

**HAND DELIVERED**

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD  
2005 JUN 17 P 4: 11

THE CENTRAL OHIO TRANSIT AUTHORITY, :

Employer, :

-and- :

Case No. 04-MED-11-1280

THE TRANSPORTATION WORKERS OF AMERICA, :  
LOCAL 208,

Employee Organization. :

FACT-FINDING

*Philip H. Sheridan, Jr., Fact-finder*

*Issued: JUNE 17, 2005*

RONALD G. LINVILLE, Esq.  
BAKER & HOSTETLER LLP  
65 EAST STATE STREET, SUITE 2100  
COLUMBUS, OHIO 43215

FOR THE EMPLOYER

ROBERT W. SAUTER, Esq.  
CLOPPERT, LATANICK, SAUTER & WASHBURN  
225 EAST BROAD STREET  
COLUMBUS, OHIO 43215

FOR THE EMPLOYEE ORGANIZATION

## STATEMENT OF THE CASE

The parties, the Central Ohio Transit Authority, (hereafter COTA) represented by Ronald G. Linville, Esq., and Tara Ferrell, Esq., and the bargaining unit, The Transportation Workers of America, Local 208 (hereafter Local 208) including approximately 620 full-time motor coach operators and service department employees excluding supervisors, managers and clerical staff, represented by Robert W. Sauter, Esq. And Kristin L. Seifort, Esq., have entered into negotiations for a successor contract to the contract that expired January 30, 2005.

The parties met and bargained in good faith with a number of meetings between the parties. The parties without dispute, or through negotiation, reached apparent tentative agreement on all but eleven of the Articles that were negotiated.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, the State Employment Relations Board appointed Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, as fact-finder.

The parties agreed to fact-finding hearings on March 2, May 16, and May 26, 2005, and the meetings were convened at the Columbus downtown Holiday Inn. In addition to their representative, Dianne McLinn, Vice President, Human Resources, Carol Wise, Belinda Taylor, Pat Stephens, Jeff Vosler, Chris Wallace, Steve Yuszka, Ginny Barry, Marion White, Trevor Ocock, and Dirk Raderstorf, appeared at one or more hearings on behalf of COTA. In addition to their representative, Theotis L. James, President, Local 208, Duane L. Marbury, First Vice President, Andrew Jordan, Second Vice President, Richard T. Kirk, Secretary Treasurer, and Keith J. Mason, Recording Secretary, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties.

The remaining issues were discussed, and the parties agreed on Article XXVII, Duration, which the parties agreed would be three years, January 31, 2005 through January 30, 2008, the

parties agreed to discuss and agree on the Housekeeping language that COTA proposed, and the parties agreed to take Article XXI, Section 1, Uniforms/Grooming off the table because of agreement in principle that Local 208 accepts the addition of the operators' badge numbers to uniform sleeves at COTA's cost.

The parties agreed that the remaining Articles at issue were not amenable to additional mediation. The parties submitted the matter upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues that have been resolved, the unresolved issues, and each party's proposal on the unresolved issues.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I). The evidence and arguments presented to me convince me that COTA has experienced flat revenue and net losses in three of the last four years, which is clearly a subject of considerable concern to COTA, Local 208, and the public. Costs of fuel and health insurance seem likely to continue to increase, as will wages and benefits. This situation affects my recommendations because I assume good faith in the dealings between COTA and Local 208, and I realize that each has a share in the continued success of a valuable public resource. I have tried not to recommend changes for the sake of change, but I have recommended adjustments where I am convinced they are necessary.

## **THE POSITION OF THE PARTIES AND RECOMMENDATIONS**

### **Article III, Section 1 – Management Responsibility**

COTA's Position: COTA seeks to add new language to create the appropriate consistency between the language in the Bus Operators/Mechanics Unit contract and the language in the contracts for the other two units represented by Local 208, the Cashier/Fare Box Unit, and the Customer Service Unit. COTA claims that the change will facilitate consistent operations and management of its workforce.

