

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding Between:

| | | |
|-------------------------------------|---|-------------------------|
| Transport Workers Union of America, |) | |
| Local 208, |) | |
| Employee Organization |) | |
| |) | |
| and |) | Case No. 11-MED-08-1015 |
| |) | |
| Central Ohio Transit Authority, |) | |
| |) | |
| Employer |) | |

APPEARANCES:

For the Union:

Robert Sauter, Union Representative
Lora Molnar, Union Representative
Andrew Jordan, President, Local 208
Olando Epps II, Vice President, Local 208
Duane Marbury, Union Representative
Tim DeMoss, Bargaining Team Member

For COTA:

Ronald G. Linville, Employer Representative
Kristen Treadway, Vice President of Human Resources and Labor Relations
Jennifer Edwards, Senior Legal Counsel
Patrick Stephens, Vice President, Operations
Marion White, Chief Financial Officer; Vice President Finance
Skid Thomason, Manager, Vehicle Maintenance
W. Curtis Stitt, President and Chief Executive Officer
Jeff Vossler

Before Sarah Rudolph Cole, Fact-finder

The Ohio State University, Moritz College of Law
55 West 12th Avenue
Columbus, OH 43221
Tele: (614) 688-4918
E-mail: cole.228@osu.edu

Introduction

The Transport Workers Union of America, Local 208 (Union or TWU) represents the bargaining unit at issue in this case. The 620 member bargaining unit consists of full-time motor-coach operators and service department employees excluding supervisors, managers and clerical staff. These employees are responsible for the operating, cleaning, maintenance and organization of COTA buses. Prior to this fact-finding, the parties attempted to resolve their remaining issues through mediation with the fact-finder. These issues included wages, wait time, maintenance/facilities work progression and part-time employment. Following mediation with the fact-finder, all but one issue was resolved. On March 29, 2012, the parties met for fact-finding at the Columbus Bar Association's offices. This report addresses the only issue that remained in dispute following the mediation. All matters not addressed in this report are tentatively agreed to or continue in the parties' successor agreement.

Criteria

Ohio Revised Code § 4117.14(G)(7) specifies the criteria the fact-finder is to consider when making a decision:

- (a) past collectively bargained agreements, if any, between the parties;
- (b) comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) the interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) the lawful authority of the public employer;
- (e) the stipulations of the parties;

- (f) such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

Findings of Fact

Of the statutory criteria identified above, the most relevant to the dispute here include the parties' past collectively bargained agreements, the interests and welfare of the public and the parties' stipulations. The parties presented considerable evidence as to each of these criteria at the hearing, but appeared to focus most heavily on the interests of the public and past practices.

Article XXII –Maintenance/Facilities Work Progression

The issues in dispute in Article XXII include wages and conditions of employment for the new "journeyman" position, and the employment of individuals in the new job title proposed by COTA entitled Labor Pool employees assigned to vehicle maintenance.

The parties agreed that the new position of journeyman should exist and that those promoted to the journeyman position could work in at least two lines of progression, equipment (heavy) repair and inspection/running repair. The parties disagreed about whether journeymen should also be permitted to work in the areas of Electric Shop and Machine Shop. The Union preferred to limit journeymen's work to the heavy and running repair lines of progression; COTA advocated for permitting journeymen to work in any lines of progression. In addition, the parties did not agree on an additional amount that should be added to the journeyman's base rate of pay. The Union proposed an

additional \$1.00 per hour increase to base rate of pay; COTA proposed a \$.50 per hour increase. Nor did the parties agree on the number of journeymen that COTA could identify and employ at the higher rate of pay. Regardless of number, the Union proposed that journeymen positions should be bid by seniority; COTA proposed that seniority come into play only if more employees bid for the position than positions were available. In that situation, COTA would select journeymen based on seniority. In addition, the Union believed that journeymen should be assigned to one facility; COTA preferred the ability to use journeymen at any COTA facility as needed.

