STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF FACT-FINDING BETWEEN	:	
GREATER DAYTON REGIONAL TRANSIT AUTHORITY	:	**CASE NO: ~~09~~-MED-12-1401** 08
AND	:	
AMALGAMATED TRANSIT UNION LOCAL NO. 1385	:	**FACT-FINDING REPORT**

HEARING

Hearing Dates:	February 12, 2010 & March 3, 2010
Report Issued:	April 30, 2010
Hearing Location:	600 Longworth St. Facility, Dayton, Ohio
RTA Representative:	Mr. Ronald Linville, Esq. Baker & Hostetler, LLP 65 East State St., Suite 2100 Columbus, Ohio 43215
Other RTA Participants:	Mr. Mark Donaghy, Executive Director Mr. Dale Crutcher, Manager Labor Relations Ms. Mary Stanforth, Chief Financial Officer
Union Representative:	Mr. Peter J. Rakay, Esq. Ms. Laura E. Rakay, Esq. Rakay & Spicer 11 W. Monument Bldg. Suite 307 Dayton, Ohio 45402
Other Union Participants:	Mr. Claude J. Huff, President Mr. Kevin Frazer, Vice President Ms. Michele Wilkinson, Recording Secretary Robert Stevens, Committee Member
Fact-finder:	William M. Slonaker, Sr., JD, MBA, SPHR

APPOINTMENT

This Fact-finder was appointed by letter dated December 1, 2009, from the Ohio State Employment Relations Board. Pursuant to the appointment, this Fact-finder was bound to conduct a Fact-finding Hearing and to serve on the Parties and SERB his written Report and recommendations on the unresolved issues. Subsequent to the appointment, the Parties agreed to extensions such that the Fact-finder was to serve the Parties with a written Fact-finding Report no later than Friday, April 30, 2010. Accordingly, the Fact-finder scheduled and conducted the Fact-finding Hearings as above noted.

STIPULATIONS

1. That only the remaining issues before this Fact-finder are in dispute. That issues previously agreed to by the Parties be recommended by this Fact-finder.

2. That all contractual and SERB procedures/time frames preceding the Fact-finding Hearing have been met. Therefore, this matter is properly in Fact-finding.

CRITERIA

Pursuant to Rule 4117-9-05(J) State Employment Relations Board, the Findings of Fact and Recommendations presented in this Report are based on reliable information relevant to the issues before the Fact-finder. In making recommendations, Fact-finders shall take into consideration the following:

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

BACKGROUND – THE PARTIES AND THE ECONOMY

The Greater Dayton Regional Transit Authority ("Employer") provides virtually all public mass transportation within Montgomery County. The Employer is governed by a nine member board of trustees and is an independent political subdivision of the State of Ohio organized pursuant to ORC §306.30 – 306.71. In July 1980, the voters of the county approved a one-half percent sales and use tax of unlimited duration and the boundaries of the Employer were extended to the boundaries of Montgomery County. The Employer also provides transportation service to persons with disabilities through Project Mobility.

The Amalgamated Transit Union, Local No. 1385 ("Union") is the sole bargaining agent for all hourly rate employees, except those on probation, in all matters covered by the Contract. (Agreement, Article I, Section 3) Such employees include Traditional Fixed Route Bus Operators, Maintenance (Mechanical and Non-Mechanical), Combination Operators, and PMOB Service Operators. (Appendix A) Currently, there are approximately 460 members of the bargaining unit. The Union has been the bargaining unit representative since the 1940s under the Employer's predecessor (City Transit Company) and is deemed a certified unit under Chapter 4117.

The current collective bargaining agreement ("Agreement") had an effective date of April 2, 2006, and an expiration date of April 5, 2009. The Parties are currently operating under the terms of the expired Agreement. Negotiations for a successor Agreement began in April 2009. The bargaining teams met on a number of occasions (August 11, 12, 25; September 23, 24; and, informally on other dates) and have tentatively agreed on all issues excepting the two addressed in this Report. The Parties engaged in good faith mediation on the two remaining economic issues on March 3, without success.

Collective bargaining is an ongoing process that develops and matures through the years, through successive collective bargaining agreements, and perhaps most importantly, through the daily interactions between the members of the bargaining unit and members of management. The Parties acknowledged that in past years their relationship was very positive, enabling them to make new agreements without substantial effort or stress.* Both said they are ready and willing to work toward restoring a more positive, more effective working relationship. Undoubtedly they can accomplish this goal. The labor relations knowledge, experience, skills, and abilities in the Fact-finding Hearing room were truly impressive. All present need only focus those qualities in a positive way and they will be successful. Difficult times, like now, require the best working relationship possible for the benefit of all of their various respective stakeholders.

*The Union noted that during the past 45 years only two persons have served as its President - currently, Mr. Claude Huff since 1995; and previously, Mr. Leonard Howard. Sadly, Mr. Howard passed away in February.

While the Parties successfully resolved many pending issues, they submitted the two most difficult for the consideration and recommendations of this Fact-finder. Both are economic issues. The Parties were unable to mutually identify ***the*** answer for the economic issues. This Fact-finder does not have ***the*** answer. The financial and economic experts do not have ***the*** answer for what some have been calling the "Great Recession" (thankfully not the "Second Great Depression"). It is hard to imagine a more difficult time for a Fact-finder to conjure recommendations. Consider the following as a sample of recent facts and opinions regarding the economy:

- According to the U.S. Bureau of Labor Statistics, in Dayton the "Total Nonfarm" employment dropped by 3.4% from February 2009 to February 2010 – with every category of employment down, except government which had no change (0.0%). (http://data.bls.gov/cgi-bin/print.pl/eag/eag.oh_dayton_msa.htm retrieved 4/13/10)

- Unemployment in Montgomery County was 12.6% in February 2010. (http://lmi.state.oh.us/laus/ColorRateMap.pdf retrieved 4/13/10) Ohio's February unemployment rate was 10.9%, while the U.S. rate was 9.7%. (http://jfs.ohio.gov/releases/unemp/201003/UnempPressRelease.asp retrieved 4/13/10)

- The current recession is hitting Ohio hard. Employment is declining farther in Ohio than in the nation as a whole. From 2000 to 2008, employment grew in the Akron, Cincinnati-Middletown, and Columbus Metropolitan areas, but declined in the Canton-Massillon, Cleveland-Elyria-Mentor, Dayton, Toledo, and Youngstown-Warren-Boardman metro areas. (p. 2) From 1997 to 2007, Ohio ranked 48th in percent increase in real GDP. In 2007, per capita personal income in Ohio was $34,468, below the national level of $38,615. Ohio's per capita personal income fell from 21st in 1997 to 33rd in 2007. (p. 4) Ohio underperformed the national average in every industry from 2000 to 2008. (p. 16) The census predicts that Ohio's population growth will be one of the slowest in the country, 47th among the 50 states and the District of Columbia. (p. 22) ("2009 Economic Analysis," Ohio Department of Job and Family Services, http://lmi.state.oh.us/research/2009OhioEconomicAnalysis.pdf retrieved 4/13/10)

- Recessions often take longer to trickle down to local government, in part because it takes time for the sales and property-tax revenues on which municipalities depend to catch up with a depressed economy. * * * But the sting this time around is expected to be far more acute and long-lasting than in previous recessions. (*The Wall Street Journal*, "A Slump Hits Home, Cities Downsize Their Ambitions," December 26-27, 2009, p. A1)

- In the past year, hourly wages have risen 2.2%, not enough to offset the 2.3% increase in the Consumer Price Index from November of 2008 to November 2009. * * * The government's broadest compensation measure, the Employment Cost Index, which tracks wages and benefits for private and government workers, was up 1.5% in the 12 months ended in September [2009]. * * * For those in state and local government jobs, the worst could be yet to come. * * * Just 14% of companies said they are planning across-the-board wage freezes this year [2010], compared with 30% who did so last year [2009]. (*The WSJ*, "Wages Still Under Pressure," January 9-10, 2010, p. A5)

- Economists . . . are predicting a slow upswing for the economy as a whole. Respondents on average expect economic growth to settle at about 3% in 2010. * * * That's why the economists expect the unemployment rate to fall only to 9.4% by the end of the year – down from 9.7% in January [2010]. (*The WSJ*, "Many Jobs Gone Forever, Economists Say," February 12, 2010, p. A4)

- Personal income in 42 states fell in 2009, the Commerce Department said Thursday. Nationally, personal income from wages, dividends, rent, retirement plans and government benefits declined 1.7% last year. (*The WSJ*, "Personal Income Drops Across the Country," March 26, 2010, p. A5)