Local 208's Position: The bargaining unit proposes no change. It asserts that R.C. 4117.08 provides COTA with its management rights, that the statute does not include “transfer or subcontract work,” that the other two bargaining units only consist of 14 employees, and that Local 208 does not agree to give up its right to “past practice” as established in the previous dealings of the parties.

**Discussion and Recommendation:** I recommend no change. COTA provided no concrete instances of its inability to exercise its management rights or of a lack of consistency in its operations as a result of the language in the expired contract.

### **Article VIII, Appendices A and C - Wages**

COTA's position: COTA proposes a wage freeze for the first year of the contract, and a 2% raise across the board in the second and third years of the contract with 1% paid on the effective date of the contract and 1% paid six months later. COTA also proposes a significant reduction in the wage rate to be paid to Servicemen/Steam Jenny and Labor Pool employees. Finally, COTA proposes deletion of Appendix “C” Cost of Living Allowance because it has not applied to the bargaining unit for 15 years. COTA argues that its financial affairs, including losses in three of the last four years, support its modest offer. COTA claims that Local 208 is

clearly the best paid bargaining unit for transit systems in the State, and that when the pension pick-up is included the bargaining unit may be the best-paid transit employees in the country. Similarly, COTA argues that the Servicemen/Steam Jenny and Labor Pool wage rates are significantly higher than what is normally paid in the marketplace for unskilled labor by as much as 30 to 35%. COTA is concerned that trained employees are bidding on the jobs and cutting grass when they should be repairing the buses. A recent fact-finding in Akron supports COTA's view that no raise in the first year and small raises in the second and third year are justified where the Authority has lost money in three out of the last four years.

Local 208's position: The bargaining unit proposes 4% increases in each of the years of the contract. The Local opposes the reduction in the rate of pay for Servicemen/Steam Jenny and Labor Pool wage rates. Local 208 agrees that Appendix "C" can be deleted from the contract. The bargaining unit believes it should be at the top of the comparables of transit operations in Ohio. It wants to maintain that position for its members. It argues that COTA's cash balance of 18 million dollars is substantial, and it supports Local 208's argument that COTA is able to fund the requested increases, which would barely outpace inflation, especially if the members must incur increased health insurance costs. In contrast, Akron's cash balance was only 2 million dollars. The bargaining unit argues that an analysis of the expired agreement supports its argument. The members received a signing bonus, a 2% raise in the first year of the contract, a 2% raise on the effective date of the contract in the second year and a 1% raise and a 1% pension pickup six months later, and a 2% raise on the effective date of the contract in the third year and a 1% raise and a 1% pension pickup six months later. The bargaining unit argues that the reformed new management of COTA should deal with the effects of its past mismanagement through cost savings, should consider a fare increase, and should not demand money out of the

bargaining unit members' pockets without some benefit in return. The members in the Serviceman/Steam Jenny and Labor Pool classifications have done nothing to deserve a 33% reduction in their rates of pay.

Discussion and Recommendation: I recommend a 2% raise upon ratification of the contract, a 2% raise effective January 30, 2006, a 1% raise July 31, 2006, a 2% raise effective January 29, 2007, and a 1% raise July 30, 2007. The recommendation reflects COTA's economic realities and provides a fair raise to the bargaining unit over the life of the contract. Concerning the Servicemen/Steam Jenny and Labor Pool wage rates, COTA's comparables do show that the employees in these positions are paid more than the amount paid to similar employees by other Ohio transit authorities. However, even in the face of the documented losses, I am not inclined to recommend cutting current employees from \$21.32 per hour for Serviceman/Steam Jenny to \$14.21 and from \$20.85 per hour for Labor Pool to \$13.90. Thirty three percent reductions in pay are not supportable under any reading of Chapter 4117. I will recommend COTA's reductions for new hires after the ratification of this contract, but I don't believe it will have much effect on COTA's perceived problem as long as bidding from within fills positions by seniority. I am also not going to recommend overturning the longstanding system of bidding for jobs by seniority.

