Received before business hours on 2/1/16, processed same business day

IN THE MATTER OF FACT FINDING

BETWEEN

AMALGAMATED TRANSIT UNION LOCAL 1385

AND

GREATER DAYTON RTA

SERB Case: 2015-MED-01-0036

BEFORE: William C. Binning Ph.D.
SERB Fact-finder

PRINCIPAL ADVOCATE FOR THE EMPLOYER

Ronald G. Linville
Baker & Hostetler, LLP
65 East State Street Suite 2100
Columbus, Ohio 43215

And

PRINCIPAL ADVOCATE FOR THE UNION

Joseph S. Pass
Jubilirer, Pass & Intrieri P.C.
219 Fort Pitt Boulevard
Pittsburgh PA 15222

Received before business hours on 2/1/16, processed same business day

INTRODUCTION

This Fact-finder was properly appointed to this case by SERB on August 31, 2015. The parties agreed to hearing dates of November 2, and November 3 at the Marriott/ University of Dayton. The parties requested mediation for those days, the parties acted in good faith and some progress was made on the numerous outstanding issues. Concurrently, the representatives of the Mechanics in the ATU and representatives of the Employer engaged in bargaining/mediation, and they made substantial progress. Their good work deserves acknowledgement.

The parties agreed for an additional hearing date of December 11, which was also used for mediation. That was held at the Courtyard Marriot /Dayton. The Fact finder asked the very able advocates to provide him with a second position statement on the remaining outstanding issues, and they met that request with very good presentations. In the interim, at the urging of the Fact - finder, the parties engaged in further bargaining. They met five times and a few more issues were settled. At the December 11, 2015 mediation, a few more issues were settled. Progress stalled, and the parties agreed to move the numerous remaining issues to a Fact finding hearing, which was held on December 16 at the Courtyard Marriot/ Dayton. From the outset, the Fact-finder cautioned the parties that he was reluctant to address such a significant number of issues from an existing contract. Many of the work related, non- economic issues are best settled at the bargaining table.

The Fact- finder would like to thank the advocates, Attorneys Joe Pass and Ron Linville for their multiple and excellent pre-hearing statements, their informative hearing presentations, and their patience with the Fact finder. I would also like to acknowledge the work of Attorney Ryan Cates, who was also with the employer, and helped to keep track of a fact- finding addressing a contract with so many outstanding issues.

Received before business hours on 2/1/16, processed same business day

PRESENT AT THE HEARING

Employer

Ron Linville	Attorney for Employer
Ryan Cates	Attorney for Employer
Mark Donaghy	CEO RTA
Alison Ledford	H.R. RTA
Bob Stevens	RTA
Mary Stanforth	CFO RTA
Jim Napier	RTA
Dale Crutcher	RTA

Union

Joseph Pass	Attorney ATU
Gary Johnson	ATU International V.P.
Glenn Salyer	ATU Local President
Kelly Moon	ATU Recording Secretary
Larry J. Lipscomb Jr.	ATU Maintenance Steward
Gerald Duncan	ATU Financial Secretary
Michael Long	ATU Local V.P.

Received before business hours on 2/1/16, processed same business day

CRITERIA

OHIO REVISED CODE

In Fact finding, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered by the Fact-finder. The criteria are listed below and were given weight by this Fact-finder in his recommendations for this matter. The criteria are:

!. Past Collective bargaining agreements

2. Comparisons

3. The interest and welfare of the public and the ability of the employer to finance the settlement.

4. The lawful authority of the employer

5. Any stipulations of the parties

6. Any other factors, not listed above, which are normally or traditionally used in disputes of this nature.

Received before business hours on 2/1/16, processed same business day

OUTSTANDING ISSUES

At The hearing held on December 16, 2015 there were 17 issues remaining for the Fact-finder to address. A few of the issues were withdrawn or settled during the hearing.

The issues remaining were:

1. Parties and Recognition/Management Rights Articles I, XXXVI
2. Union Shop for all Employees Article II
3. Subcontracting Article IV
4. Project Mobility Article IV A
5. Tardy and Absence Article V
6. Leaves of Absence and Sickness and Disability Leaves Article VIII
7. Health Care Insurance Benefits Plan Article IX Appendix C
8. Authority Sickness and Group Sickness and Accident Protection Article XI
9. Vacation with Pay and Buy Back Article XV
10. Hours of Work-Working Conditions-Transportation Article XIX
11. Seniority of Maintenance Department Employees Article XXVI
12. Hours of Work Maintenance and Line Crew Article XXVII
13. Rates of Pay Article XXIX
14. Violations of Authority Rules/Grievance and Arbitration Article XXXI
15. Part-Time Operators Article XXXIII
16. Bi-annual Physicals
17. Incorporation of MOUs.

Received before business hours on 2/1/16, processed same business day

Before proceeding to each of the issues, it is noted that although the hearing was closed on December 16, 2015, the parties agreed that further evidence could be submitted for a narrow list of issues. Specifically, an arbitration decision, not yet awarded, that might have significant financial consequences would be accepted for the record with short briefs by the parties. Also, the advocates agreed to continue to review the MOUs and the Fact- finder agreed to allow any recommendations for the MOUs on the record.

The Arbitrator closed the record for the pending Arbitration award on January 17, 2016. The record remained open for positions and evidence regarding the issue of MOUs until January 22, 2016. Evidence and positions were accepted for that issue until January 21, 2016.

ISSUE 1

ARTICLE 1

PARTIES AND RECOGNITION/ /MANAGEMENT RIGHTS

Section 1

The parties agree that this contract is for three years and:

That the parties hereto, in consideration of the mutual covenants and agreements herein contained, contract and agree with each other that this Agreement, which shall become effective as of the *2nd day of April, 2015* shall thereafter constitute the complete entire Agreement between the parties hereto.

There are proposed changes for Article 1.

Received before business hours on 2/1/16, processed same business day

Employer proposal:

The Employer made a number of proposed changes for Article 1. They proposed adding the following paragraph to Section 2:

The Agreement, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. After the effective date of this Agreement, all past practices and precedents may not be considered as binding authority on any preceding arising under this Agreement.

The Employer advocate characterized the proposal as a "zipper clause".

The Employer also proposed additional language to Article 1, Section 4: Management Rights 1) Take actions to carry out the mission of the Authority, including the implementation of reasonable work rules that do not violate any provision of this collective bargaining agreement. The Authority will notify the Amalgamated Transit Union of any new work rules and provide the Union the opportunity to discuss them.

The Employer also proposed eliminating Section 5 Union/Management Committee. Proposed: Will meet as mutually agreed.

Union Position:

The Union advocate opposed all of these Employer proposed changes, and was particularly concerned about the proposed language change to Article 1 Section 2. Union did not object to eliminating the Union/Management Committee because it has become dormant.

Discussion:

The merits and benefits of the proposed language changes for Article I are not palpable.

The Union did not object to striking the Union/Management Committee language. The Employer recommended Will meet as mutually agreed. Since neither party, at this time, is interested in having a vehicle for meeting and discussing issues, the following is recommended For Section 5: Union-Management Committee: In order to provide a mechanism for discussion of mutual problems, there is hereby established a Union/Management Committee. The Committee shall be composed of four (4) persons appointed by the Union and four (4) persons representing Management. Will meet as mutually agreed.

Recommendation:

Retain current language.

Except:

Other than the agreed to language changes on the length of the contract (noted above in Section 1) and retention of the revised Union/Management Committee with the change: Will meet as mutually agreed, no change in language is recommended.

Received before business hours on 2/1/16, processed same business day

ISSUE 2

ARTICLE II

UNION SHOP FOR ALL EMPLOYEES

Employer proposal:

Section 1 The Authority agrees that all of its present hourly rate employees shall become and remain members in good standing of the Union in the employ of the Authority, except those on probation.