- The outlook for the ailing US labour market brightened yesterday after data showed that the number of Americans seeking jobless assistance fell to its lowest point since December 2008. However, Ben Bernanke, Fed chairman, yesterday told Congress that the "employment situation is very weak", and described rampant joblessness as a "tremendous social and economic problem in the United States today". (*Financial Times*, US job data raise recovery hopes," March 26, 2010, p. 1)

- Although the US economy has escaped from recession, any improvements in its labour market have been scant to date, leading to concerns that America could face a "jobless recovery". US personal income is expected to rise 0.1 per cent in February, which would increase the year-on-year growth rate from 1.1 per cent to 2 per cent. (*FT*, "US labour figures set to enhance recovery signs," March 29, 2010, p. 22)

- Factories around the world are ratcheting up production, fueling optimism that the global economic recovery has legs. This growing manufacturing muscle is one reason that most economists now dismiss the possibility that the U.S. or other major economies will experience a double-dip recession. (*The WSJ*, "Factories Revive Economy," April 2, 2010, p. A1)

- The job market is showing signs of life, though its slow recovery suggests unemployment will remain high for years to come. Federal Reserve officials expect the jobless rate to remain above 9% through this year and above 8% throughout 2011. The large pool of available labor is likely to constrain wage growth in the coming years. (*The WSJ*, "Job Market Picks Up, But Slowly," April 3-4, 2010, p. A1)

- Since the start of the Great Recession in December 2007, the economy has shed 8.4 million jobs and failed to create another 2.7 million required by an ever-larger pool of potential workers . . . we could be looking at five to eight years before catching up to where we were before the recession began. The likelihood, therefore, is that as the economy struggles to recover and today's jobless begin to find work, the median wage will continue to fall – as it did between 2001 and 2007, during the last so-called recovery. (*The WSJ*, "The Jobs Picture Still Looks Bleak," April 12, 2010, p. A19)

- The committee of academic economists that dates the beginning and end of U.S. recessions stopped short of calling an end to the downturn that started in December 2007 . . .. Most members . . . said the recession probably ended in mid-2009 . . .. If the recession end date is ultimately marked as mid-2009, it would go on record as the longest since the 43-month downturn in the early 1930s during the Great Depression. (*The WSJ*, "Panel Decides It's Too Soon To Pinpoint Recession's End," April 13, 2010, p. A4)

- The deep declines in tax receipts that have hammered states over the past year are slowing, but they face budget gaps for at least the next two years – in large part because federal aid is going away, according to a report released Wednesday by the National Conference of State Legislatures. Wednesday's report suggested that the deep declines in state tax revenue have slowed and that revenues will resume growing by next year, in part because of recently enacted tax increases. Forty-two states project their revenues will grow in the fiscal year that ends in June 2011. (*The WSJ*, "Revenue Picture Brightens a Bit for States, but Budget Gaps Are Looming," April 16, 2010, p. A6)

- Ever since central banks began pumping trillions of dollars into the global economy just over 18 months ago in an attempt to stave off economic depression, a debate has raged over whether the eventual result would be inflation. More recently, the conversation has shifted. Indeed, discussions are increasingly focused on the extent to which disinflation or deflation will take hold. The topic returned to the spotlight this week when US consumer price inflation was shown to have been just 0.1 per cent in March. The core rate was unchanged. (*FT*, "Threat of deflation stalks recovery," April 17, 2010, p. 15)

- The slow economic recovery should continue over the next few months, the Conference Board says; index of leading economic indicators rises 1.4% in March, marking 12 consecutive gains. Payrolls employment made its first substantial contribution to the coincident economic index, suggesting a recovery that is beginning to gain traction. (*MarketWatch*, April 19, 2010)

The primary goal for these Parties should be an agreement on wages and insurance that serves their basic ***needs*** during this time of economic stress. This is not a time for either Party to be seeking to improve their economic ***wants*** at the expense of the other. Consider accepting a resolution with which both can live for the immediate future – that is, now through April 2012. This situation is further complicated by of a lack of clear, valid comparables. There are few transit systems in Ohio, let alone in the southwest part of the state.

The following issues, identified by the Parties in their Pre-hearing Position Statements and during the Fact-finding Hearing remained unresolved at the conclusion of the Hearing.

ISSUES

ISSUE 1: WAGES – APPENDIX A

UNION'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes retroactive across-the-board increases of 3% on the first day of each year of the Agreement.

For the Combination Operators and the PMOB Service Operators, the Union changed its original proposal in its Prehearing Statement (page 2 of Attachment A) to instead propose $1.25 / hour / year increase to the existing hourly rates for these job classifications contained in the current Agreement.

Related, the Union proposed adding to Appendix A of the Agreement that:

> All janitorial work, including hub work, shall be done by bargaining unit employees under the current [lower] rate structure for janitors.

In support of its proposals, the Union notes the Employer's "secure financial position, vast investment portfolio, and increased federal funding" enable it to "reward its highly skilled workforce with modest raises." The last raise was in April 2008 – two years ago.

The Union finds that the highest current rate of pay ($11.8588/hour) for the PMOB Service Operators to be below a reasonable rate for the valuable service they provide.

As for the Janitors, the Union noted that it agreed (in 2000) to a reduced rate, but now the Employer wants an even lower rate (Exhibit A, p. 6, Employer's Pre-Hearing Statement) for newly hired Janitors. The Union believes that all Janitors employed by the RTA (Union or non Union) should be under this Agreement. However, the Employer is only willing to do that at an even lower rate than the PMOB rate, which is unacceptable. The Union is proposing that Janitors who are at hubs be included in the Bargaining Unit and that they start at the reduced rate on page 54 of Appendix A, "Hired or Promoted On or After 4/6/97."

Further, the Union wants to keep the provisions for different "Hired or Promoted" dates in Appendix A for those employees who may transfer from a driver's or operator's position – which happens from time-to-time. This would be lost in the Employer's proposal to "grandfather" the current employees.

The Union considers the primary factor under the Revised Code to be the Parties' bargaining history and the wage increases previously granted to the employees. Union Exhibit 1 (U1) presents a history of wage increases for the top operator rate:

4/7/91	4.0%	4/6/97	3.0%	7/1/03	2.0%
4/5/92	4.5	4/5/98	3.0	4/4/04	2.5
4/4/93	5.0	4/5/99	3.0	4/1/05	3.0

4/3/94 0.0 (signing bonus)	4/2/00 2.8	4/1/06 2.0
4/3/95 1.0 (signing bonus)	4/1/01 2.75	4/1/07 2.0
4/4/96 2.0	4/7/02 2.75	4/1/08 2.0

The Union's Representative (Mr. Rakay) has witnessed much of the history of the Parties' relationship during the past 40 years. He noted that during the tenure of Mr. Howard, contracts were rapidly renegotiated because the agreement was based on trust and that the City Transit (without much in funding) gave the employees "every dime they could give them." This trend continued into the late 1980s. Anything not validly earmarked for capital improvement was put into the employees' wage package. The employees were treated well.

The Union noted that the Parties have rarely needed fact-finding. But, in all three cases (May 2003 [U8]; April 1994 [U9]; and, April 1991 [U10]) the Employer raised the "sky is falling" defense. All the fact-finders rejected the defense. The Union suggests that in the past, public agency employers commonly did not have carryovers, or if they did they were minimal, near zero. Now the Employer has about $25 million in investments – in addition to their cash flow. The Union states that the Employer's mentality is that it cannot be used for employees, that its always for other purposes – thus advancing the "us versus them" mentality. The Union suggests that the Employer underestimates the funds they will have to carry over and the funds that will be available the following year.

The Union finds it sad that it is not a priority for the Employer to give a fair increase to the employees. Since the start of the last contract (4-2-06) the cost of living has gone up 9%. During the past three years, the employees received only 2% per year – and, back to 1991, have never received less.

The Union referred to page 6 of the Employer's 2005 Budget (U2). When the Employer projected an "Actual" reserve of $17.6 million in 2007 – but it never went that low. It is currently $25 million. The Employer projected a "Required" reserve of $13.2 million for 2007. The Union believes that the reserve figures shift, that projections are never accurate.

The Union presented the Consumer Price Index – Urban Wage Earners and Clerical Workers (U3) showing recent changes to the index as follows:

2005	3.5%	2008	4.1%
2006	3.2	2009	- 0.7
2007	2.9	2010	January 0.2

The Union presented the Employer's audited financial statements for the years ended December 31, 2008 and 2007 (U4). Page 18 shows that as of December 31, 2008, total investments were $22,447,239. The Union noted that the report for 2009 was not yet printed, but they believe that the total has increased slightly – thus the Employer's "gloom and doom" forecast did not come true.