#### Article XI – Sections 1 and 2 – Sick Days

COTA's position: COTA proposes a reduction in the amount of sick days that are accrued by bargaining unit members from the present annual allotment of 13 days to 9 days. COTA provided statistics that indicate that 8 percent of operators call off sick on a daily basis, that the average annual usage is around 9 days, and that other comparable transit authorities allot an average of 9.3 days of sick leave per year to their bargaining unit members. COTA alleges that the number

of days allotted leads to abuses in absenteeism. The proposed reduction would also be a cost savings because bargaining unit members would have fewer days to accumulate and either sell back or redeem at the end of the year or on retirement, and a reduction in usage would lead to less overtime.

Local 208's position: The bargaining unit proposes no change from the expired contract. The 13<sup>th</sup> day is only available to bargaining unit members who are available for work on 240 workdays. The accrual of 13 days was a bargained for benefit in return for concessions on wage progression. Not every absence leads to overtime, and the maximum accumulation is set at 150 days. On retirement, a bargaining unit member can redeem the days at the rate of pay enjoyed at the time the days were accrued. The parties negotiated concerning the alleged absenteeism problems and agreed in the previous contract to a no fault system that was subject to arbitration when disputes arose.

Discussion and recommendation: I recommend no change in the contract language. Although use, or misuse of sick leave may be one of the causes of increased costs and overtime, disciplinary actions are more likely to solve that problem than reducing the amount of leave accumulated. I would not penalize the good employees for the actions of their co-workers. Neither party provided evidence that allowed me to determine whether an eight percent daily absence rate is out of line or whether usage of slightly more than nine days sick leave in a year is excessive or normal.

#### Article XII - Insurance

COTA's position: COTA proposes a monthly contribution by the bargaining unit for health insurance premiums in the amount of 20% of the premiums. COTA also proposes changing the contract language that requires agreement of the bargaining unit before COTA can change the

benefit levels as the market changes during the term of the contract. COTA proposes a two-tier system without the gatekeeper primary care physician, so that all services will either be in-network or out-of-network. Significant differences discussed at the fact finding hearings included a \$10,000.00 lifetime limit on gastric bypass surgery and complications, an increase in co-insurance maximums that includes the deductible, increase of the office visit co-pay from \$15 to \$20, a change in the mail-in prescription plan from a \$20 co-pay for generic drugs to an 80% - 20% payment system, cancellation of payment for "lifestyle" drugs, and payment for the difference in cost of a brand named drug requested where a generic substitute is available. COTA points out that the contracts from the insurer are for one year only and often the insurers do not offer the exact same plan in the next year. COTA needs flexibility in order to tailor the best possible plan for all of its employees, and is willing to agree that non-bargaining unit employees will receive the same coverage as bargaining unit employees. COTA is committed to obtaining the best coverage at the most economical cost. Sharing of premiums and increases in deductibles will encourage the bargaining unit members to use the plan in a responsible manner, and controlled usage will in turn result in reduced costs because the increased premiums that have been the norm are based on past experience.

Local 208's position: The bargaining unit proposes no change. Twenty percent of the current family premium would result in an increased cost to the members of over \$200 per month. Each of the increases in co-pays and deductible amount results in potential out-of-pocket expenses for the members. Adoption of COTA's request for flexibility would mean that the bargaining unit has no certainty about the overall plan design during the term of the contract. The limitation on gastric bypass coverage is based on one case in which complications occurred, and the five surgeries of this type during the last contract all cost more than \$10,000.00. COTA did not present

evidence that Local 208 had unreasonably withheld consent to any proposed changes in the plan during the last contract. The bargaining unit would rather increase the deductibles and have the members who use the plan the most bear the cost than be required to pay a part of the premium.

Discussion and recommendation: I recommend establishment of a co-pay of health insurance premiums (which includes health, dental and vision coverage) at a rate of 5% of the premium amount from the date of ratification until the beginning of the second year of the contract, 7.5% in the second year of the contract, and 10% in the third year of the contract. I recommend continuation of the requirement that significant changes to the benefit design require mutual agreement. The two-tier system proposed by COTA appears to be reasonable in most respects, the increased deductibles are not out of line in the marketplace, and I recommend it with the following changes. I would recommend deletion of the lifestyle drug language and the language concerning “medical necessity” being required for coverage of oral contraceptives. I would also increase the lifetime maximum for gastric bypass to \$40,000.00.