The parties also disagreed about the need to combine the employees designated as Labor Pool employees assigned to vehicle maintenance and the Service Technicians. Rather than retain two distinct positions with differing job responsibilities, COTA proposed to combine many of the job duties of the two positions while retaining their separate job titles. Under COTA's proposals, the only functions that would belong to the Service Technicians alone would be performing road calls and minor bus repairs. The function that only Labor Pool employees assigned to vehicle maintenance could perform, that Service Technicians could not perform, would be labor pool work "as necessary." COTA also proposed paying all of the employees within these two classifications at the higher rate of pay for Service Technicians. This proposal would result in an automatic \$.36 to \$.56 wage increase for Labor Pool employees assigned to vehicle maintenance. The Union proposed that both Service Technicians and Labor Pool employees assigned to vehicle maintenance be permitted to fuel coaches and check fluids and tires. However, Service Technicians alone could perform the tasks of steam jenny, line-up, road calls and minor repairs. Only Labor Pool employees assigned to vehicle maintenance, not Service

Technicians, could perform coach cleaning or premium coach cleaning. The Union's proposal also anticipates that Labor Pool employees assigned to vehicle maintenance would be paid at the Service Technician wage rate.

Although both of these issues arise under Article XXII, for purposes of clarity, the fact-finder will first discuss the journeyman issues and then discuss the Labor Pool employees assigned to vehicle maintenance/ Service Technician issue.

A. Journeyman Position

As mentioned above, both parties agree on the development of a new journeyman position at COTA. The parties disagree, however, on what the journeyman's job responsibilities would be, how much journeymen would be paid, how journeymen would be selected (including how many journeymen there should be) and whether the journeymen could work at more than one facility.

COTA Position

COTA proposes that it should have the ability to hire as many journeymen as it deems necessary, choose journeymen by seniority only if there are more qualified employees seeking the position than there are positions available, pay journeymen at \$.50 per hour higher rate and permit them to work across all four lines of progression and at any COTA facility. COTA also proposes that if a journeyman is doing a job, he or she should be able to remain on the job overtime in order to finish the job rather than stop working and call in another employee to finish the job.

To justify these changes, COTA points to the need to increase efficiency in its workplace. COTA indicated that it operates at a higher cost per hour than eight of the nine regional transit authorities against whom it has historically measured itself. COTA

also emphasized that it must show the public that it is a good steward of public monies particularly because it plans to seek an extension of its .25% levy during the term of this collective bargaining agreement. COTA contends that even though it will pay the new journeymen more per hour than other employees, that the ability of the journeyman to work not only across the repair lines but also across the electric and machine shop lines will save considerable money and time. Because the parties agree that the journeyman position should be created and that journeymen, at the least, should be able to work both in inspection/running repair and equipment (heavy) repair, the fact-finder will focus the discussion on how much the journeyman's pay should increase and whether COTA's claims of efficiency justify permitting journeymen to work across the two additional lines of progression and at both facilities.

During the fact-finding hearing, Skid Thomason, Manager of Vehicle Maintenance at COTA, testified that if, during inspection, an inspection/running repair mechanic determined that the AC drive line of a vehicle was not functioning, he or she would have to take the bus to the Electric Repair Shop to permit a mechanic in that shop to complete the repair. Thomason also testified that under the current structure, only a mechanic from the Machine Shop is permitted to drill out a broken bolt. Thus, if a mechanic from equipment (heavy) repair is attempting to repair a bus, he or she must wait for the mechanic from the Machine Shop to drill out the bolt before the repair may continue. In its position statement, COTA identified one additional example – a mechanic who replaces shocks is prohibited from replacing a headlight.