U5 is taken from the reference manual of the 46th Annual Midwest Labor and Employment Law Seminar, noting that:

> In its 2008 Annual Wage Settlement Report, SERB reported that public employers statewide granted an average wage increase of 2.92% to bargaining-unit employees in labor contracts negotiated in calendar year 2008. * * * The average increases per contract year were 3.02% for the first year, 2.98% for the second year, and 2.93% for the third year. (p. 19.39)

The Union noted that the Employer is better off than the State of Ohio because the Employer is not dependent on the same funds as the State of Ohio, which does have a major financial problem. The Union urged that each situation has to be examined separately, and the Employer is in good financial condition. While the Employer receives funds from the Federal and State governments, its principal source is from sales tax. The Union's perception is that sales taxes have bottomed out and will be going back up.

U6 includes the Employer's monthly financial statements for 2009 (excepting August, September, and November). The Union notes that from the second page of the December 2009, Year to Date:

> Labor and fringe benefits were $2.54 million (6%) under budget primarily due to service cuts, reduced maintenance overtime, payroll related benefits, and lower than expected medical insurance costs.

The Union argued that from the same statement (December 2009) after combining the positive and negative year-to-date variances between actual and budgeted amounts for revenues and expenses, there was a $5.5 million positive variance over budgeted. [It is important to note that the Employer correctly pointed out that this computation by the Union is composed merely of budget variances and not the actual financial results of the Employer. For example, the Employer's board originally approved a budgeted operating deficit for 2009 of $2,513,921 with the intent that by the end of the year it would be in balance – and it was a positive operating income of $245,363 as of the end of December due to fare increases and cuts. Further note, U15 Executive Director's Newsletter (February 5, 2010) reflects what the Employer explained. That is, the December 2009 Preliminary Financial Results, including YTD actual and budgeted, show YTD actual revenues of $56,145,838, and Actual expenses of $55,900,475, for net operating income of $245,363 – as compared to what had been a budgeted operating loss of $2,513,921.]

U7 is a detailed summary of the Employer's investments as of 12-31-09 and it reports that the total Book Value is $25,174,266. The Union says that the Employer is making the same argument now as they did in the 2003 fact-finding and that the fact-finder concluded that the sky was not falling, and that they must have a little money for raises. He recommended a little over 7% which the parties accepted. (U8 – June 2003)

The Union submitted its three fact-finding reports as part of the wage history between these Parties over the past 20 years, noting that the Union has never taken a zero increase for any extended time period. U9 is the Report from April 1994. The Union noted that the Parties' relationship was much better then and ultimately the Parties resolved their contract slightly different from what the fact-finder recommended. U10 is the Report from April 1991. This was issued when the Employer was in a fiscal crisis, they were making essentially the same arguments as now, and the fact-finder recommended 13.5% total over the three years.

The Union addressed comparative wage rates for the PMOB Operators (U11, January 2009, wage rates for paratransit operators across the US, taken from a "book of transit rates"). They noted that the PMOB came into existence in its present form in 1995, and that they took a very low wage rate to get them into this bargaining unit – against the advice of their counsel. At that time he projected that ultimately they would feel disadvantaged because of the different wage rates for the drivers. The Union acknowledged that has come to pass and now the gap ($10 to $11/hour) between the PMOB operators and the Traditional Operators should be closed because the large gap is not right considering the serious responsibilities of the PMOB operators.

To begin closing the PMOB gap, the Union proposes an equity adjustment of $1.25 per each of the three years of the contract. This is in lieu of the proposal on page 2 of the Union's Attachment A to the Prehearing Statement. (Note: the $1.25 proposal is the same for the Combination Operators.) Per U11, of the 70 cities listed, two are in Ohio. Both (Cincinnati $16.32; and Toledo $13.93) make substantially more than do the Employer's PMOB operators ($11.8588). U12 is an attempt to present value the PMOB operators' wages from 1996 ($9.50) through 2008 ($13.43) using CPI adjustments to show what the rate *should* be just to keep up with inflation – as compared to actual rates under the current contract (1st year $10.98; 2nd year $11.25; 3rd year 11.52; and, 4th year $11.86).

U13 is the projections of the 2009 Operating and Capital Budgets, Board of Trustees, November 18, 2008. Page 10 projects reserves as follows (in millions):

	2009	2010	2011	2012	2013
Actual	$21	$14	$6	$-3	$-11
Net of Debt	18	12	5	-3	-11
Required	19	19	19	19	19

The Union pointed out that the Employer's reserves for 2010 are over $25 million, leaving approximately $10 million difference between their projections and the reserves available for 2010.

U14 is a "Summary of Tentative Agreement Dated January 23, 2008" for the years 2/1/08 through 1/31/11 for Cincinnati (SW Ohio RTA- Metro) with the wages on the last page in-part as follows for "Operators":

Current	2/10/08	2/08/09	2/07/10
$21.34	$21.66	$22.33	$23.08
[Increases	1.5%	3.1%	3.35%]
[RTA top	$22.62]		

The exhibit does not include a counterpart for the Employer's PMOB operators. (The Union did not tie the other job classifications on U14 to those of the Employer.) The Employer pointed out that Cincinnati was negotiated prior to February 2008, *i.e.*, "before the economy hit the skids" and is not relevant in today's economic conditions. The Employer believes that Cincinnati recently laid off 80 operators. The Union believes that the "crash" started prior to February of 2008.

The Union reported that in 2003, one of the issues was the salary of the Employer's then Executive Director. At one point in the early 2000s she was making about $115,000. The Board increased it to the low $140s with all of her compensation. When the current Executive Director started (mid-2006) his beginning salary was in the range of $144,000. Somehow his total compensation package reached $184,000 within three years. His percentage rise far exceeds that of the employees. U16 is a listing of management salaries for the years 2006 through 2009, reporting the following "Wage" for the Executive Director:

2006	2007	2008	2009
$150,961	$172,705	$184,783	$175,126

[Note the Employer's explanation below.]

The Union perceives that the wage freeze for salaried employees is posturing as part of its negotiations with the Union. The Union perceives that to some degree this situation is analogous to the general public's concern that corporations are paying its top people exorbitant salaries and not taking care of their working employees. The Union admits that some drivers "make a lot of money" because they "live" at the facility driving a lot of overtime. Base wages for operators comes to about $50,000 per year; for the PMOB it is about $24,000; with many in between.

The Employer acknowledged that some Operators have performed substantial overtime because there is a shortage of fulltime drivers. The Employer said that they did not want to hire new Operators with the possibility of then having to lay them off. The Employer said they have minimized the impacts on the Union as best they can.

According to the Union, another expense that is out of proportion is the Employer's legal expenses – between $500,000 and $1 million every year. [Note the Employer's explanation below.]

Finally, regarding the Employer's proposal to eliminate the various references to "Hired or Promoted On or After . . ." provisions in the current Appendix A of the Agreement, the Union explained that employees transfer from positions, and therefore they need to keep their hired or promoted dates. For example, someone hired in 1984 transfers into a Janitor position. They would come in at the higher Janitor rate "Hired or Promoted On or After 4/3/94 and Before 4/6/97" – not the lower "Hired or Promoted On or After 4/6/97."

The Union suggests that the only real issue is the ability to pay. The employees have not had an increase in two years and should not have to bear the burden any longer. The Employer has $25 million in reserve, with more monies likely coming from the Federal government (stimulus package money). The Union says that it is only seeking a fair increase for the employees.

EMPLOYER'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

On one hand, the Employer's proposal regarding wages is simpler than that of the Union. The Employer proposes:

1st year of contract = a wage freeze
2nd year = a wage freeze
3rd year reopener for wages

The Employer believes that a reopener for the third year of the contract is a "great idea" given the current state of the economy. However, the Union believes that "the only thing worse than not settling would be a reopener" because that would only prolong the agony that the Parties have experienced for the last 1½ years. The Union does not want a reopener in the third year.

On the other hand, the Employer's wage proposal is more complicated than that of the Union. The Employer states that the current Appendix A to the Parties' Agreement contains "the most complicated wage schedules" of any labor contract. There are basically three "buckets":

"Hired or Promoted Prior to 4/3/94"
"Hired or Promoted On or After 4/3/94 and Before 4/6/97"
"Hired or Promoted On or After 4/6/97"

The Employer proposes to simplify Appendix A.

First, regarding the "Traditional Fixed Route Bus Operators" the rates for the full-time and the part-time (in all of the "buckets") top out at $22.6245 (Agreement). The only people affected by the "buckets" are current employees who were hired either before 1994, or between 1994 and 1997, and who would move into one of these two "buckets" – which rarely happens. Under the Employer's proposal, they would get to the same place, *i.e.*, they will top out at the same rate of $22.6245. Admittedly, the Employer gets the benefit of a slightly longer progression before hitting the top rate. The Employer's proposal for the Traditional Fixed Route Bus Operators results in one progression and one rate. The Employer notes that all employees in this classification are either in the progression, or are topped out, or will be topped out shortly.