Article XVIII, Sections 3(b) and 3(e) - General

COTA’s position: COTA proposes a change in the requirement in section 3(b) that bargaining unit employees provide a doctor’s statement in order to be excused from overtime work if it is detrimental to the employee’s health. The change would provide that COTA’s doctor’s opinion would be controlling in a review of the exemption. COTA also proposes an addition to section 3(e) that requires a written doctor’s statement if an employee has been absent for more than three workdays. COTA argues that employees are misusing doctor’s excuses to avoid overtime work and that requiring a doctor’s statement after a significant absence is a common practice in most union contracts. The changes promote compliance with COTA’s attendance policy and enable COTA to more efficiently manage its workforce.

Local 208's position: The bargaining unit proposes no change. The bargaining unit wants to be able to grieve management decisions that refuse to allow an exemption from overtime. A requirement of a doctor's written excuse after three days of absence encourages increased usage of the health insurance benefits and not every three-day absence requires a visit to the doctor.

Discussion and recommendation: I recommend no change in the contract in this article. No specific problems were presented other than COTA's suspicion that exemption from overtime excuses are being misused. I don't know how many exemptions there are or whether there have been actual disputes over their validity. COTA can require review of the bargaining unit member's medical records by its doctor, and denial of the exemption based on its doctor's opinion is properly subject to the grievance provisions. Similarly, it appears to me that a bargaining unit member should only be required to obtain a written statement from his doctor where there is some valid question about the member's fitness for duty.

Article XXII, Section 15 - General and Article XXIII, Section 16 - Transportation General

COTA's position: COTA proposes deletion of each of the sections. Section 15 limits subcontracting to paratransit services to the elderly and disabled on a fixed route basis, and section 16 limits the operation of authority owned vehicles and other equipment when the vehicle or equipment is being used to perform functions normally assigned to bargaining unit employees. COTA argues that the deletions are necessary because COTA needs the "flexibility to contract with private vendors to provide unique or specialized services on its least productive routes." The expanded right to subcontract allows COTA operational freedom to manage its workforce and allocate its resources in the most effective and efficient manner.

Local 208's position: The bargaining unit is against the deletion of the two sections. COTA's efforts are similar to its effort in Article III, Section 1, which is to obtain the authority to

subcontract bargaining unit work. Limited subcontracting is already allowed in the contract, COTA succeeded on two low-income programs under the current language, and the bargaining unit is against subcontracting that reduces the work available to its members.

Discussion and recommendation: I recommend no change. COTA did not provide specifics of proposed programs it was unable to implement because of the existence of these two sections. COTA currently subcontracts on a limited basis in both the transportation of the elderly and disabled and in the performance of certain maintenance on its buses.

Article XIX, Sections 2, 4, 5, and 7 – Transportation Department. Hours of Work and Working Conditions

COTA's position: COTA proposes elimination of the 8-hour "daily" run guarantee for runs that exceed six hours and the two-hour "piece" guarantee. COTA argues that these guarantees unnecessarily restrict COTA's ability to schedule buses and provide extra pay when no work is performed. COTA expects that the elimination of the guarantees will reduce overtime costs, allow more efficient management and scheduling of routes, and allow payment for the actual work done. Most runs do not take exactly 8 hours.

Local 208's position: The bargaining unit proposes no change. The guarantees were bargained for benefits the members have enjoyed based on their long bargaining history. COTA is in charge of scheduling and recently purchased an expensive computer program to control the extra costs incurred by enabling COTA to schedule runs that are close to eight hours long. This change would also affect the 40-hour per week guarantee.

Discussion and recommendation: Despite the best efforts by COTA to equalize the length of the runs a number do not amount to 8 hours for "straight" runs or "combination" runs. Currently, if they exceed 6 hours the employees are paid for 8 hours. I recommend a modification

of the expired contract language that requires the “straight” and “combination” runs to exceed 7 hours before the 8-hour guarantee applies. I recommend no change in the 2-hour guarantee.