The added clause, except those on probation, to Section 1 is acceptable to both parties. So it is recommended.

Section 3 –Job Bidding

It is recognized by the Authority that vacancies in hourly rated jobs throughout various departments will occur from time to time, should management authorize a replacement. These vacancies are defined as being created by the termination of hourly employees, and their separation from seniority lists. It is agreed that all such vacancies or any new job openings within the department will be ~~offered to, and~~ filled by employees within the department who are actively at work, able to immediately begin work in the new position and who ~~can qualify~~ are qualified for the position, as outlined in paragraph 2 below.

The insert of the word calendar in the 2nd paragraph of Section 3 is acceptable to the parties and is recommended.

The Employer offers a 4th paragraph for Section 3:

All open positions will be advertised through a job posting. Interested internal candidates must submit a Career Opportunity Application and meet minimum qualifications before being considered for promotion into the open positions.

Received before business hours on 2/1/16, processed same business day

Section 4

If no employee within the department ~~can qualify~~ applies for the position, or no employees are otherwise interested to fill any open position, it is then agreed that the vacancy or vacancies will be posted for ten (10) days. Present employees actively at work and able to immediately begin work in the new positions, as defined in Section 3 above, will be given the opportunity for advancement by transferring from department to department, provided ~~such~~ employees can qualify without undue penalty to the organization in meeting the requirements of the job.

Language addition: Internal employees accepting promotional transfers between departments ~~transferred employees~~ will be subject to a probationary period of 1,040 hours worked, excluding overtime.[1] (This revised sentence was acceptable to both parties and is recommended).

Section 7

The employer offered language in Section 7 inserting a date of February 22, 2013 is acceptable to both parties and is recommended.

In support of their language changes in Section 3 the employer offered as exhibit Tab 12[2] the paperwork of employees who were promoted but had to be sent back because they were not able to qualify for the job.

Union Position:

The Union rejects the substantive changes offered by the employer in Article II regarding promotion. The Union argues that it is designed to gut seniority as carrying weight in promotions. They also argue that it will facilitate the Employer

[1] GDRTA. Fact-finding Exhibits, December 16, 2015 Tab II p. 4.
[2] Id. Tab 12 P. 4.

Received before business hours on 2/1/16, processed same business day

to promote whom they please and ignore seniority. The Union maintains that the only qualification is a CDL.

Discussion:

There is no way the Fact finder can determine the burden of the current language on the employer in promoting and then having to return the person promoted back because they could not qualify for the new position. They did offer a limited amount of evidence which spanned many years. Also, it is not possible to weigh the argument of the Union that this proposal is designed to totally gut seniority and allow the employer to advance favored employees.

However, the Fact finder finds a technical problem with the Employer's newly proposed language. The language advanced by the employer in Section 3, which inserts "are qualified" and strikes "can qualify". That language is at odds with the language in Section 4 regarding promotional transfers "provided ~~such~~ employees can qualify without undue penalty to the organization in meeting the requirements of the job."[3] It seems incongruous to this Fact finder that departmental candidates must be qualified to apply while transferring applicants "can qualify ".

The language, offered by the employer in their binder submitted on the day of the hearing is clear, unambiguous and contradictory. Language offered for Section 3 is does not match the language in Section 4.

Recommendation: No change in language.

[3] Id. December 16, 2015 p.4.

Received before business hours on 2/1/16, processed same business day

ISSUE 3

ARTICLE IV

SUBCONTRACTING

Employer Proposal:

The Employer proposed language for Article IV Subcontracting. The Employer's position on this issue changed a number of times in an effort to craft acceptable language, during mediation.

The latest proposal was to strike language regarding the required process with the union that protects the loss of union work from subcontracting. Their proposal is offered below:

Article IV

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

Received before business hours on 2/1/16, processed same business day

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

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

~~The joint Union Management Committee may discuss the expenditure of any funds saved through the utilization option.~~

The third to last paragraph the following language change is proposed.

In the event the Authority considers contracting out a function or service under the major facility system(s) renovations provision, the employer shall provide ~~not less than thirty (30) days advance~~ written notice to the Union. Upon request, the Authority shall meet with the Union to discuss reasons for the contracting proposal and provide the Union an opportunity to present alternatives. [4]

Employer maintains that the existing language is too cumbersome, that the procedures are not actually followed. This new language will save time and money.

Union position: The Union objects to the proposed changes in language and supports current language. The Union made reference to and produced at the end of the hearing an arbitration award on that addressed the above language where the arbitrator found for the Union.

Discussion: The Fact-finder reviewed the submitted arbitration decision that the Union maintains supports their position on this issue. The well-respected Arbitrator Jonathan Dworkin was asked to interpret what “major “meant in the

[4] Id. 6-7.

Received before business hours on 2/1/16, processed same business day

last paragraph above, which the Employer proposes to alter. It was noted in Dworkin's arbitration award that the language was a product of hard bargaining between the Union and the Employer. To the point, Arbitrator Dworkin found that the lighting project under question, which had been outsourced, did not meet the threshold of "major" and found for the union and the employer had to make the union whole for hours of work lost due to subcontracting.[5]

The existing language is a product of "hard bargaining" and its implementation was defined in an arbitration award.

Recommendation: No change in language.

ISSUE 4

ARTICLE IV A: PROJECT MOBILITY

The positions of the parties continued to change on this issue during mediation. The parties offered and withdrew language proposals. The Fact-finder indicated he was concerned about the unforeseen consequences of language recommendations he was asked to recommend. At the hearing, the Fact- finder recommended current language and the parties accepted that.

[5] See Arbitrator Jonathan Dworkin, MVRTA v. ATU Local 1385 AAA Case No 523900056397. August 13, 1998.

Received before business hours on 2/1/16, processed same business day

ISSUE 5

ARTICLE V

TARDY AND ABSENCE

Employer proposal:

~~Section 1~~

~~1. If an operator calls ten minutes before, or show within ten (10) minute before their scheduled report time, or calls one (1) hour before scheduled relief (street), the run is lost and the operator is tardy. Each tardy will count a one half (1/2) of a chargeable absence.~~

~~The operator must declare that he/she I available for the Extra Board or other work at that time, otherwise, a full absence will be charged.~~

~~2. If an operator fails to call or show as stated above before their run is due out or fails to relieve on time (street), the operator loses their run or assignment and is absent.~~

~~3. If either a tardy or absence occurs as outlined above, and the operator works any other assignment that day, the original tardy or absence is charged.~~

In keeping with our core values, you have an obligation to report to work as scheduled. No matter what your role is at the RTA, your regular attendance is vital to our overall success in providing excellent public transportation to our community. As a professional, you must recognize the importance of maintaining good attendance as a condition of your continued employment. Failure to maintain good attendance is a performance issue and will result in corrective action, up to and including termination of your employment.

Section 1

This attendance program utilizes a point system that is calculated on a rolling twelve (12) month basis. An employee will accumulate one (1) point for each period of a consecutive absence when he/she is not at work as scheduled.

Received before business hours on 2/1/16, processed same business day

This Article will be strictly enforced and the right to grieve and/or challenge this Article will be limited solely to the correct chargeability of the absence.[6]

Corrective action/progressive discipline for accumulative points is as follows:

Points	Corrective Action
1-4 points	No action
5 points	Performance Improvement Reminder
6 points	Performance Improvement Reminder
7 points	Performance Improvement Reminder
8 points	Termination

Any employee who works 160 hours the month prior (excluding overtime) will receive ½ absence occurrence credit. A maximum of four (4) credit points in a rolling twelve (12) month period can be earned. PA and Vacation Days will count as time worked for the purposes of this Article.

Section 2- Call-in Procedure /Failure to Report to Work as Scheduled /Failure to Call—in.