Regarding the "Maintenance Employees – Mechanical," there are no various time-frame "buckets" and the Employer is proposing to maintain current wages for two years, using the same current categories, with the reopener as proposed for the third year.

Regarding the "Maintenance Employees – Non-Mechanical – Janitor," there currently exists the same time-frame "buckets." The Employer proposes that any Janitor currently employed is to be "grandfathered" at their current rate. Therefore, no one currently working as a Janitor would go down in their wage rate. In its proposal for these employees, the Employer has tried to list the employees by name who would be grandfathered into the current rates within the various "buckets." The Parties recalled that there are currently seven Janitors.

Regarding the "Maintenance Employees – Non-Mechanical – Utility – Non Mechanical," the same would be true. Current employees in those positions would be grandfathered as well, even though the Employer did not try to identify them by name in its proposal. The Parties estimate that there are about 12 employees within this classification.

The Employer's proposal also grandfathers the sole "Maintenance Employees – Non-Mechanical – Truck Driver" at that employee's current rate of $22.7377.

Regarding future new Janitors, the Employer notes that the current rate of $21.9910 for a "#1 Janitor" is "completely out of market." About ten years ago the Parties negotiated a new (lower) Janitor rate – that currently has no one in it. The Employer is proposing the following, which will not impact any current employee, but which is lower than the originally negotiated lower rate:

New Janitor Scale (Hired on or After (Date to be Determined))	Initial Year
First Year of Service	10.6456
Second Year of Service	10.9089
Third Year of Service	11.1711
Fourth Year of Service and Thereafter	11.5000

The Employer noted that it intentionally kept the top rate below that of the Combination Operators and the PMOB Service Operators so that those employees would remain where they are and not try to transfer into a Janitor position. Previously, the Parties negotiated the ability of the Employer to subcontract janitor work, which has saved the Employer money.

The Employer represented that there are no Janitors in the low rate and there never will be because, for example, a PMOB Operator can transfer into an opening and double their pay as a Janitor – because of the "hired or promoted" dates in the existing wage schedule, and which would not change if persons are grandfathered under the Employer's proposal. The Employer confirmed that the "hired or promoted" dates for each applicable employee are company-wide and are not job specific. The Union acknowledged that if the non bargaining unit janitors from the hubs are brought into the Union, that other long-term employees could bid and come in at the higher Janitor rate and not at the reduced rate.

The Employer's proposal for the "Other Union Employees – Combination Operators" and "Other Union Employees – PMOB Service Operators" is to continue their wages as-is under the most recent Contract. In other words, the same proposed wage freeze for the first two years with a reopener for the third.

Overall, regarding wages, the Employer argues that three constituents need to be considered: the employees, the taxpayers, and the riders. But, the Union has only discussed one – employees. To get a wage increase, the Union has to provide a good reason. Prior Agreements are an issue, but more important issues are comparable data – and the Union has only provided some on the PMOB drivers and some information from Cincinnati. The Union left out the cost information for their proposal. The Employer finds that the Union's proposal will cost more than $6 million.

(The Employer acknowledged that the reference to "Coach Placer" on page three of Exhibit A to its Pre-Hearing Statement should be deleted.)

The Employer noted that the CPI has been negative. Thru September 2009, it was – 1.7%. Additionally, the current time is unique with greater than 11% unemployment. Foreclosures in

Dayton are up 51% in February. The Employer has taken steps to try to maintain the reserve they feel they need to continue operating public transit in the Greater Dayton area. And that is by having a "severe" reduction in the number of employees over the past number of years.

The Employer argues that there are Traditional Bus Operators making in excess of $100,000. Overall, the Operators are in the upper 20% as compared to the wages of all bus drivers in the U.S. In order to pay for any increase there will have to be further reductions in employees or in service. Under the statute, the employer's ability to pay and the impact of the proposed request on the standard of public service are to be considered.

The Employer explained that legal expenses are higher than they should be because the Union files many frivolous grievances. Twenty-five cases have gone to arbitration under an attendance control policy and all arbitrators say it is fair and should be applied. [The Union countered by noting that grievances are voted on by the membership before the Union takes them to arbitration; that the Union's legal fees are about 1/10 of those of the Employer; and, that legal fees would be better spent on giving a raise to the employees.]

The Employer notes (Employer Exhibit 1 – E1) that in 2008, the Consumer Price Index declined by -0.5%; and that from September 2008 to September 2009, it declined by -1.7%, the first decline in more than 50 years. The Employer states that the cost of living must be considered in any recommendation regarding wages. The Employer believes that these negative percentages make a difference as compared to if the CPI was increasing. (Source: U.S. DOL, BLS, CPI for Urban Wage Earners and Clerical Workers, U.S. City Average, All Items, 1982-1984=100)

The Employer presented E2, taken from the U.S. Bureau of Labor Statistics. The recent 2009 unemployment rates in the Dayton area have been:

July	12.2%	October	11.0%
August	11.5	November	11.2
September	10.7	December	11.8

The Employer suggests that foreclosures are also indicative of the area's economy (E3). The *Dayton Daily News* (2/12/10) reported that foreclosures in January 2010 were up by 51.7% over January of 2009. (E4) Further, the Employer notes that (from census data – census.gov) the Dayton median household income is $27,423; and that 23% of Dayton residents are below the poverty line. [Note: 2008 median income for Montgomery County is $45,237; and, persons in poverty equals 15.0%. http://quickfacts.census.gov/qfd/states/39/39113.html retrieved 4/18/10.]

The Employer shows (E6) that the top Operator wage rate has increased from 1997 through 2008 as follows:

1997	3% ($17.19)	2000	2.8%	2003	2%	2006	2%
1998	3%	2001	2.75%	2004	2.5%	2007	2%
1999	3%	2002	2.75%	2005	3%	2008	2% $22.62)

The Employer presented E7 showing the average and highest salaries in 2009 in each of four categories as follows:

	Average	Highest
Traditional Operator	$56,101	$112,435
Maintenance	52,076	72,138
Combination Operator	35,936	44,084
PMOB Operator	30,635	49,960

The Employer offered this information to give a "sense of what the folks are earning" and noted that the numbers include overtime and all compensation. [Note: a review of the 2009 earnings of management level employees (U16) reveals that the average compensation for the 61 personnel is $56,516, and the highest is $175,126.]

The Employer presented E8 which reports "Bus Operators' Top hourly Wage Rates" for "Transit Systems Throughout The United States," October 2009 (prepared by Greg Dash & Associates, a consultant in the transit industry). The Employer noted that this data is for all transit systems across the U.S. – even though acknowledging that the Employer is not comparable to all of the systems. The 252 systems are ranked. The GDRTA ranks 50th with its top wage of $22.62. The Employer notes that many larger markets have rates lower than that of the RTA. [Interestingly, other Ohio systems include the following:]

Cleveland	#26	$24.02	Grand River	#137	$19.33
Columbus	#43	$22.91	Youngstown	#188	$17.60
Cincinnati	#47	$22.69	Canton	#228	$15.75
Akron	#59	$22.18	Steubenville	#229	$15.71
Toledo	#115	$19.90	Springfield	#239	$14.99

With regards to the issue of the Janitors, E9 is a comparison of some Ohio transit organizations with janitors. The Employer argues that its Janitors (at $21.99) are "completely out of market" as compared to:

Cleveland	$18.61	Toledo	$10.95
Cincinnati	16.46	Youngstown	9.30
Columbus	15.34 (if hired on or after 2005; $22.12 for before 2005)		

E10 is the Employer's wage increase analysis of the Union's proposal, which in part shows:

$868,375	1st year increased cost
1,762,802	2nd year " "
2,684,061	3rd year " "
$5,315,238	Wages – cost of a 3% per year increase over 3 years
956,743	PERS & workers' comp increased costs (18%)
$6,271,981	Total Cost of a 3% per year increase over 3 years

E10 further computed the costs for the Union's original proposal for separate increases to the wages for the Combination Operators (would have been an average increase of 21.6%) and for the PMOB Service Operators (would have been an average increase of 19.7%). (There are approximately 14 Combination Operators and 109 PMOB Operators.) The Union substituted a new wage proposal for an increase of $1.25/hour for both classifications on the day of the Fact-finding Hearing. The Employer (on the date of the Hearing) estimated the cost for three years of the Union's proposed $1.25/hour/year increase for the Combination Operators and the PMOB Service Operators to be about $1.5 million of additional cost. [Further, it appears that an approximation of the first year percentage increases to current wages for these two classifications would be:]

Combination Operators	Current	Proposal	% Increase
1st year of service	$12.6048	$1.25	9.9
2nd year of service	13.5762	1.25	9.2
3rd year of service	14.7076	1.25	8.5
PMOB Service Operators			
1st year of service	$10.9779	$1.25	11.4
2nd year of service	11.2488	1.25	11.1
3rd year of service	11.5198	1.25	10.9
4th year of service	11.8588	1.25	10.5

(Note: the percentages do not include the roll-up costs.)