Article XIX, Sections 8, 9, 25, 26, and 27 – Transportation Department. Hours of Work and Working Conditions.

COTA’s position: COTA proposes reduction of the payment of “intervening time” from the current 90 minutes to payment of any intervening time less than 30 minutes as required by the Fair Labor Standards Act. COTA’s service is predominantly oriented to provide trips at peak times in the morning and afternoon. This results in a number of split work assignments as opposed to the traditional eight hours of work. COTA believes it should be able to achieve a substantial cost savings by not paying bargaining unit members for the time between assignments where the intervening time exceeds 30 minutes.

Local 208’s position: The bargaining unit proposes no change. Again, the long bargaining history of the parties has led to this benefit, which is not unusual in transit contracts. Under the current expired contract COTA can tie up 14 hours of the day for a bargaining unit member and only pay 90 minutes of intervening time for the period in between assignments. To say that this is time not worked does not fully consider the inconvenience to the employee and the degree of control that COTA exercises.

Discussion and recommendation: I recommend no change in the contract language. As a practical matter, the bargaining unit members are controlled by COTA, their personal transportation is not readily available, they are limited in their ability to transact personal business, and they are unable to return home for the interval.

Article XIX, Sections 15, 20, and 23 – Transportation Department. Hours of Work and Working Conditions.

COTA's position: COTA proposes changes in the sections that will result in beginning the calculation of the hours of work when the operator begins driving. Currently operators register on at a station and are paid for their travel time to the point of relief. Operators routinely park their personal vehicles at COTA facilities and ride buses to the various points of relief, for instance, Broad and High Streets. COTA argues that this change will reduce overtime costs and address abuses in the current Attendance Policy.

Local 208's position: The bargaining unit proposes no change in the contract language. The proposed change, according to the figures provided by COTA, would result in a reduction in an operator's compensation of about \$1,800.00 annually. COTA determines the point of relief and most of the runs are relieved at Broad and High. Parking would be prohibitive for personal vehicles at or near the point of relief, and the buses are being driven from the COTA facilities empty except for the relief operators.

Discussion and recommendation: I recommend no change. The bargaining unit members should continue to report to work at the operating stations and be paid for their travel time.

Article XXIII, Sections 7, 8, 12, and 17 – Maintenance/Facilities Department. Hours of Work and Working Conditions.

COTA's position: COTA proposes to change the progression through the job classifications based on a combination of time on the job and testing. The current progressions are based solely on seniority. COTA seeks development of a more qualified workforce, creation of skill-based job progression, and increased public safety. COTA claims that by requiring appropriate certifications, COTA will ensure that its fleet is repaired properly by skilled workers to

prevent compromises in public safety. COTA believes American Service Excellence tests could be adapted for its use.

Local 208's position: The bargaining unit proposes no change. Seniority has been the traditional method of determining progression. COTA has not specified what sort of tests would be used, and the bargaining unit has serious questions about the effects failure on the tests would have on the members and other details of the proposed change that have not been offered. The bargaining unit also argues that no evidence has been provided that even suggests that the current employees are deficient in some manner.

Discussion and recommendation: I recommend no change. Although tests may be available that apply to the repair of diesel engines and transmissions, this seems like a solution in search of a problem. COTA already has the authority to determine whether an employee is performing in a competent manner. The bargaining unit is comfortable with the seniority method of progression, which has been in the contract for a number of years. COTA could require new hires to be certified in some manner without resort to a change in the contract. No evidence was presented to me that COTA's current mechanics are less than skilled. It seems to me that training rather than testing is the appropriate method of improving competencies if COTA feels it is necessary.

Article XXIII, Section 16(g) - Maintenance/Facilities Department. Hours of Work and Working Conditions

COTA's position: COTA seeks to limit employees' ability to bid for positions outside of their current departments. COTA claims the change will lead to the development of a more qualified workforce, cost-effective use of skilled labor, and increased public safety. The proposal is

intended to curb alleged misuse of the bidding process and to prevent skilled employees from bidding for jobs in the Facilities Department where their skills are not utilized.