Each employee must notify the designated official in his/her home department *at least* 20 minutes prior to their shift or report if they are unable to work. Employees failing to provide the 20 minute advance notice will be treated the same as a "No Call/No Show" and assessed two (2) points. Operators relieving on the street will be required to call in 60 minute before scheduled relief time. Failure to call will result in two (2) points.

Any employee who fails to report to work for three (3) consecutive days without notifying the Authority will be considered Absent Without Official Leave (AWOL) and will be subject to discharge.

Section 3- Overtime Assignments

[6] This language was already agreed to by the parties. See Current Contract MOUs. P 9.

Received before business hours on 2/1/16, processed same business day

Any employee who fails to report to work for any overtime assignment will be assessed one (1) point.

Any employee who misses four (4) mandatory overtime assignments within a rolling twelve (12) month period may be subject to discharge. The absence will not be subject to the grievance procedure but the timeliness of notification may be challenged.[7]

Section 4- Late/Tardy/Leave Early Chargeable

Any employee who is tardy (reports to work no later than 10 minutes after scheduled report time) will be offered work and if accepted, will be assessed ½ a point. Otherwise, they will be marked absent and assessed one (1) point. Each tardy mark will count as ½ a point.

Any employee who requests to leave work prior to completing his/her assignment will be assessed ½ a point if he/she has completed the minimum of 51% of their assignment. Otherwise, a full point will be assessed.

Section 5- Medical Documentation

Upon request of the Authority, any employee who is at five (5) points or more in the progressive discipline process shall be required to furnish Human Resources a doctor's certificate within five (5)[8] business days following any absence not covered by Family Medical Leave. A doctor/s certificate is defined as a written verification signed by the attending physician stating the nature of and the date first attended by the physician and the estimated or actual duration of the illness or injury.

Any employee who fails to provide the required medical documentation will be coded as absent and not subject to receive sick leave pay.

Section 6- Probationary Employees

[7] The limit on a grievance on this issue is supported in the existing Contract: See Appendix B MOU Administration of the Absence Control Policy. p. 53.

[8] Note: the Fact-finder recommends raising this from 3 business days to 5 business days. See Article XI F.in existing contract: "Upon request of the Authority, after the fifth (5th) day of sick leave pay, an employee shall furnish Human Resources a certificate from the attending physician…."

Received before business hours on 2/1/16, processed same business day

This section does not supersede the Authority's exclusive power to control, direct and terminate the employment of any new employee during the probationary period. Any employee who incurs three (3) absences (consecutive or non-consecutive) during their initial probationary period will be discharged.

Section 7- Americans with Disabilities Act (ADA) Family Medical Leave Act (FMLA)

This section will not violate ADA or FMLA guidelines. Fraudulent use of sick leave or FMLA will not be tolerated and will subject an employee to discharge.

On the implementation of this policy, all affected employees will be one-time reset to zero.

The Employer offered as evidence detailed information on absenteeism in Tabs 14 and 15.[9] The transit system has a 16% average absenteeism, which in the view of the Fact-finder is high. The Employer has a right under the existing contact to develop and implement an attendance policy. It is offering their proposed policy as contract language to bring it to the employees' attention.

The Union asserts the policy is draconian. However the Union also pointed to Appendix B and Article XI "The Authority maintains the right to implement an absence control program, provided such program is not arbitrary, discriminatory or unreasonable." [10]

Discussion: The Employer clearly has the right, based on existing contract language to develop and implement an absentee policy. In the view of this Fact-finder the policy offered above is not arbitrary, discriminatory or unreasonable. The policy is punitive, however it allows employees to "clean their record" by good attendance. The Union assertion that this is unilateral implementation is noted. The contract gives the employer the authority to devise an attendance policy. The benefit for the Union, having the policy in the contract is that the policy is now transparent, and not easily changed, since the employer by its proposal to place it in the contract has made it a subject of future bargaining.

[9] GDRTA Fact Finding Exhibits Tab 14, 15
[10] Agreement GDRTA with ATU Local 1385 April 2, 2012 THROUGH April 1, 2015. P 19.

Received before business hours on 2/1/16, processed same business day

The Employer has the right to develop an attendance policy under current contract language. See Below:

See Article XI I "The Authority maintains the right to implement an absence control program, provided such program is not arbitrary, discriminatory or unreasonable." [11] Also in Appendix B MOU Administration of Control Policy "The RTA reserve the right to implement a new Absence Control Policy as prescribed in ARTICLE XI upon expiration of this labor agreement." [12]

Recommendation: Language offered by the Authority above. Except, the Fact-finder recommends an increase in the number of required days for furnishing a doctor's certificate. The 5 day recommendation is based on current contract language.

ISSUE 6

ARTICLE VIII

LEAVES OF ABSENCE AND SICKNESS AND DISABILITY LEAVES

Employer Proposal:

There are a number of proposed changes by the Employer for Article VIII, which address a variety of different issues.

Section 1

On leave of absence propose to insert"…career development, and/or continuing education opportunity". … Leaves of absence can be revoked or cancel by the Department Head (or designee) at any time.

[11] GDRTA with ATU 1385 April 2, 2012 THROUGH April 1, 2015. P. 19
[12] Appendix B MOU "ADMINISTRATION OF THE ABSENCE CONTROL POLICY" p. 53

Received before business hours on 2/1/16, processed same business day

Section 2 A 1st paragraph

The seniority of any employee ~~with less than five (5) years of service, who is off work by reason of sickness or disability,~~ shall be protected for a period of twelve (12) months from the last day worked, provided he/she discloses or authorizes the disclosure during that period of all information bearing upon his/her physical or mental condition and submits to physical or mental examinations at the request and expense of the Authority. ~~If the disability is the result of occupational injury or disease, his/her seniority may be protected for an additional twenty-four (24) months for a maximum of three (3) years.~~

Section 2 A-- 2nd paragraph

<u>During the last six (6) months of this period,</u> ~~T~~the employee will be considered an "inactive" employee during this additional period and no Authority benefits of any nature shall apply or accrue. If the employee becomes physically able to return his/her regular duties within this additional period, he/she shall be reinstated within his/her classification at his/her original seniority. [This relates to language that the employer proposes to strike in the paragraph above it: ~~If the disability is the result of occupational injury or disease, his/her seniority may be protected for an additional twenty-four (24) months for a maximum of three (3) years.~~ [13] ~~—~~The "inactive with, no Authority benefits, would apply to the last 6 months of the proposed limit of 12 months leave for everyone covered by this language.~~]~~

Section 2 B. The Employer proposes to strike this section that provides protection of 36 months for those off for sickness or disability to those with 5 or more years seniority. Everyone would be protected for 12 months.

<u>B.</u> Employer proposes to add a new paragraph:

[13] GDRTA p. 11.

Received before business hours on 2/1/16, processed same business day

Any employee who returns to work from an inactive status or disability and fails to demonstrate his/her ability to perform the essential functions of their job by remaining actively employed for a continuous three (3) month period will be reevaluated by the Authority's medical provider to make a final determination as to whether the employee can perform the essential functions of the job. Employees deemed unable to perform the essential functions of their job will be terminated

Section 3

A.

Employer proposes to strike extended continuation of insurance benefits for those with 5 years seniority.

Also proposes in last sentence of 2nd paragraph "Insurance benefits will be discontinued if an employee fails to make such monthly premium contribution ~~for two (2) months.~~

Section 3

B.

Add at the end provided that the Authority's Occupational Medical Provider certifies that the employee is DOT certifiable and mentally and physical capable of safely operating an RTA vehicle.

Section 5

Add a career development and/or continuing education opportunity.

Section 6

Received before business hours on 2/1/16, processed same business day

Proposes to restrict Union officer's time off for Union work and extends time required for request for time off.

Proposes language to restrict reinstatement of Union officers if he/she is qualified and capable of performing the essential functions of the job.