Finally, the Employer presented E10 to show the added cost of bringing in 11 new Janitors [from the hubs] versus continuing the current sub-contracting, per the Union's proposal as follows:

$45,760	Janitor annual wage at $22/hour
$503,360	x11 Janitors – total annual wages
$780,208	Total with 55% to cover health insurance, PERS, and workers' comp
365,000	Total current cost of annual contract with "Professional Maintenance"
$415,208	Total **annual increase** in cost

E11 is the Employer's attempt to show the cuts that it believes would be necessary to fund the Union's proposal . In summary, the Employer projects cutting service runs that would save a total of $4,734,488, or the equivalent of cutting 19 Operators.

E12 is a presentation by the Employer of its financial situation. The Employer noted that its financial information is audited annually.

As of December 2008, sales tax revenues were about $800,000 less than for the prior year. The Employer noted that "it has been extremely difficult to project five years where we think we are going to be, with the sales tax numbers changing, looking at operating deficits, and having to cut service, jobs and things like that." Additionally, in 2008, the Employer had to deal with $4/gallon fuel. Pages 2 thru 10 of E12 give some background to page 11, the Reserve Analysis.

The Employer described how during the 1990s, sales tax was "our bread and butter" and counted on increases similar to the CPI to fund wage increases. In 1996, sales taxes ($28.3 million) were about 68% of total revenues. In 2009, it ($29.0 million) represents about 51% of total revenues. The Employer relies much more heavily on federal and state assistance and especially on federal assistance because state assistance is "nearly down to nothing." (Note: expenses were $42.3 million in 1996, and $55.9 million in 2009.)

Service has been reduced over the years. E12 reflects that in 1996 there were 278 total picked runs (*i.e.*, full-time runs). In January 2010, there were 199 total picked runs. Thus, the drop of 79 runs equals a decrease of 28%. Union operating positions have been lost accordingly. The 1996 runs ("total revenue miles") equaled 8.1 million miles of fixed route service; which declined 20% to 6.5 million miles in 2009. From 701 employees in 1996, the number has been reduced to 600 employees in 2009, a drop of 14%.

The Employer summarized (E12, pp. 7-8) some of its recent budget adjustments to "tighten its belt" as follows:

• 2009 budget	fare increases generating $1.2 million of additional revenue
	service adjustments/cuts saving $2.5 million
• 2008 budget	fare increases generating $1.2 million of additional revenue
• 2007 budget	comprehensive operational analysis (efficiencies) saving $4.0 million
	new organizational structure saving $1.5 million
	new insurance program saving $500,000
• 2006 budget	security contract saving $60,000
	salary health co-pay saving $60,000
	eliminate several staff cars saving $10,000
• 2005 budget	fare increases generating $1.2 million of additional revenue
	route 5 and tripper service changes saving $383,000
	prioritizing runs saving $200,000
	overtime/board protection saving $150,000
• 2004 budget	service adjustments/cuts saving $480,000
	eliminated light duty program saving $134,000
	board protection saving $53,000
	use of rainy day fund for pay and medical/liability insurance for $8 million
• 2003 budget	service adjustments/cuts saving $850,000
	change from #1 diesel to #2 diesel fuel saving $385,000
	contract maintenance and utilities saving $400,000
• 2002 budget	service adjustments/cuts saving $1 million

The Employer does not increase fares or cut service unless it absolutely has to do so. Likewise, the Employer does not want to spend any more of its reserves for operating purposes.

Page 9 of E12 presents the Income Statement for 2009 (pre-audit), and approved budgeted statements for 2010 through 2014. (The audited statements for 2009 were not yet available as of the date of the Hearing. However, to date the auditors have not proposed any adjustments.) Some significant information from the statements include:

2009	2010	2011	2012	2013	2014
Total revenues					
$56,358,213	$56,589,957	$55,395,202	$55,684,085	$56,027,395	$56,375,177
Total Expenses					
56,112,850	57,254,988	58,244,324	59,242,723	60,261,973	61,433,653
Gain/(Loss)					
$245,363	($665,031)	($2,849,122)	($3,558,638)	($4,234,578)	($5,058,476)

Transfers to local capital match
$245,363 $0 for remaining years – target should be $900,000 per each year (this is a 30-year average)

The Union acknowledged that it can be difficult to project future financial results, and that it can be "impossible" to project. Yet, the Union points out that the Employer's projections are always more "dismal" than what ultimately occurs. The Employer said that for the past couple of years the Employer has been waiting for the economy in Montgomery County to pick up so it can get back to a more normal business model, but it has not been happening.

Projections out to 2014 include holding wages flat, as follows:

2009	2010	2011	2012	2013	2014
Wages – Time Worked					
$24,913,841	$25,300,000	$25,300,000	$25,300,000	$25,300,000	$25,300,000
Wages – Paid Time Off					
$4,032,000	$3,700,000	$3,700,000	$3,700,000	$3,700,000	$3,700,000

The Employer is budgeting about a 10% increase in medical insurance each year. The Employer has no answers now for how it will balance its operating budget for years 2010 through 2014.

Salaried employees (other than for new jobs) have a wage freeze in 2009 and 2010. The Employer's other union (AFSCME) has a "me-too" clause which expired in December.

The Employer said it has to "match" up to 20% federal monies for capital purchases, *e.g.*, to buy a new bus, or equipment for the maintenance shop. Page 10 of E12 presents a Capital Summary. The Employer notes that very little of the federal funds it receives can be used for operating expenses. The Employer projects what it will need from its reserves to pay toward its share of capital projects, as follows:

2009	2010	2011	2012	2013	2014
Capital Project Funding – Employer Share					
$3,606,634*	$4,203,986*	$708,663	$455,732	$571,555	$302,374

*2009 and 2010 are "heavy bus replacement years."

Even if the Employer can balance its operating budget, it says it will still be spending monies for its capital program.

Capital Project Funding totals (2010 through 2014) are projected to be as follows:

Federal Grant Funding	$34,634,467
State Grant Funding	1,388,496
Other – non RTA	885,625
Local – RTA share	6,242,311
Total	$43,150,899

Page 11 of E12 is an analysis of reserves. That analysis can be summarized as follows (in millions of dollars):

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Actual*	34	31	29	25	19	14	9	5	-1
Net of Debt**	27	26	25	22	17	13	9	5	-1
Required by Board	18	18	18	18	18	18	18	18	18

(*cash and investments; **primarily bond debt that will be paid off by the end of 2011)

After payment of the bond debt in December 2011, about $2 million (principal and interest) will no longer be necessary from the reserves.

In the past, the cash portion (close to $10 million) of Reserves was three months' of operating expenses, and now it is down to two months. The cash allows the Employer to pay its bills on time (*e.g.*, salaries/wages, fuel, parts, etc.). The Employer counts on "capitalized maintenance" of about $1.5 million per month, and during the week of the Hearing the Employer received notice that the federal government has frozen those funds for an unknown time period. This happened several years ago when the federal government shut down but the Employer was able to continue. Another important use of Reserves is the Employer's self-funded workers' compensation program.

The reserve level of $18 million required by the Board was determined as follows:

- $10 million for ongoing operating cash needs (working capital) and for emergency situations
- $5 million to support the local (Employer's) share of matching funds for capital improvements – average $1 million per year
- $3 million to support the self-insured workers' compensation program

The Employer confirmed that the $10 million portion of the reserves approximated two months of operating expenses and that the two months was selected about four years ago after benchmarking to other transit authorities (*e.g.*, SORTA, COTA, and about 11 other transits in their "peer group"). While the Employer said that the desired number of months was three, they decided they could live with two months of operating expenses in the reserve.

The Employer views the current situation as "one of the most challenging budget environments in over a quarter century." Major challenges include cash flow (paying the bills), keeping medical insurance costs down, trying to tighten the belt "year-after-year-after-year." The Employer is currently working to:

- Eliminate the projected $665,031 deficit for 2010 (which assumes no wage increase)
- Eliminate future projected deficits.

• Seek new revenue sources and major expense containments/reductions.

SUMMARY of the Employer's cost estimate (E12, p. 16) of the Union's wage proposal is as follows:

- $6.3 million – 3% wage increase compounded over 3 years
- 1.5 million – the $1.25/hour wage increase compounded over 3 years for Combination and PMOB Operators
- 1.2 million – hiring (transferring in) 11 new janitors versus continuing outside contractor for three years (includes PERS, health & dental insurance, workers' comp)

$9.0 million – total additional cost – includes roll-ups – for three years

The Employer does not know from where the additional costs will come. The Employer accused the Union of "living in denial" of the Employer's actual financial situation. The Employer suggested that the Union may only come to understand if layoff notices are issued. During the most recent 1½ year the Employer has been "living off of the stimulus, and that's gone." Currently, monies for transit in any Stimulus 2 were removed in the last couple of weeks. Regardless, there may not be a Stimulus 2. The Employer notes that it is not now feasible to go to the taxpayers for increased funding to essentially fund wage and benefit increases.