Local 208's position: The bargaining unit proposes no change. Cross bidding is an important benefit. Bargaining unit members should have the freedom to bid on jobs that they are capable of performing without regard to their former job progressions. Only a few members have exercised this benefit, and COTA has not shown that there is a lack of qualified employees in any of the job progressions.

Discussion and recommendation: I recommend no change. I see no "misuse" involved in cross bidding. If there were an actual shortage of certain skilled persons in specific job progressions my decision might be different, but no such evidence was provided.

Article XIII, Section 22 – Maintenance/Facilities Department. Hours of Work and Working Conditions.

COTA's position: COTA seeks to reduce the number of overtime lists from three to two based on COTA's financial condition, operational flexibility and efficiency, public safety, and the current seniority of the Maintenance/Facilities Department. COTA also seeks to remove the penalty clause associated with the Voluntary List and instead require that any missed overtime opportunity be assigned to the appropriate employee on the next overtime occasion. COTA does not want to pay employees who do not actually work.

Local 208's position: The bargaining unit proposes no change. It is COTA that does the assigning, and the penalty only applies when it makes a mistake. The members who qualify for Assigned List No. 2 because they have 10 years or more of seniority can choose to be on the Voluntary List, and the bargaining unit does not object to members with such seniority choosing to

be on Assigned List No. 1. However, members on Assigned List No. 2 rarely get called for overtime and they, for the most part, enjoy that benefit.

Discussion and recommendation: I recommend retention of the three lists, with the bargaining unit's addition to section 22(d) that employees with 10 or more years of seniority may choose to be placed on Assigned List No. 1. I also recommend the change proposed by COTA to section 22(b) that provides that if the improper administration of the list causes an employee to miss an overtime opportunity, he/she "will be given the next overtime assignment the employee is available to work." Missing overtime because of administrative error does not appear to be the type of issue that should require payment to the employee as a penalty.

Article XXI, Section 4(a) – Uniforms/Grooming.

Local 208's position: The bargaining unit proposes a \$20.00 increase in the semi-annual uniform allowance. Such an increase has been traditional in renewals of past contracts and the cost of uniforms has increased since the last contract was implemented.

COTA's position: COTA proposes no change. Given the financial status of the Authority and its prospects for increased revenue there are good reasons for not increasing this benefit.

Discussion and recommendation: I recommend an increase from \$162.50 to \$175.00 for the term of the contract and no other change.

Article XXIII, Section 25 – Maintenance/Facilities Department. Hours of Work and Working Conditions.

COTA's position: COTA proposes a change that allows it to establish and enforce standard time limits for the completion of specific tasks in the Maintenance/Facilities Department. COTA claims the change will result in development of a more qualified workforce and protect public

safety. COTA argues that without time standards it is prevented from using the primary basis used by the fleet maintenance industry in the evaluation of operational performance and efficiency.

Local 208's position: The bargaining unit proposes no change. COTA's arguments do not contain specific instances of problems in this area, and the existing language provides that the lack of standard times does not "limit the Authority's ability to judge individual performance and to deal appropriately with such performance as may be judged substandard or inadequate."

Discussion and recommendation: I recommend no change. Without specific instances of repair problems or systematic delays in completion of specific tasks I am unwilling to change the parties' bargained contract language. A prohibition on the establishment of standard times does not prevent COTA from considering them in comparison to its actual experience in determining its operational performance and efficiency.

Article XXIII, Section 35 – Maintenance/Facilities Department. Hours of Work and Working Conditions.

COTA's position: COTA proposes eliminating the language that restricts subcontracting and eliminating the reference to 145 employees as the number of authorized employees in the department that cannot be reduced by subcontracting. The current number of employees in the department is 140, allegedly for reasons other than subcontracting. COTA seeks the flexibility to determine work tasks and areas that could more effectively and efficiently be performed by subcontracting in light of current labor rates. COTA has the right to subcontract, and earlier contract language protected "current" employees.

Local 208's position: The bargaining unit proposes no change. It has a currently pending grievance and arbitration that alleges that subcontracting did cause the reduction to 140 employees.