3rd paragraph, Employer proposes to strike language on withholding to pay full time Union officer.

Section 7

Proposes restricting members of the Union who take a salaried position and then return to their original position, from 6 months to 30 days.

Employer position: On proposed changes for Section 3 B Employer cites "Duffey" arbitration. That will be taken up in the discussion below.

Union position: Current language.

Discussion:

There are a variety of separate and distinct proposals made by the Employer for Article VIII.

The Fact finder does not see the point of denying leave benefits if the employee is engaged in "continuing education opportunity" while on leave.

The Employer did not make the case to discontinue more extensive leave benefits to those with more than 5 years seniority.

The proposed reduction of missing insurance payments from two months to one month seems excessively punitive.

Article VIII Sections 6 and 7, reducing language relevant to Union officers and eliminating withholding to pay the full time official: In general, this Fact finder is very reluctant to recommend language changes regarding Union officer's ability to conduct Union business, unless agreed to by the parties.

Received before business hours on 2/1/16, processed same business day

The Fact-finder did review the "Duffey" arbitration case offered by the Employer. This evidence is relevant for the proposed language under Section 3. B last sentence: provided that the Authority's Occupational Medical Provider certifies that the employee is DOT certifiable and mentally and physically capable of safely operating an RTA vehicle.

This relates to the Union proposal to add additional neutral medical opinion for return to work from disability.

The Employer offered a recent arbitration award by Arbitrator Robert Stein. On pages 19- 21, the award Stein addresses the Unions demand for a neutral third party medical provider. Stein wrote that opportunity is very restricted by the contract.[14]

Recommendation:

Retain current language.

Except for adding this proposed last sentence to Section 3 B.

provided that the Authority's Occupational Medical Provider certifies that the employee is DOT certifiable and mentally and physically capable of safely operating an RTA vehicle. This proposed language is supported by the cited Arbitration award.

[14] GDRTA v ATU LOCAL 1385 AAA CASE 53390 L 0004314 December 30, 2014 pp. 19-22.

Received before business hours on 2/1/16, processed same business day

ISSUE 7

ARTICLE IX

HEALTH CARE INSURANCE BENEFITS

Both parties offered proposals on the Health Care Insurance. It was agreed that the Union would present their proposal first. Their arguments and evidence will be taken up at the end of their proposal.

Union Proposal:

Effective January 1, ~~2012~~ 2016 and each year thereafter, if GDRTA has a fully insured plan, and each full time employee will pay~~15%~~ 10% of the monthly premium for a single, one plus one, or family contract, for medical, dental and prescription drug coverage.

Effective January 1, 2016, if GDRTA has a self-insured plan, employees' contribution shall be based upon their base hourly rate at 2080 hours per year. Specifically, under a self-insured plan, an employee shall contribute to the cost of health insurance calculated at 2% of forty (40) hours at the employee's base hourly wage rate on a weekly basis and made by payroll deductions.

The Union proposes that the premium share "under the self-insured model the employees' contribution be tied to their income based upon a 40 hour work week/2080 hour year schedule. For example, in each year of the Agreement, if a self-insured model is elected by the GDRTA, employees shall contribute to the cost of health insurance. The proposed contribution rate will be 2% of forty (40)

Received before business hours on 2/1/16, processed same business day

hours at the employee's base hourly wage rate on a weekly basis and made by payroll deductions." [15]

The Union is concerned about paying a percentage of the actual premium, especially if a self-insured policy is adopted by the Employer, because of the uncertainty of the cost, which is dependent to some extent on the unknown impact of future medical claims. Evidence was presented by the Union, citing the significant overpayment of the premium share by Union members the first year of the self- insured plan. They offer extensive evidence on health insurance claims in their Exhibits presented at the hearing December 16, 2015.[16] To avoid that uncertainty of the annual total cost of the health insurance, the union wants to move away from being tied to the total cost and tie their premium share to their wages.

The Union points out that the 15% is above the average premium share in the SERB data. The Union also established that the premium share of 15% was above the average for Dayton area public employees.

Employer Proposal:

The Employer proposes 15% premium share for the Union for the duration of the new contract. They reduced their annual proposed increases in their premium share from their initial proposal during the course of mediation.

Discussion

The Union's effort to move the premium share from being tied to the overall cost of the annual insurance program, (self-insured or not) is understandable.

[15] Joseph Pass, ATU Pre-Hearing Statement October 30, 2015. Pp 9-10.
[16] ATU Local 1385, UNION PRESENTATIONS WITH EXHIBITS. December 16, 2015, Under Tab "HEALTH CARE".

Received before business hours on 2/1/16, processed same business day

Everyone, including the employer, would like to have more predicable health insurance costs. However, costs of any health insurance plan can spike quickly in one year. The variability of self-insurance costs can be significant in a year, because it is dependent on the claims made in one year. The Union has accepted sharing the risk on health insurance in their past contracts. They do not like the greater premium variability they see in a self- insured plan. However, if they want this relief, they will have to bargain for it.

The SERB 2015 Report on the Cost of Health Insurance reports that "Self-insured plans are 70.5 % of all plans reported this year."[17] The employer is not choosing to do something extraordinary by choosing to be self-insured. It is the most common choice of public entities in Ohio. The "Average Monthly Employee Contributions to Medical Premiums When a Contribution is required" shows it is 13.4% for a single and 14.0% for a family statewide.[18] The 15% monthly premium share for GDRTA is not out of line with the state averages.

Recommendation:

ARTICLE IX

Section 1

Effective January 1, 2015, each full-time employee will pay 15% of the monthly premium <u>total cost of the health care plan as defined by the premium charges if fully insured or the premium equivalent rate defined each year by the Authority (if it) is self-funded.</u> (bracket (if it) proposed by Fact finder. Recommend retaining "monthly premium".

Slight change in Employer proposed language since it is not clear to the Fact-finder why "monthly premium" was deleted in their proposal.

[17] SERB, 2015 23rd Annual Report on the Cost of Health Insurance in Ohio's Public Sector.p.6.
[18] Id. 33.

Received before business hours on 2/1/16, processed same business day

The Fact-finder also recommends the Employer proposed new Section 3 (offered below) It offers transparency.

Section 3

Should the Authority determine to self-fund portions of the health care plan, it will publish to all plan members annually a financial report describing the plan year's fiscal results and impacts on Authority –held reserves generated from Authority and employee contributions.

Finally on Health Insurance, the Fact finder recommended, at the hearing, the parties create a committee of Authority and Union members to have regular discussions on their health insurance. That recommendation was based partially on the so called "Cadillac tax", which has since has been delayed. The Fact finder still recommends the idea of a union and management committee to share health insurance information but not as contract language.

ISSUE 8

ARTICLE XI

AUTHORITY SICKNESS AND GROUP SICKNESS AND ACCIDENT PROTECTION

The proposals of the Employer and the Union address different issues. They are taken up separately rather than a package.

Employer Proposals:

ARTICLE XI

Section 1 Authority Sick Leave

Received before business hours on 2/1/16, processed same business day

A ~~Effective upon the ratification of this agreement, the Authority will pay 100% at the employees prevailing base hourly rate for any sick leave accrued in excess of 800 hours. Payment must be made within sixty (60) days.~~

B. ~~Thereafter~~ An employee with one (1) or more years of continuous service shall accrue sick leave credit of ~~eight 8~~ four (4) hours for each calendar month that he/she is on the active payroll, not to exceed a total accumulation of 800 hours. Employee must work at least ~~120~~ 160 scheduled hours in the month (excluding overtime) to accumulate leave. Paid vacation days will be considered work days for the purpose of this Paragraph.

They propose to strike Section 1 F. and J

Section 1 1: ~~The Authority maintains the right to implement an absence control program, provided such program is not arbitrary is not arbitrary, discriminatory, or unreasonable.~~ (This strike is proposed because it is used to support the new Article V.