While the Union suggested that there will be substantial cost savings because many newer busses are under warranty (except for routine maintenance such as brakes and lubrication) the Employer notes that the wages for the maintenance personnel continue regardless, and that savings from new vehicles are included in the Employer's financial data. The Employer said that warranty savings is one reason for recent investments in new busses. The Employer said that overtime in vehicle maintenance is probably at record lows, and that 8 to 12 maintenance positions have been eliminated since about 2006.

Regarding U16 (listing of management personnel total compensation for the years 2006 through 2009) the Employer confirmed that the salary portions of those numbers did not change for 2009 and will not change for 2010 (for people who have not changed jobs). The total compensation amounts from 2008 to 2009 and to 2010 (if it were included) can vary due to such factors as employees selling vacation time at the end of the year (as can bargaining unit members); or, variations in an employee's flexible spending plan. The Employer confirmed that for management personnel the wage freeze was in effect for all of 2009. Their last raise was at the beginning of 2008. By way of example, the Executive Director started in 2007 at a salary of $157,000 and received a 2% raise so his salary at the start of 2008 was $166,000.

The Union countered by noting that the Executive Director does not have to obtain the consent of the Management employees to freeze wages. He can simply say "no raises." The Union notes that's a good reason for employees to be unionized and why the State of Ohio created SERB in 1984, with far fewer strikes since then. The Union asserts that it has been trying to settle this without a strike, using compromise and reason.

RECOMMENDATION

First, the Fact-finder thanks the Parties and their Representatives for their diligent, hard work that resulted in the successful tentative agreements on all issues other than the two in this Report. Also, thank you for your excellent presentations of your respective proposals and positions on these two issues during the Hearing. Detailed information regarding the presentations on the two issues is included for two reasons. One, so that readers who did not attend can better understand the Parties' respective positions. And two, so that readers may come to the same conclusion as this Fact-finder, *i.e.*, that there is no single, obvious right answer to the issue of wages. While the Parties have expressed their *wants*, they are unable thus far to agree on their mutual *needs* regarding wages. The Fact-finder has reviewed the wage proposals and the supporting arguments and documentation many times trying to identify *the* correct recommendation, *i.e.*, *the* answer to the wage issue. The Fact-finder has tried to find the piece of the puzzle that will serve as *the* single, best, obviously correct way to resolve the wage issue. Thus far, there is no epiphany, *i.e.*, no sudden intuitive leap of understanding or vision. What has resulted is simply his best, good faith, considered judgment for an agreement on wages considering the facts in this case and the statutory criteria. Admittedly, the following recommendation is a "holding action" pending new and better data on where the national, state, and primarily the local economies are headed.

The following recommendation also considers that the wages of most of the Union's bargaining unit members compare very well to their counterparts in other Ohio cities, and even across the country. Admittedly, the Combination Operators and the PMOB Operators do not compare to their brothers and sisters who work as Traditional Fixed Route Bus Operators. But, now – in the midst of the Great Recession – is not the time to be recommending equity adjustments. Hopefully better economic times will enable the Employer to better recognize the valuable contributions made by these other operators.

The Fact-finder recommends wage increases for all job classifications (retroactive to the first day of each year of the Agreement) as follows:

First Year	0% increase
Second Year	1% increase
Third Year	2% increase

The Fact-finder does not recommend the Union's proposal for across-the-board hourly increases of $1.25 per hour for the Combination Operators and for the PMOB Service Operators. Briefly, this is not the economic time for equity adjustments.

The Fact-finder does not recommend The Employer's proposal to eliminate the "buckets" (*i.e.*, the "Hired or Promoted Prior to . . ." and the "Hired or Promoted On or After . . ."). Briefly, any such administrative changes/clarifications should be made by the agreement of the Parties.

The Fact-finder does not recommend the Union's proposal to bring janitors from the hubs into the bargaining unit. Briefly, this is not the economic time to be increasing the Employer's costs over its current subcontracting expenses.

The CPI for the third year of the prior Agreement (April 2008 – March 2009) was -1.0. The CPI for the first year of the new Agreement (April 2009 – March 2010) was 3.1% (CPI – Urban Wage Earners and Clerical Workers, http://data.bls.gov/PDQ/servlet/SurveyOutputServlet retrieved 4/20/10) Thus, for those two years, the net increase to the CPI was 2.1%, which was balanced by the 2% raise for the last year of the prior Agreement. As of March 2010, the employees were essentially even. Admittedly, the CPI for the second year of the new Agreement (April 2010 – March 2011) may very well exceed the recommendation for a 1% increase, but who can know for sure. At least the employees should come close to maintaining their overall economic positions during the second year of the new Agreement. This is a much better position than the 12.6% of Montgomery County workers who were unemployed as of February 2010. (http://lmi.state.oh.us/laus/ColorRateMap.pdf retrieved 4/13/10) Matters could be substantially worse in this Great Recession.

The Union was adamant that it did not want a reopener for the third year of the Agreement. The recommended 2% increase for the third year is the best this Fact-finder can do in good faith. Minimally, it should help hold the employees even – unless there is a severe bout of inflation. Further it should be affordable for the Employer, considering the first year 0%, and second year 1% recommendations. Following the Employer's format (E10) an initial cost comparison of the Union's proposal for 3% for three years to the Fact-finder's recommendations is as follows:

Wage Increase Analysis – All Employees

Cost for Union's 3% - E10	**Cost for Recommendation**
$28,945,841 2009 Annual Paid Time	$28,945,841 2009 Annual Paid Time
29,814,216 First Year 3% Increase	28,945,841 First Year 0% Increase
30,708,643 Second Year 3% Increase	29,235,299 Second Year 1% Increase
31,629,902 Third Year 3% Increase	29,820,005 Third Year 2% Increase
$868,375 First Year Increased Cost	$ - 0 - First Year Increased Cost
1,762,802 Second Year Increased Cost	289,458 Second Year Increased Cost
2,684,061 Third Year Increased Cost	584,706 Third Year Increased Cost
$5,315,238 Wages – Cost of 3%/yr x 3 years	$874,164 Wages – Cost of 0%, 1%, 2%
956,743 PERS & WC increase (18%)	157,350 PERS & WC increase (18%)
$6,271,981 Total Cost 3% increase for 3 yrs	**$1,031,514** Total Cost of 0%, 1%, 2%

The Employer's financial statements (U6 – Current and Budget Income Statements, December 30, 2009; E12, p. 9 – Income Statement, Pre-audit 2009; and, U4 – Audit Report for the years ended December 31, 2008 and 2007) do not separate the wages of the bargaining unit members of the Union, the Employer's other unionized employees, and non-unionized management level (salaried) personnel. For example, U6 shows "wages" of $28,945,841, and E12 shows "wages [time worked and paid time off] of $28,945,841. U4 shows "labor" for 2008 as $25,879,366 – with no allocation of the compensation of the various groups. However, an *approximation* of management level employees for 2009 is $3,447,473 – from U16, which shows 61 such employees receiving compensation for 2009 (average $56,516). No information was offered to disclose the wages of the Employer's other unionized employees. Thus, a somewhat more accurate estimate of the cost of the recommendation is:

Revised Cost for Recommendation

$28,945,841	2009 Annual Paid Time
-3,447,473	2009 Management compensation
25,498,368	2009 Union employees
25,498,368	First Year 0% Increase
25,753,352	Second Year 1% Increase
26,268,419	Third Year 2% Increase
$ - 0 -	First Year Increased Cost
254,984	Second Year Increased Cost
515,067	Third Year Increased Cost
$770,051	Wages – Cost of 0%, 1%, 2%
138,609	PERS & WC increase (18%)
$908,660	Total Cost of 0%, 1%, 2%

The Union argued that it has never received less than a 2% per year increase. It now proposes 3% per each of the three years. Unfortunately, the Union appears to be trying to proceed with "business as usual." During the past 40 years described by the Union, there has never been such a depressed economic situation in the country, state, and most importantly in Montgomery County. As noted on page 5 above, "If the recession end date is ultimately marked as mid-2009, it would go on record as the longest since the 43-month downturn in the early 1930s during the Great Depression." The economic conditions justify a departure from past collectively bargained agreements. The "Great Recession" is a factor that must be considered in the determination of wages.