In addition to permitting journeymen to work across the four lines of progression, COTA proposes that it be permitted to select as many qualified journeymen as it deems

necessary, that the journeymen be permitted to move among facilities, and that journeymen be permitted to stay after the end of their shift to complete a repair. COTA also proposes adding a \$.50 per hour increase to the journeymen's base rate of pay to compensate them for the more complex work assignments. COTA justifies these proposals on the grounds of efficiency. It believes that increasing the number of journeymen will enable it to perform work more efficiently – that less time will be wasted and that time saved will more than offset the additional monies paid to the new journeymen employees. In addition, COTA does not want to limit journeymen working on a repair to two hours beyond their shift. According to COTA, this limitation would add “an unnecessary and **severely limiting** restriction on management's right to continue its current practice of having mechanics in [the various lines of progression] remain at work long enough to complete their repairs.” (Employer Post-Hearing Brief at 7). COTA does not want to limit the number of journeymen to a set number – because it is a volunteer position and COTA believes that it will provide greater efficiency, COTA wants the flexibility to hire as many journeymen as it deems necessary. Similarly, COTA believes efficiency will be enhanced if journeymen are permitted to work at any COTA facility.

Union Position

The Union agrees that efficiency will be enhanced by combining the inspection/running repair and equipment (heavy) repair lines of progression. It does not, however, believe that efficiency will be gained by permitting the new journeymen to work in either Machine or Electric Shop. Duane Marbury, a union representative, offered testimony to rebut COTA's claims that permitting journeymen to work in the Electric or Machine

Shop lines will be more efficient. According to Marbury, only Electric Shop workers can do a/c repair (COTA Ex. 37, example #3) because an employee needs a/c certification in order to complete the repair. Marbury also testified that a mechanic does not need to wait for a Machine Shop employee to drill out a bolt. Under the Job Manual, mechanics can already drill out bolts. (Union Ex. 3, at 19) Thus, the new journeyman employee could drill out bolts rather than wait for someone from the Machine Shop.

The Union proposed assigning the journeymen to work at one of COTA's facilities, rather than permit them to move from facility to facility. The Union explained that it is inefficient to permit journeymen to move among facilities because their tool boxes are large and heavy and because there are separate overtime lists for each facility. The Union also argued that journeymen should receive a \$1.00 per hour increase to their base rate of pay to recognize the value that such skilled employees bring to COTA. Finally, the Union proposed limiting the number of journeyman positions to 10 on the grounds that permitting only a limited number of journeymen will protect the integrity of the seniority system, the bidding process for jobs and other employees' opportunities to advance through the lines of progression with the necessary skills. The Union also wanted to limit journeymen overtime to two hours past their shift to complete a job in order to preserve overtime opportunities for other employees.

Fact-finder's Recommendation: I recommend that journeymen be permitted to work across two lines of progression, equipment (heavy) repair and inspection/running repair, that they have \$.50 per hour added to their base rate of pay, that COTA be permitted to hire as many journeymen as it sees fit, and, if it has more volunteers than positions, that it select from its employees qualified to be

journeymen on the basis of seniority and that the journeymen be permitted to complete repairs begun on their regular shift without limitation but that journeymen should not be permitted to move between the two existing facilities.

Rationale: Both in their briefs and in witness testimony, COTA made clear that it created the journeyman position to promote the public interest by improving workplace efficiency. Through agreement with the Union, COTA has already taken significant steps in the direction of greater efficiency by creating the journeyman position and permitting the journeymen to work across two lines of progression, equipment (heavy) repair and inspection/running repair. In addition, COTA is willing to pay journeymen employees a greater base rate in order to encourage employees to apply for the position which, COTA believes, will result in greater overall efficiency. As the Union pointed out during the hearing and in its brief, however, COTA did not support its argument for adding the other two lines of progression to its journeyman job description. COTA offered a number of examples related to line progression problems, only two of which addressed problems that could be resolved by adding Electric and Machine Shop work to the journeyman's job description. Moreover, the Union adequately rebutted those two examples, pointing to the job manual to explain that equipment repair mechanics can drill out bolts and that they cannot make a/c repairs without a certification. In light of a dearth of evidence supporting COTA's contention that greater efficiency could be achieved by combining the four lines of progression, I find that only the repair lines of progression should be combined.

At the same time, COTA's proposed \$.50 per hour wage increase seems reasonable in light of the potentially more limited work the journeymen will do.

Efficiency can be achieved not only by saving time, but also by saving money. While journeymen are skilled employees who deserve recognition for the additional work they do, it does not make sense to offset efficiency gains in time by greatly increasing costs. In difficult economic times, a \$.50 wage increase to the base rate is reasonable.