Discussion:

The Employer recommendations on sick leave are part of its overall "attack" on absenteeism. The reduction from 8 to 4 earned sick leave credit is not justified. The recommended change from 120 to 160 to accumulate sick leave in part is to address attendance. The recommended attendance policy in Article V should be sufficient to help remedy the attendance problems for GDRTA. Further changes, such as reducing earned sick leave benefits is excessive.

Recommendation: Current language. Except for the following offered below:

Section 1 A: Striking is recommended. It was transition language. // Section 1 J strike language. This language is used to implement absentee policy.

Regarding Section 1 J regarding the 5 days for a required physician statement that has been incorporated in the proposed attendance policy.

Received before business hours on 2/1/16, processed same business day

Union Proposal:

H. Sick Leave credits are for employee's protection while in the employ of the Authority. Any unused accumulated sick leave will be paid out **to all employees** at ~~50%~~ **100%** value up to a maximum of 800 hours to employees that voluntarily separate their employment with the Authority.

Union argues that these sick days were earned and have a value and should be paid at their full value.

Employer Position rejects the argument. Supports current language.

Discussion: It is common in the public sector in Ohio to reduce the sick leave payout to people who retire or otherwise separate from a public employer. The benefit is generous as it stands.

Recommendation: Current language.

Section 2 Long Term Disability Insurance

Union proposal

The Authority shall provide full-time active employees ~~the option to purchase~~ Long Term Disability Insurance that provides 66 2/3 of his/ her monthly salary up to a maximum of $5,000 a month. Full time active employees electing this option will pay 40% of the total premium and this contribution will be made with after

Received before business hours on 2/1/16, processed same business day

tax dollars. To be eligible for the benefit, the employee must complete six (6) months (180 calendar days) of continuous service with the Authority. [19]

Union is proposing that the option to purchase is stricken from the contract.

Employer position:

The Employer argues to retain existing language.

Recommendation: Retain existing language.

Union Proposal:

The Union proposed a short term disability policy be included in this article. This was for 26 weeks. (Hearing Testimony). The Union offered comparables from other large Ohio transit systems.

Section 3

Short Term Disability Insurance

The Authority will provide full-time active employees the option to purchase Short Term Disability Insurance that provides 66 2/3 of his/her monthly salary up to a maximum of $5,000 a month. Full time active employees electing this option will pay 40% of the total premium and this contribution will be made with after tax dollars. To be eligible for the benefit, the employee must complete six (6) months (180 calendar days) of continuous service with the Authority.

[19] ATU Local 1385, Union Presentation with Exhibits. Tab "Sickness Accident".

Received before business hours on 2/1/16, processed same business day

Employer Position:

The Employer maintains short term disability insurance was negotiated out of a previous contract. The Employer maintains a short term disability proposal in unnecessary, because the employee has sick leave for such occurrences.

Discussion:

The argument of the Employer that short term disability was negotiated out of a previous contract was not rebutted by the Union. That carries significant weight for this Factfinder.

Recommendation

The Short term disability language is not recommended.

ISSUE 9

ARTICLE XV

VACATION WITH PAY AND BUY BACK

Employer Position:

(Note: The Fact-finder is modifying parts of the employer's proposal- it is noted so noted.)

Section 1 Vacation with Pay

The Employer makes changes in minimum hours worked in the preceding year to qualify for vacation. This is to address absenteeism.

Received before business hours on 2/1/16, processed same business day

ARTICLE XV

Section 1 Vacation with Pay

A. Current Language

B. The qualifications for vacation are as follows:

1. Less than 5 years =1,920 hours worked

5 to 10 years =1,664 hours worked

10 to 20 years =1040 hours worked

Over 20 years = 0 hours worked

2. Employees must work a minimum of hours described above in the preceding year in order to qualify for a paid vacation. Paid vacation, holidays, and personal absence float days will be counted as work days for the purpose of this paragraph. For the purposes of accruing vacation, all hours paid for the employees regularly scheduled pick/run will be counted as time worked.

The employer strike of the 2nd paragraph is not recommended. Current language is retained.

(Note: The paragraph below is struck by the Employer it is not stricken below)

For purposes of accruing vacation only, employees who are sick for thirty (30) or more consecutive work days due to a serious health condition will be credited with such days as though they had been worked, provided they have worked during the calendar year. A serious health condition shall be defined as an illness, injury, impairment, or physical or mental condition where the employee is incapacitated and under the care of a physician for thirty (30) or more consecutive days.

4. No vacation allowance will be made to any employee who leaves the employ of the Authority during the year for which the vacation is allowed, unless he/she had one (1) year seniority the previous January 1.~~in which event~~ . If the employee had

Received before business hours on 2/1/16, processed same business day

one (1) year seniority, he/she would receive one-fourth (1/4) of the allowable annual vacation days for each completed calendar quarter worked, provided he/she did not exceed the pro-rated number of allowable days off. This ~~including~~ includes a pro-rated number of ~~the~~ one (1) or two (2) periods of sickness, all to be calculated by the number of completed calendar quarters worked. Provided ~~further,~~ that conduct involving the misappropriation of the Authority money or property is not a reason for separation.

.

Section 2 General Conditions

F. Approach to picking weekly, partial, single day vacations and personal days.

The Authority shall designate vacation periods and PA days, which shall be chosen by seniority and under the following conditions:

1... Operations. ~~Under the present plan of operation, there~~ shall be a ~~minimum~~ maximum of 8% ~~of the total number of fixed route~~ of Operators permitted off during the months of June, July, August and September and 6.5% during all other months. Total work force will be used to determine the number of Operators permitted off.

a. Annual weekly vacations requests will be accepted in seniority order during the November service pick for the upcoming calendar year – January 1 to December 31.
b. The Authority will post the awarded vacation weeks during the month of December. Employees will be responsible for checking any vacated weeks.
c. All Requests for single vacation and personal days will be accepted in seniority order once the vacation pick has been completed. Operators may request single days no more than thirty (30) days in advance but no less than (3) days in advance, granted the request is in accordance with provisions outline in F-1 above. Single day requests will be confirmed within 24 hours of the request.

Received before business hours on 2/1/16, processed same business day

2. Maintenance: There is a Tentative Agreement.

3. ~~Employees with four (4) or more weeks of vacation may take off (pick) two (2) weeks in periods of less than one (1) full week. Employees with one (1) to three (3) weeks of vacation may schedule one(1) week in periods of less than a full week; however, no more than three (3) employees per day from the Fixed Route Operators pool, and no more than two (2) employees per day in PMOB/Combination, and~~ No more than four (4) Maintenance employees two (2) Mechanical and two (2) Non-Mechanical) will be scheduled off for periods of less than one full week. For scheduling purposes, full weeks will take precedence over part weeks.

(Note: The sentence below is struck by the Employer. It is not stricken here).

The Authority will buy back all unused vacation, payable by the end of January.

~~G. Extended time shall be granted to a vacation period, without pay, provided other employees are available to permit this to be done, without undue hardship or inconvenience, but the periods picked for vacation shall be limited to the number of vacation weekly periods individually allowable.~~

The Employer focused its case or the language on facilitating selection of single days for vacation.

Union Position:

The Union supports current language.

Received before business hours on 2/1/16, processed same business day

Discussion

The change is language in the first part of the proposal is designed to help address the problem of absenteeism. The language that addresses the approach to picking days off is to facilitate use of single days for vacation.

Recommendation

The Employer language above with noted language changes by the Fact-finder is recommended.

ISSUE 10

ARTICLE XIX

HOURS OF WORK- WORKING CONDITIONS-TRANSPORTION

Union Proposal:

No regular run shall pay less than eight (8) hours a day and all operators shall receive time and one-half after eight (8) hours daily (platform time) forty (40)

hours per week (platform time), regardless of assignments. Overtime shall not be pyramided.