From E8, discussed on page 15 above, it appears from the comparison of top rates that these employees are in a good, overall comparable position – 50th in the U.S. out of 252 systems; and, 4th in Ohio out of 11 systems. Comparing the larger Ohio systems, these employees are in a good, overall comparable position:

System	CBA Ends	Size	Top Level
Dayton	04/05/09	479	$47,058
Cleveland	07/31/09	1,926	46,841
Columbus	11/30/08	550	46,270
Akron	07/31/10	240	44,512
Cincinnati*	12/31/08	878	44,387

(SERB Benchmark Report, 4/08/10)
(*U14 – tentative agreement – 01-31-11 ending date, top rate of $23.48, *i.e.*, $48,006)

The Employer has the ability to pay the recommended two raises (second year 1% & third year 2%). The cost of about $908,660 is manageable and worth the risk that the economy will sufficiently improve by the start of another new agreement in April 2012. U6 (Current and Budget Income Statements, December 30, 2009) showed a budgeted deficit for the year ending 12/30/09 of ($2,513,921). The actual turned out to be a positive operating income of $245,363, to some degree supporting the Union's argument of Employer predictions of "doom and gloom."

The Employer (E12) projects a loss of ($665,031) for 2010 and ($2,849,122) for 2011. Even with no wage increases whatsoever, the Employer will need to take action to breakeven. Consider the following:

Y/E	Projected Deficit		
2009	$245,363	(gain)	
2010	(665,031)		
2011	(2,849,122)		
Subtotal	(3,268,790)	78%	deficit – non wage
Wage increases	(908,660)	22%	deficit – wage increase
Total 3-year deficit	($4,177,450)	100%	total projected deficit

In other words, the very conservative wage increases (0%, 1%, 2%) become part (22%) of the deficit that needs to be solved along with the major part (78%) of the deficit. The need for the small increases is just as important as are whatever other expenses collectively constitute most of the deficit. In fairness, the employees should not have to bear a disproportionate share by effectively contributing no increases whatsoever.

Another way of looking at funding the wage recommendation is from the reserves. In December 2004, the Employer (U2) projected its reserves for the following three years as follows (in millions):

	2004	2005	2006	2007
Actual	26.6	23.9	20.9	17.6
Required	16.3	16.0	15.6	13.2

On November 18, 2008, the Employer (U13) projected its reserves for the following five years as follows (in millions):

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Actual	39	34	31	29	21	14	6	-3	-11
Required	18	18	18	18	19	19	19	19	19

On February 12, 2010, the Employer (E12) projected its reserves for the following four years as follows (in millions):

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Actual	34	31	29	25	19	14	9	5	-1
Required	18	18	18	18	18	18	18	18	18

As of December 31, 2009, the total book value of the Employer's reserve (U7) was $25,174,266, earning an estimated 2.333%. For whatever reasons, projected reserves appear to be ball-parked from year-to-year within a few million dollars. There appears to be sufficient flexibility within the reserves to fund the recommended increases (0%, 1%, 2%). The yield alone on the 12-31-09 balance will cover the increases.

Another source of funds to substantially pay for the recommended increases is the Employer's legal expenses. The Union estimates those annual costs to be $500,000 to $1,000,000. The Employer explained that the Union continues to bring numerous grievances (related to an attendance control policy) to arbitration, and consistently loses (estimated 25 cases). The Union explained that its democratic policy allows members to vote on whether or not to pursue a grievance into arbitration. While the democratic policy is admirable, perhaps the Union should work with its members to stop futile arbitrations and thereby help the Employer save legal costs so it can cover the costs of the recommended increases. Perhaps this effort can be part of the Parties' renewed efforts to improve their working relationship.

Regarding reserves, the Employer explained that $10 million of reserves represents about two months of operations. The two months was set after benchmarking to about 13 other transit systems. Personally, the Fact-finder has no problem with the goal to preserve two months of operating expenses as a conservative measure to help protect against unknown or surprise economic conditions.

In summary, either way (as part of a budgeted deficit or from reserves) it clearly appears that the Employer has an ability to pay the recommended, very conservative wage increases. The relative minor increase to the Employer's budget should not in itself affect the interest and welfare of the public, or the ability of the Employer to finance and administer the wage increases proposed, or the Employer's normal standard of public service.

Finally, as noted above, the "Great Recession" is not a good economic time to be trying to achieve equity adjustments for any of the employees, including the Combination Operators, the PMOB Service Operators, or the Janitors. The Union acknowledged the history behind the lower wages for the Combination Operators and the PMOB Service Operators, and that it knew it the lower wages would become an issue in the future. The future is here but unfortunately it is not a good economic one to be trying to correct the actions of the past. Nor is this a good time to unnecessarily increase the Employer's costs (estimated $415,208 – E10) for janitorial services at the hubs by bringing those janitors into the bargaining unit.

ISSUE 2: HEALTH CARE INSURANCE BENEFITS PLAN

EMPLOYER'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes to eliminate the current Sections 1 (first paragraph) and 2 of Article IX – Health Care Insurance Benefits Plan (whereby employees paid 10% of monthly premiums) and substitute a new Section 1 (first paragraph) provision as follows:

> Full-time (40 hours) members of the bargaining agreement will be provided an opportunity to participate in the Authority's medical and dental coverage plan(s). For those participating, the Authority will contribute up to $407 per month toward a single plan, up to $852 toward an employee + 1 plan or up to $1,287 toward a family plan whether the employee selects medical only, dental only or a combination of both. The employee will pay (via pre-tax payroll deduction) the

difference between the maximum plan rates stated in this section and the total cost of the plans selected.

[Note: the Employer proposes keeping the current second paragraph of Section 1 which offers a flexible spending plan.]

The Employer's proposal (page 7, Pre-Hearing Statement) is to take the current provision that fulltime employees pay 10% of the monthly premium for medical, dental, and prescription drug coverage and change it to a system where the Employer will contribute a flat (fixed) amount on a monthly basis. The employee would pay the difference on a monthly basis. Over the past three years, the Employer has introduced three different versions of insurance with different plan designs. The idea is that the employee can decide whether they need the best coverage (higher premium) or a lower benefit coverage (lower premium).

E13 and E14 report monthly premium history for family coverage (medical and dental) as follows:

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Med/Dent Family	803	937	956	1,017	1,063	1,232	1,273	1,395	1,368	1,696
Med Dual								1,398	1,371	1,430
Med Triple										1,323
Total premiums (in millions)	3.755	5.290	5.419	5.205	5.745	6.186	6.682	6.944	6.555	

E15 summarizes the key provisions of the three options offered in 2010, all through United Healthcare. E16 reports what the non union employees are currently offered, *i.e.*, the Employer has fixed its contributions at the same amounts as proposed for the Union. It reports that the AFSCME employees are currently paying 10% of their premiums, *i.e.*, the same as the Union bargaining unit members. And, it reports that the Union employees are paying 10% as provided in the prior Agreement.

A brief summary of E16 highlighting only family coverage is:

Current **non union employees** (monthly) & the Employer's proposal for the Union employees

Max RTA funding		Employee funding	Option 1	Option 2	Option 3
(monthly)	$1,287		$408	142	35
(annual)			$4,905	1,713	426

Current **ATU & AFSCME employees** (monthly)

RTA funding		Employee finding			
(monthly)	$1,695		$169		
	$1,429			142	
	$1,322				132
(annual)			$2,034	1,715	1,587

Additional annual costs (savings) to bargaining unit employees electing family coverage under Options 1, 2 or 3 of the Employer's proposal:		$2,871	($2)	($1,161)

E17 reflects current enrollments in the various options (single, 1+1, family) as follows:

	Option 1	Option 2	Option 3
ATU	422*	18	2
AFSCME	46	2	0
Non union	45	34	2

(*121 single; 149 1+1; and 152 family – all under option 1)

Thus, as proposed by the Employer, each of the current 152 ATU employees electing family coverage under Option 1 would incur higher annual premium costs of $2,871. (Other costs or savings are not shown above.) When premiums rise in coming years, the employees' portion would go up by such annual increases. The Employer's portion would not increase since it is proposing to freeze its maximum premium payment per employee.

The Employer estimates that if its proposal for maximum Employer funding (with employees paying the balance) is adopted, the estimated savings will be $827,191 per year – assuming all employees stay with their current Option. (E17) The Employer acknowledges that one purpose of its proposal is to move employees from the "rich" Option 1 to the less costly Options 2 and 3, as has occurred with the non union salaried employees.

E18 and E19 were prepared by the Employer's healthcare consultant. These exhibits are to compare/benchmark the key provisions (*e.g.*, deductibles, annual out of pockets, emergency room, office visits, prescriptions, *etc.*) of the Employer's Options to other groups of employers.

