to justify a change in the language of this provision at this time.

### **FACTFINDER'S DETERMINATION**

**The position of the Union is adopted. There shall be no change in the sick card/occurrence policy.**

11. **Pull-Out Time**

At hearing, the parties indicated their belief that an issue regarding “pull-out time” under Article 8, Section 2(b) of the Agreement could be resolved by a committee of union and management representatives. Accordingly, that issue is referred to committee for resolution. The parties are directed to convene a committee within 30 calendar days following the ratification of this Agreement.

## TENTATIVE AGREEMENTS

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 20<sup>th</sup> day of January 2005 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein". The signature is written in a cursive style with a large initial "R" and "S".

Robert G. Stein, Fact-finder