Union propose to add this sentence to above**: All terms set forth in this Article shall apply to all operators.**

Employer Proposal:

The Employer is opposed to this change in language which impacts Project Mobility Operators overtime calculation. This is an issue in a current arbitration.

Discussion:

The Fact- finder is reluctant to further complicate an issue subject to arbitration.

Recommendation: Current language.

Employer Proposal:

No operator shall work in excess of twelve (12) platform hours per day and no more than 70 total platform hours per week. For purposes of this section, on-call, board protection and travel time will not be counted against the daily or weekly work hours. In case of emergency and extreme hardship to get service on the street, the Authority may waive the daily maximum, but shall not exceed the weekly total.

Union Proposal:

Received before business hours on 2/1/16, processed same business day

The Union is opposed to the offered language.

Discussion:

The Employer maintains the above language is for safety purposes and DOT (Department of Transportation) is expected to announce safety limits. Neither party made a strong case for or against this language. Parties can wait and adapt to DOT changes if they are issued, and impact hours worked.

Recommendation:

The proposed language is not recommended.

The Employer offered the following new language for On-Call Procedures**:**

SECTION II

F. Bus Operator On-Call Procedure

The parties recognize the need to fill work in real-time to meet service commitments. This provision establishes an on-call procedure for employees who are not at work or on-site, but instead are available as needed and have been scheduled to be on-call

Received before business hours on 2/1/16, processed same business day

Operators may be offered on-call work. For purposes of this contract provision, on-call operators are those who may report to work within one (1) hour of receiving notification from the Dispatch Office of their need to report to work. On-Call operators will be identified in advance to ensure sufficient notice.

On-Call operators will be paid 50% of their current rate of pay while off-site for a maximum of two (2) hours of pay. On-call operators will be paid 100% of their current rate after reporting to work on-site to include all applicable overtime provisions.

Any on-call operator who cannot be contacted by phone or fails to report to work after being contacted by the Dispatch Office will be charged in accordance with the Article V and will not be paid.

Employer argues this will help solve the manning problems due to absenteeism. The Employer emphasizes this is voluntary.

Union Position

The Union argued that the hours and pay for on-call is inadequate.

Discussion

There could very well be a benefit to an on-call procedure for the GDRTA. On call procedures are used by local governments and special districts. Since it is voluntary, the Union needs to be persuaded that it will attract their members, since it is presented as voluntary. The Authority has not made their case for this language to the Union.

Received before business hours on 2/1/16, processed same business day

Recommendation

The language for On-Call not recommended.

The Union proposes the following under Article XIX:

C. Working conditions for operators

All operators shall be provided a ten minute break after two hours of operation and, after 4 hours of operation, a twenty minute lunch break, and after 6 hours of operation, a ten minute break.

The authority shall provide this information in to the schedule /MDT for operator to know when the breaks are to be taken. For tradition bus the break must take place at the layover and a 30 minute window will be allowed for scheduling. For PMOB the breaks shall take place between clients when the bus would be empty and the schedule shall provide for this time to happen.

The Union maintains the bus drivers receive inadequate breaks for their lunch and to go to the bathroom.

Employer:

The Employer maintains the issue of breaks is already addressed on the existing timing of the routes.

Discussion:

Sufficient evidence was not presented by either party.

Recommendation: Language is not recommended.

Received before business hours on 2/1/16, processed same business day

Bus Conditions

The bus must be able to maintain a temperature of 75 degrees or less when the exterior temperature outside has exceeded 80 degrees.

The bus must be able to maintain 75 degree when the outside temperature is 40 degree or colder.

Should these conditions are not maintained the bus will be taken out of service until repaired.

Safety Equipment

All buses are to be equipped with an emergency button that has been inspected monthly to assure it is working and noted on an inspection tag placed in the bus confirming a working condition exist.

Driver Safety Enclosure

Effective as of this contract dated all new buses will be order with driver enclosures full height

All existing buses will have [to] install a driver enclosure to be full height and similar to the factory installed enclosures. The authority shall complete 1/3 of the existing fleet each year.

The Union provided testimony in support of these proposals.

Employer Position:

The Employer opposes the inclusion of this language.

Discussion:

Received before business hours on 2/1/16, processed same business day

Many of these proposals have merit, particularly, the issues regarding safety. The Fact- finder was not persuaded they belong in the contract. All evidence the Union has on the safety issues should be brought to the attention of the Employer.

Recommendation:

The proposed language is not recommended.

ISSUE 11

ARTICLE XXVI

SENIORITY OF MAINTENANCE DEPARTMENT EMPLOYEES

Employer Proposal:

Section 1

Employees of the Maintenance Department will be entitled to seniority in their particular group classification and shall have the right to advance in their group classification provided they qualify and there is an opening for such advancement. ~~Competency and seniority~~ Qualifications and certification will be considered in promotions. ~~In all other matters, it is agreed that, all other factors being equal, the principle of seniority will prevail.~~

Section 3

There shall be at last one (1) mark-up or pick within the various groups of Maintenance employees during August of each calendar year ~~(unless the date is changed by mutual agreement) for~~ the observance of seniority of the employees

within the various groups ~~insofar as seniority can be recognized without undue penalty in fitting the qualifications of the individual to the requirements of the job.~~

The Employer presented evidence of an accident with electricity. A Flashing was presented as evidence that unqualified employees were being promoted and put at risk. This was an argument for the focus on qualifications.

Union Position:

The Union painted this as an attack on seniority. The Union also diminished the evidence pointing out that it was a single incident many years ago. The Union points out that "qualified" has already been established by testing procedures.

Discussion:

The Fact finder did not see sufficient evidence to support this proposed language change.

Recommendation: Retain current language.

Received before business hours on 2/1/16, processed same business day

ISSUE 12

ARTICLE XXVII

HOURS OF WORK MAINTENANCE

Union Proposal:

The Union proposed that the agreed upon overtime policy be placed on the Contract.

Employer Proposal:

The Employer wanted time to study the document.

Discussion:

The Fact finder believes that the supervisors and the union employees in Maintenance have a healthy relationship and they worked successfully to resolve a number of issues including this overtime policy.

Recommendation:

The parties need to resolve the few issues that remain. The Fact-finder is reluctant to recommend that this extensive policy, which is not in the contract be placed in the contract. It is a policy for a subset of employees. The parties agreed to most of it at the hearing. The parties need to continue working together to resolve whatever outstanding issues remain.

Received before business hours on 2/1/16, processed same business day

Employer Proposal:

Hours of work Maintenance:

The Employer is proposing language that would allow for Flex scheduling in Maintenance. That would allow Maintenance to go to a 10 hour day and work 4 ten hour days in a week. The Employer said there will be overtime if the employee works over the 10 hours.

Union Position:

The Union opposes this change in language. The Union maintains that the language change allowing the 10- hour work day and the four 10 hour shifts is an attack on overtime. Currently overtime is paid for work over eight hours. The Union says the problem is the language and how it would be implemented. The parties agreed to continue to work out this language.

Discussion:

The proposal has some merit. There is some support by Maintenance employees for the 10 hour day. It could/would impact overtime pay. The parties need to work out the overtime issue.

Recommendation

Current language.

Received before business hours on 2/1/16, processed same business day

ISSUES WITHDRAWN OR RESOLVED

Issue 15 Part time Operators. The Fact-finder told the parties that he understood the issue of OPERS, part time rehires and health insurance but he did not see a remedy he could offer.

Issue 16 on Biannual Physicals (Appendix B) – the issue was withdrawn.

Issue 17 Incorporate existing MOUs into the Contract. This was under review by the parties. This was not resolved and sent to the Fact-finder (See below).