Discussion and recommendation: I recommend the change proposed by COTA. It appears

to me that the remaining language of section 35 clearly protects current employees from discharge or layoff or reduction in pay as a result of subcontracting and forbids subcontracting work usually done by COTA employees. I do not believe a static number is required.

Article XXV, Section 2(a) – Maintenance/Facilities Department – Uniforms/Tools.

Local 208's position: Similarly to Article XXI, Section 4(a), the bargaining unit proposes a \$20.00 increase in the semi-annual tool allowance. Such an increase has been traditional in renewals of past contracts and the cost of tools has increased since the last contract was implemented.

COTA's position: COTA proposes no change. Given the financial status of the Authority and its prospects for increased revenue there are good reasons for not increasing this benefit.

Discussion and recommendation: I recommend an increase in the semi-annual tool allowance from \$142.50 to \$155.00 for the life of the contract and no other change.

Article XXVI – Neighborhood Circular Route Operators Board

COTA's position: COTA seeks to delete the limitations on the number and type of circulator routes it can establish, add the ability to hire part-time bus operators up to 25% of the total number of full-time employees, and remove the 30 foot length limitation on the size of the buses used. COTA argues that part-time operators will enable it to operate more efficiently and flexibly so that it can reduce overtime and benefit costs. The intent is to use part-time employees on tripper-type work during the week, all types of work on the weekends, and limited emergency work on regular runs. COTA provided comparables that indicate that all of the other Ohio transit authorities allow part-time employment of some sort, and most of the out-of-state authorities also allow it.

Local 208's position: The bargaining unit proposes no change. This is a strike issue for the membership. They do not want lower paid part-time union members who have fewer benefits. Despite COTA's arguments, the bargaining unit believes that even limited part-time employment will have serious negative effects on bargaining unit members.

Discussion and recommendation: I recommend no change except for an extension of the size bus allowed to be used in the program from 30 feet to 31 feet. I tend to agree with COTA that Local 208's success in an arbitration that challenged using buses COTA had acquired for use in the Neighborhood Circular Routes that were 30 feet 7 inches long was a victory of form over substance. However, I will not recommend part-time employees where the parties have disputed this issue for 20 years and where no arbitrator under the parties' previous MAD has imposed it.

#### Central Ohio Transit Authority Attendance Policy – Absences/Misses

COTA's position: COTA proposed changes in the Attendance Policy that basically reduced the number of events necessary for removal actions from 12 to 7 and imposed two events instead of one if the employee failed to call in two hours prior to the beginning of the shift. Local 208 refused to consider the changes and handed the proposal back to COTA's negotiators. If Local 208 refuses to bargain COTA intends to impose the changes.

Local 208's position: The bargaining unit acknowledges that the policy affects terms and conditions of employment and is a proper subject of bargaining, but it proposes no change. COTA provided no evidence of particular problems and only alleged that there was a problem with attendance.

Discussion and recommendation: I recommend no change in the policy. It appears to me that a "no fault" policy such as this would be too stringent based on only 7 events to removal. Not much information was presented concerning the purported problem.

CONCLUSION

I recommend that the parties adopt the tentative agreements reached by them. The parties cooperated in presenting their positions to me, and in our mediation efforts. The courtesy and professional behavior was evidence of the good relations between the parties. Good faith bargaining does not necessarily lead to agreement, but I encourage the parties to continue to bargain in good faith even if they are unable to agree on my recommendations because no one wins if there is a strike.

Respectfully submitted,



PHILIP W. SHERIDAN, JR.  
Fact-finder  
S.C. #0006486  
915 South High Street  
Columbus, Ohio 43206-2523  
(614) 445-0733

CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by HAND DELIVERY and by E-mail transmission this 17th day of June, 2005, to the principal representatives of the parties and by Regular U.S. Mail, postage prepaid, to State Employment Relations Board, 65 E. State St., 12<sup>th</sup> Floor, Columbus, OH 43215-4213.

  
PHILIP H. SHERIDAN, JR. (0006486)