In addition, COTA's proposal to employ as many journeymen as it deems necessary makes sense as does using seniority to select among qualified employees if more qualified employees volunteer to work as journeymen than COTA needs. It is unclear why COTA's proposal does not protect the integrity of seniority nor does it seem to preclude advancement through the lines of progression for those with the necessary skills. In addition, permitting the journeymen to complete work begun on their shifts, even if that means paying overtime to the journeymen, makes sense if COTA is trying to increase efficiency. Switching a task to another employee, even if that employee earns less than a journeyman, is likely to be inefficient since the employee taking over the task will have to figure out what has gone on before he or she arrived.

Finally, the Union's argument that journeymen not be permitted to move among COTA facilities makes sense. In addition to the difficulties associated with transporting large, unwieldy tool boxes, when a higher paid journeyman is traveling between facilities, efficiency gained through creation of the journeyman position, will be lost. The journeyman, paid at a higher rate, should not be wasting public resources commuting between facilities unless a need for that movement is proven necessary. COTA did not explain why such movement was necessary or how that movement would increase efficiency.

**Labor Pool employees assigned to vehicle maintenance /Service Technician Position
COTA Position**

As part of its overall emphasis on improving efficiency, COTA proposes combining many of the tasks of the current Labor Pool assigned to vehicle maintenance (“Labor Pool”) with those of the Service Technicians. COTA asserted that operational efficiency could be more readily achieved if Service Technicians were able to clean coaches as necessary and that Labor Pool assigned to vehicle maintenance were able to fuel and line up buses as necessary. Although separate job titles and seniority lists would remain, apart from performing road calls and minor repairs, which would remain the sole province of Service Technicians, the tasks of each position would be interchangeable. In other words, a Labor Pool employee could be asked to perform the task of steam jenny and a Service Technician could be asked to clean coaches. As compensation for the possibility of potential additional work, COTA proposed increasing the pay of all of the employees in these two classifications to the higher rate of pay for a Service Technician, resulting in an automatic increase of \$.36 to \$.56 per hour wage increase for the Labor Pool. COTA emphasizes that these changes are necessary to improve overall efficiency particularly because COTA will begin using Compressed Natural Gas (CNG) to fuel buses within the next 12 to 18 months. The CNG fueling location will be outside the COTA facility. If the new CNG fueling station had to operate under the terms of the current CBA, a Service Technician would have to stand at the CNG pump while a Labor Pool employee drove the coach outside to be fueled. COTA proposes instead that a Labor Pool employee should be permitted to drive the coach to the new fueling station, start fueling the coach and then clean the coach while it is fueling. COTA suggests that

this would save considerable time over having a Service Technician at the fueling station whose sole job would be to fuel and check fluids in the coaches.

Union Position

The Union is concerned about combining the job duties of Service Technicians and Labor Pool employees assigned to vehicle maintenance for several reasons. First, the Union suggests that morale problems will arise for remaining Labor Pool employees not assigned to vehicle maintenance, such as janitors, laborers or shelter cleaners. These remaining employees would not be entitled to the increase in wages and thus might be unhappy with a new, two-tiered system of wage payments to employees known generally as "Labor Pool." The Union is also concerned that the Labor Pool employees assigned to vehicle maintenance would be required to complete minor repairs when they do not have tools to perform such repairs nor do they have the training to enable them to properly make such repairs. The Union also believes that combining the two jobs will slow the process of cleaning and fueling because that is what occurred when COTA unilaterally implemented a similar change several years ago. Finally, the Union believes that employees should not fuel and clean a coach at the same time because that would constitute working alone in a hazardous area, which is prohibited by Section 22.23 of the CBA. Finally, the Union suggests that COTA is proposing a solution in search of a problem. According to the Union, there is sufficient work for current Labor Pool employees. The status quo should not be disturbed when a need for change is not present. Rather than make the job tasks interchangeable, the Union proposes that current Labor Pool employees assigned to vehicle maintenance be permitted to fuel coaches and check fluids and tires. But, Labor Pool employees assigned to vehicle maintenance

would retain the sole ability to conduct coach and premium coach cleaning duties while Service Technicians would retain minor repairs, road calls, steam jenny and line-up. Because the Labor Pool employees assigned to vehicle maintenance would have additional tasks to perform, the Union believes that the proposed wage increases for these employees makes sense. The Union would also grant that increase to the Labor Pool employees in facilities maintenance so that those employees' morale is not harmed.