ISSUE 13

ARTICLE XXIX

RATES OF PAY

Union Proposal:

The Union proposes a wage increase of 4.5% for each year of the contract.

The Union offered its comparables. The top hourly rate for fixed route operators in the major metro transit systems in Ohio: [20]

Columbus	$26.78/ hr	
Cleveland	$26.25/hr.	
Akron	$26.18/hr.	(III)

[20] ATU, Union Presentation with Exhibits. Wages. Tab 2.

Received before business hours on 2/1/16, processed same business day

Cincinnati	$ 25.41/hr.	
Dayton	$24.49/hr.	

Dayton lags behind by over $2.00 an hour.

The Union says comparable wages for paratransit operators is also notable.

Cleveland	$23.63/hr.	
Youngstown	$21.64/hr.	(Class IV Intermediate)
Cincinnati	$19.30/hr.	
Steubenville	$18.31/hr.	(Class V Small)
Springfield OH	$16.60/hr.	(Class V Small)
Dayton, OH	$13.57/hr.	

The Union offered extensive testimony and evidence to support its proposed pay increase.

The Union focused on the following facts:

The GDRTA already included in their budget a 2% wage increase for this unit in future fiscal years. They point to an RTA Finance/ Personnel Committee Meeting August 25, 2015. Regarding July 2015 Financial Statement: "Ms. Stanford reported sales tax receipts are up but there have been declines in some operating revenues. Some of it is due to a decline in cash paying riders and a shift to using passes. A two percent wage increase for the ATU is planned but no agreement with the Union has been established."[21]

The Union gave attention to the fact that the GDRTA executive director received a significant pay increase in 2014.

[21] Id. Financials Tab 2.

Received before business hours on 2/1/16, processed same business day

The Union advocate gave a great deal of evidence from the Employer's public records that show that The local sales tax, dedicated to transit, has an significant increase in yield in recent years.

The sales tax is the major source of revenue for the transit system. There is a ½ % dedicated piggyback sales tax to the transit system. The other revenue sources are: passenger fares, federal funding, state funding, advertising. The lion's share of the transit system operating budget is the sales tax.

The Union presented national wage comparables under their Tab 4.

Under Tab 3 the Union presented evidence that their wages have fallen behind the other transit systems in Ohio that have been designated as comparables. They compare Greater Dayton wages to Cincinnati transit wages. Dayton has not kept pace.

There has been savings for GDRTA transit system from lower costs for health insurance and fuel.

The Union maintains the Authority is in very good financial health. They have cash reserves. They have a large surplus. They can afford a pay raise.

The ATU Local points out that the other GDRTA bargaining unit, an AFSCME unit, that represents office personnel, received a 2% increase in their last CBA.

The Union offered an extensive review of the finances of the GDRTA and their board minutes which documents the GDRTA increase in revenue particularly in sales tax revenue. [22]

[22] Id.

Received before business hours on 2/1/16, processed same business day

Employer Proposal:

The Employer proposes.

ARTICLE XXIX: RATES OF PAY

Section 1 –Wages

A. Effective the date of this Agreement, the wage progression for all employees shall be pursuant to Appendix A

APPENDIX A –CONTRACT WAGE PROGRESSIONS

(All dollar amounts in Appendix A should be modified to reflect a 2% wage reduction in the first year of the contract (12/15-12/16), and a wage freeze for the second and third year of the contract (12/16 -12/17 and 12/17-12/18). [23]

At the hearing, the Union advocate immediately challenged the proposed 2% reduction in the 1st year. The Employer advocate said it was related to an impending arbitration decision.

The Employer made strong statements about the pending arbitration case. That it was "ridiculous" and could cost GDRTA a significant amount of money. The Employer said the case should never have gone to arbitration.

The Employer maintained that the 2.3% wages and fringe charge in one of the referred budget lines included insurance.

[23] GDRTA Fact-Finding Exhibits. p. 24

Received before business hours on 2/1/16, processed same business day

The Employer provided comparative cost of living data for metro areas. The data shows that Dayton was relatively low in comparison to the other Ohio Metro areas offered as comparables.[24]

The Employer attempted to diminish the value of the national comparables.

The Employer attempted to rebut every point made by the Union on finances. The Employer went over the same GDRTA public record minutes and argued that the Union presented the data out of context. It was part of a larger picture. The Employer argued that the point the Union was making was based on isolated bits of information and that the financial health of the GDRTA needs to be looked at in its entirety. The Employer said the 2% wage increase the Union was pointing to in the minutes and in budgets going forward, was just common public sector budgeting practice. It had no significance beyond that. The Employer attempted to diminish some of the Union's argument on GDRTA's budgets by suggesting it was old data from 2012.

The Employer offered rebuttal to the Union's arguments and evidence on the fiscal health of the GDRTA. The Employer offered testimony from Mary K. Stanforth CPA, CPP Chief Fiscal Officer of the GDRTA.

On the revenue side, the GDRTA maintained that other revenues such as federal aid and ridership have been declining. [25] The sales tax revenue increases, the Union pointed to are calculated from the significant declines during the Great Recession. Ms. Stanworth stated that the sales tax revenue declined 8% after 2008. She maintained the GDRTA was playing "catch up" on sales tax revenue, dismissing the notion the GDRTA was flush with excess cash. The surplus should be understood in the context of necessary investments in future vehicles and other liabilities, including the imposition of new accounting rules related to public pensions. That would amount to $29 million. She also argued there was depreciation that had to be included in understanding GDRTA's budget. She said GDRTA expected to finish the fiscal year 2015 with a balanced budget at zero.

[24] Id. Tab 23.
[25] Id. Tab 21.

Received before business hours on 2/1/16, processed same business day

She answered a Union question on the cost of a raise of 1%. She said that a 1% increase in wages would be $300, 000 for the GDRTA.

The Employer offered SERB Annual Wage settlement data, which showed in 2014, statewide it was an average 1.77% and for the Dayton area it was 1.97%$. [26]

Ms. Stanforth made a point about Federal funding: She said the Feds were much more generous with stimulus money during the recession. Currently and going forward, the Feds were providing a lower percentage of the cost of a vehicle and the GDRTA was required to make a large match for the purchase of new vehicles. That had to be taken into consideration when looking at GDRTA's finances in future years. Also, the fleet was aging and needs to be replaced, and GDRTA has to share in the cost of new vehicles.

Discussion:

First, when a Fact- finder examines wages, he/she must take into account comparables. (See Criteria, ORC page 4 above). There is some justification for granting ATU members raises on that evidence. However, increased wages are based on evidence of inflation and productivity. On the first point of inflation, there was negligible inflation in the past year. There was no increase in Social Security benefits because there was no significant inflation. Also, inflation has not reached the Federal Reserve target of 2%. The ATU did not provide evidence of increased productivity. The rosy picture of the finances offered by the Union was mitigated by the testimony and evidence offered by GDRTA.

The GDRTA relies on a dedicated percentage of the sales tax. The Union points to the recent growth in sales tax receipts. The increased sales tax receipts are tied directly to the vibrancy of the economy. Given the elasticity of a tax, like the sales

[26] Id. Tab 25.

Received before business hours on 2/1/16, processed same business day

tax, those receipts going forward are not guaranteed and could possibly diminish or stall in years ahead. Ridership is also on the decline.

Recommendation:

The above evidence supports a modest wage package. A 2% wage increase for each year of the contract is recommended. It is to be retroactive for the current contract year.

Expressed a different way for the contract:

APPENDIX A

Greater Dayton Regional Transit Authority
ATU Local 1385 Contract Wage Progressions

% Increase	**2.00%**	**2.00%**	**2.00%**
Effective Date	**4/2/2015**	**4/2/2016**	**4/2/2017**

(The Day in the Month of April when a new scale is to begin can be adjusted by the parties. The first year 4/2/2015 is the beginning of the new contract. Pay is to be retroactive).