The healthcare consultant noted that calendar year 2009 was a high claims year and ended up at 136%, *i.e.*, the claims exceeded premiums by 36%. Thus, renewal bids for 2010 bids started at a 29% increase. The triple option was conceived to offer substantially what was in place plus two other good coverages. The "core" benefit was around Option 2. So if the employee could cover a higher out-of-pocket, they paid less in premium. Thus, a (non union) employee selecting Option 1 would pay about 23% of the premium; 9% for Option 2; and, 2.5% for Option 3. Currently, the Union employees pay 10% of the premium. From a benefits perspective, Option 1 is overall the same plan as in the immediate past. While the consultant noted that employees would save by using Options 2 or 3, he characterized those Options as primarily for employees "if they are healthy, or they don't have much expense." Options 2 and 3 contain increased deductibles and increased co-pays. To add perspective, the Union noted that a PMOB Operator would need to work 7.9 hours each week just to pay for their share of the proposed employee contribution toward premiums for coverage under Option 1. By way of comparison, the Executive Director would need to work about .4 hour per week to pay for the same coverage.

The consultant was asked about continuing the current arrangement whereby the Employer and the bargaining unit members each pay a percentage of the premiums and thereby a percentage of future increases – rather than fixing the cost for the Employer. He said that "the problem with it has been when you have a plan like Option 1, where most of the people stay, the cost increases that would occur there will be unsustainable." He said, "if you don't share some of the costs with the participants there's no incentive for them to use things like generic drugs, or other less expensive, the questions don't get asked about treatment, and it's expensive – yes it's expensive from the employees' standpoint." He said that the carriers' "annualized rate of trend" right now is between 13 and 14%. He said employers cannot afford that and are looking for ways to shift that cost.

The Employer noted that it cannot just eliminate Option 1 because under the Agreement, "comparable" is Option 1. The Employer acknowledged that the Union has agreed to some changes to the benefit levels during the past few years. But, the Employer is looking for some incentive for at least the healthy people to migrate from Option 1 to lower costs.

The consultant suggested that there needs to be ways to make the employees "better consumers of healthcare" through perhaps wellness programs or possibly HSAs. It was noted that the Parties' Agreement currently provides in part:

> The Authority has the right to provide reasonably comparable benefits through another agency(ies) or company(ies) mutually agreeable to the Union. The Union shall cooperate and work with the Authority to contain cost under this Article by evaluating alternative approaches to coverage as well as employee wellness programs. (Article IX, Section 2)

The Employer noted that they have tried health fairs and are going forward with a "wellness center" – fitness center – across from headquarters in the 601 building, to open in June. The Employer sees it as tailor-made for bus operators working a split shift. They can use the fitness center while waiting. During the most recent health fair, over 100 employees turned out.

UNION'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union believes that the major problem with increasing health insurance costs is with the insurance and drug companies and their extraordinarily high rates of pay for their managers. Going to lesser Options still puts higher costs on the employees. It comes down to who is most able to "bear the freight" (costs) at this time. The 90/10 ratio was negotiated in the last Contract at the request of the Employer. Increased deductibles and co-pays can be more devastating to employees than the premium payments. The health insurance issue is "even more important than wages" to the Union. What the Employer is proposing is simply not affordable by many of the employees.

The Union believes that it is outrageous for the Employer to want to shift significant costs for healthcare and want a wage freeze. The Union wants an Agreement that people can live with. The Union is willing to work with Management and their consultant "every day if necessary" to try to contain health costs. Union representatives have already spent considerable time and effort on the healthcare issues trying to work with Management. However, the only times they are invited to meet with Management is when the renewals come up. Both Parties are willing to increase their mutual efforts to work together on the health issues. The Union believes that the 90/10 split should continue during the three years of the replacement Contract and perceives that Congress may be the only organization that can change the current system to one with affordable healthcare. Only with a pay raise can the Employees pay anything more for health insurance.

The Employer believes that under the current 90/10 split, if continued, the employees who are laid off to save expenses will essentially be funding the 90/10. The Union simply does not agree, and believes that these economic issues can be paid by the Employer. The Employer believes that only substantive changes to plan design will change costs.

RECOMMENDATION

This economic issue is more than just a question of who pays. The healthcare consultant touched on the underlying issue when he said, "if you don't share some of the costs with the participants there's no incentive for them to use things like generic drugs . . . yes it's expensive from the employees' standpoint." The problem of health insurance is a *mutual* problem requiring the efforts of both the Employer and the employees. But, the Employer is proposing too much. What employer would not jump at the chance to fix its healthcare costs and shift the burden of increases to employees? Logically, it seems the problem may then become that it will be the employer who may lose interest in trying to minimize health insurance premiums. Fixing the cost to the Employer in this case would be setting a bad precedent for future contract negotiations. Overwhelmingly, organized workplaces share the burdens of health insurance, including increases.

Notwithstanding that it appears that Columbus and Cleveland employees pay 10% of premium costs, the share currently carried by the employees (10%) seems low to this Fact-finder. It seems very reasonable to increase the proportion paid by the employees. The Fact-finder recommends that the Parties agree to increase the percentage paid by the employees as follows:

Year	Increase	Example of cost increase for Option 1 family plan Monthly	New monthly	Increase/mo	Total increase/year
First Year	0% increase	$169	$169*	$ - 0 -	$ - 0 -
Second Year	1% increase	$169	$186**	$17 per month =	$204 second year
Third Year	2% increase	$186	$203***	$17 per month =	$204 third year
		Total 2 year estimated increase		$34 per month =	$408 for two years

*10% x $1,695.78 **11% x $1,695.78 ***12% x $1,695.78
[Note: this example does not account for increased premium costs.]

By way of example, if the 152 family subscribers under Option 1 (E17) continued, then over two years the Employer would save $408 x 152 = $62,016. The savings to the Employer will be greater with the additional 290 employees (442-152) in the plans other than the Option 1 family.

SUMMARY OF FACT-FINDER'S RECOMMENDATIONS

ISSUE 1: WAGES – APPENDIX A

Recommendation: That the Parties agree to the following:

The Fact-finder recommends wage increases for all job classifications (retroactive to the first day of each year of the Agreement) as follows:

First Year 0% increase

Second Year	1% increase
Third Year	2% increase

The Fact-finder does not recommend the Union's proposal for across-the-board hourly increases of $1.25 per hour for the Combination Operators and for the PMOB Service Operators.

The Fact-finder does not recommend the Employer's proposal to eliminate the "buckets" (*i.e.*, the "Hired or Promoted Prior to . . ." and the "Hired or Promoted On or After . . .").

The Fact-finder does not recommend the Union's proposal to bring janitors from the hubs into the bargaining unit.

ISSUE 2: HEALTH CARE INSURANCE BENEFITS PLAN

Recommendation: That the Parties agree to the following:

The Fact-finder recommends increases to the current percentage (10%) paid by employees toward healthcare premiums for all plans and options (retroactive to the first day of each year of the Agreement) as follows:

First Year	0% increase
Second Year	1% increase
Third Year	2% increase

ADDITIONAL RECOMMENDATIONS

That the Parties agree to accept all tentative agreements reached by the Parties.

That the Parties' new Agreement be retroactive to start April 6, 2009, and that it have a three-year term.

Note: the Fact-finder, in preparing this Report and making his Recommendations, considered the oral presentations made at the Fact-finding Hearing and supporting documentation submitted by the Parties, even though not referenced in this Report. Although implied, the Fact-finder hereby states that additional costs ("roll-ups") for benefits (such as increased pension, vacations, etc.) were considered in making the recommendations, and finds that the Employer has the ability to pay these increased costs as well.

THE FOREGOING RECOMMENDATIONS ARE RESPECTFULLY SUBMITTED to the Parties as a proposed settlement for their interest dispute concerning the terms and conditions of their collective bargaining agreement.

Fact-finder

Wm. M. Slonaker, Sr.

William M. Slonaker, Sr., JD, MBA, SPHR

William M. Slonaker, JD, MBA, SPHR

Arbitrator • Mediator

Friday, April 30, 2010

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Re: Greater Dayton Regional Transit Authority &
Amalgamated Transit Union Local No. 1385
Fact-finding
SERB Case No.: ~~09~~-MED-12-1401
08

Dear Messrs. Rakay and Linville:

Per your agreement, I am sending the attached Fact-finding Report to Mr. Linville by email; and to Mr. Rakay by fax. This email and the fax constitute the respective formal submissions to each of you as of today's date.

For your convenience, I am also mailing an original copy to you for your files. The mailing to Mr. Rakay includes the copies of the former agreements. The mailing to each includes the invoice and the W9.

Thank you again for your great, professional work.

Sincerely,

Wm. M. Slonaker, Sr.

STATE EMPLOYMENT RELATIONS BOARD
2010 MAY -3 P 4: 36

P.S. The Report includes 29 pages.

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