Fact-finder's Recommendation

The fact-finder recommends that Labor Pool employees assigned to vehicle maintenance be permitted to do the traditional work of cleaning and premium cleaning of coaches and other labor pool work as necessary but that they also be permitted to fuel coaches, check coach tires and fluid levels. Service Technicians should also be permitted to clean and premium clean coaches but will retain the sole ability to conduct line-up of coaches, perform steam jenny work and perform road calls and minor repairs. Because the Labor Pool employees assigned to vehicle maintenance will be doing additional work (potentially) but not all the work COTA wanted them to do, they should receive an increase that amounts to 25% of the difference between their wages and those of the Service Technicians/Steam Jenny. For the chart outlining this information, see COTA post-hearing brief at p. 14.

Rationale:

During the hearing, COTA emphasized a need for increasing efficiency in the daily servicing of buses. To accomplish that goal, COTA stated that it needed to make the tasks of the Labor Pool employees assigned to vehicle maintenance virtually interchangeable (except for performing road calls and minor repairs) with the higher paid

Service Technicians. In COTA's view, no "substantial reason" exists to keep the tasks performed by employees holding each of these positions separate. At the same time, however, COTA's primary justification for the proposed change is that it will be transitioning from diesel fuel to Compressed Natural Gas for its buses during the term of this CBA. That transition will require employees to fuel the buses outside. Efficiency will be lost because fueling buses will take much longer and, if current practices were followed, would require a Service Technician to stand outside all day waiting for a bus to fuel. Instead, COTA believes it would be significantly more efficient for a Labor Pool employee assigned to vehicle maintenance to drive the bus to the fueling station and clean the bus while it is fueling. COTA is convincing that great efficiency will be gained if the Labor Pool employees assigned to vehicle maintenance are permitted to fuel and clean the buses at the same time. Further, the Union did not demonstrate that labor employees not assigned to vehicle maintenance will be demoralized nor did it prove that fueling and cleaning buses at the same time is hazardous. Finally, the Union's contention that mechanics could do the work of fueling a bus if a Service Technician is not available defeats COTA's goal of increased efficiency. It does not make sense to take a more skilled employee away from other work in order to fuel and clean a bus when there are employees available who are less skilled but able to do that work. Similarly, COTA will achieve greater efficiency if Service Technicians are able to clean and premium clean coaches, if they are not doing some other important task. However, I do not find it reasonable to make virtually all of the tasks associated with these two positions interchangeable. COTA did not present convincing evidence of a need for additional employees to be available to steam clean engines and do line-up. Thus, I find that those

tasks could remain in the sole domain of Service Technicians. Because the two jobs will not be virtually identical, I find appropriate and reasonable COTA's proposal to provide the Labor Pool employees assigned to vehicle maintenance with an increase that amounts to 25% of the difference between their wages and those of the Service Technicians/Steam Jenny. For the chart outlining this information, see COTA post-hearing brief at p. 14.

This concludes the fact-finder's report and recommendations.



Sarah Rudolph Cole, fact-finder

Columbus, Ohio
April 19, 2012

CERTIFICATE OF SERVICE

The foregoing document has been served by email to Ronald G. Linville, Linville@bakerlaw.com, Kristen Treadway, treadwayKM@cota.com, Robert W. Sauter, RSauter@cloppertlaw.com, and the State Employment Relations Board, Mary.Laurent@serb.state.oh.us, on the 19th day of April, 2012.

A handwritten signature in cursive script, appearing to read "SR Cole", written over a horizontal line.

Sarah Rudolph Cole