Received before business hours on 2/1/16, processed same business day

ISSUE 14

ARTICLE XXXI

GRIEVANCE AND ARBITRATION

Employer Proposal:

The Employer proposes "comprehensive changes"[27] to the grievance and arbitration process. The Employer wants to "tighten up procedures". They argue that their proposed changes would create more efficiency in the grievance process.

The Employer proposes a number of changes to the grievance process. They want a pre-disciplinary fact finding meeting to resolve issues before the filing of a grievance. This would require an informal discussion. They want "all facts available" disclosed at that stage.

If the employee disagrees with the supervisor's decision, "the decision may then be submitted, as a grievance in writing and signed by the affected employee to the Chief Labor Officer by a union official stating… the nature of the grievance and the remedy sought."[28]

The Employer proposes that the Union bear replacement costs for Union members involved in the grievance process.

In the Employer's new Section 7: The Employer offers more restrictive language on the authority of the Arbitrator.

[27] GDRTA Pre-Hearing statement p. 51.
[28] GDRTA Fact Finding Exhibits p. 26.

Received before business hours on 2/1/16, processed same business day

Union Proposal:

The Union also expressed little support for the existing grievance/ arbitration procedure. The Union states, "Arguably, the third most important issue for the union requires an overhaul of the grievance arbitration procedure in Article XXXI."[29] The Union was very critical of the Employer's unwillingness to process grievances. They cited recent disputes/ cases where the Union said it had to seek relief at SERB and in the Courts to compel the Employer to process grievances.

The Union proposes significant changes in the grievance/arbitration procedures. If the grievance/issue is not resolved by the 3rd step, some types of grievances will go to a Mediator/Arbitrator, who will make a final/binding decision. These cases will be decided by a mutually agreed to party on a rolling basis.

The final step for more significant issues, such as discharge, will be heard by a tripartite panel of arbitrators.[30]

Discussion:

Both parties believe the grievance/arbitration procedures need significant improvement. They offer very different proposals to improve that process.

The Fact-finder is intrigued by the Union proposal. It is very much like the conflict resolution procedures used by the U.S. Postal Service and the Postal Unions. The one issue that was not clarified by the Union is: To what level does a dispute have to rise to require the tripartite board of arbitrators to hear the case, and would not be heard by the mediator/ arbitrator? The Union suggested termination as an example of a type of case that would go to the tripartite panel. The parties would have to agree to the standards. These questions can be resolved if the parties want to move in that direction. However, the Employer does not favor that approach.

[29] ATU Pre-Hearing Statement p.11.
[30] ATU, Union Presentation With Exhibits. Tab "Grievance Procedure".

Received before business hours on 2/1/16, processed same business day

One minor difference the Fact- finder noted was the maintenance of the record in the first step. The Employer wants all facts disclosed and a record maintained. The Union does not favor that extensive a record in the first steps of its proposal.

On their face, both of the parties' proposals have merit. However the parties are not in agreement. This Fact-finder stated, during the mediation that the parties need to work out their differences over grievance/arbitration procedures. Both sides must view the process as "fair". One of these proposals,(both of which have merit,) without the other party's support, or some scheme developed/recommended by the Fact- finder will not reach the bar of "fair" in the eyes of both parties. The parties have to work that out.

Recommendation:

Current language is recommended. There are a few minor changes offered below agreed to by the parties during the process.

!. Delete AAA and replace with FMCS to provide the panel of arbitrators.

2. Allow for each side to strike one offered panel of Arbitrators.

2. Employer can make editorial changes in assigning their representative. They propose "Chief Labor Officer" to represent their side in most of these procedural meetings. The Union did not object to that editorial change, so it is allowed.

ISSUE 17

MOUs

Issue 17: The issue of the MOUs was withdrawn at the hearing and the parties agreed to review the MOUs, and notify the Fact finder with their

recommendations about what MOUs should be placed in the contract. See: Issues Withdrawn or Resolved above. The Fact- finder kept the record for this issue open to receive the parties agreement on the MOUs. The issue of the MOUs was not taken up in the hearing and very little attention was given to this issue in any of the pre-hearing statements. The parties made very little progress in resolving this issue after the hearing. The parties' positions were offered as e-mails.

Employer Position:

On January 11, 2016 the Fact-finder received from Attorney Cates, counsel for the Employer, stating that: "As you know, the Union proposed to include various MOUs between the parties as appendices to the new CBA. After reviewing the MOUs, we do not believe there is any reason to include them in the new CBA. As such, the RTA rejects the Union's proposal in this regard."

In a subsequent e-mail received January 19, 2016, Attorney Cates presented further arguments regarding the issue of MOUs. He indicated a number of MOUs that he termed as "obsolete". He said some of the MOUs were "inconsistent with contract language and therefore invalid". He stated that "...there can be no question that the parties have maintained MOUs outside the CBA for at least 24 years." He stated "The parties have easily referenced and relied on their MOUs for the past 24-plus years, and there is no reason they cannot continue to do so in the future."

Attorney Cates argued against inserting a contract provision that providing that the MOUs remain in full force and effect, as requested by the Union. Cates argues many of the MOUs are invalid.

Received before business hours on 2/1/16, processed same business day

He justified the fact that the parties did not meet and resolve this issue with this statement: "Because there is nothing to support ATU's proposal, there was no reason for the parties to meet on this issue."

Union Position:

On January 14, 2016 Attorney Joseph Pass for the GDRTA responded with the following e-mail:

"The Union's position is that all MOUs identified and submitted at Fact Finding should be included in the recommendation and therefore the parties' CBA. Each MOU identified is executed by both parties and represents their mutual agreement on the particular issue or issues set forth in the respective MOU, once included in the CBA, these jointly executed written MOUs can easily be referenced and relied upon by both parties. Alternatively, if you decide the MOUs previously identified are not to be physically included in the parties' CBA, there needs to be a provision inserted in the Agreement that expressly provides that all MOUs signed by both parties shall remain in full force and effect and therefore cannot be changed without the mutual agreement of both parties. "

On January 21, 2016 Attorney Joseph Pass submitted an additional e-mail is response to the most recent e-mail, which was Attorney Cates' e-mail of January 14, 2016. Attorney Pass stated of the 9 current MOUs in the contract they are to be maintained except for the MOU "New Market/Community based Service". The Union proposes that the remaining MOUs in the Appendix of the Contract remain in the contract.

Attorney Pass then went through the other MOUs submitted by the Union for inclusion in the new contract. They include:

1. "Donated leave program" dated 6/17/14 **Include in current CBA.**
2. "Operator Run Pick" dated 8-1-88 **Do not include as written due to parties TA at Article 21 on picking of runs.**
3. **"**Wright Stop Plaza" 12/10/07 **Include in current CBA**

Received before business hours on 2/1/16, processed same business day

4. **"**coach player position change" dated June 25, 2014 **Include in current CBA**
5. "utility mechanic duties an usage" date August 16, 2013 **Include in CBA**
6. "Clarification of Article XXXI Section 1 and 2" something about counting days in compliance of 60 day requirement" dated 2/26/14 **Include in current CBA**
7. "Upcoming fixed route class" dated September 17, 2014 **Do not include obsolete**
8. "Holding grievance hearings" not dated void April 1, 2015 **Do not include expressly expired**
9. "Light Duty Program" dated November 4, 1991 **Include in current CBA.**

Discussion:

A number of the MOUs presented to the Fact-finder for inclusion in the contract are quite narrow in their scope.

MOUs are often developed to resolve a problem in the context of the contract or the relationship of the parties. The parties agreed that The MOUs in the current contract are to be included in the new contract.

Contrary to the employer's positon, the parties' post hearing e-mails reveal there was good reason for the parties to talk about the MOUs. There was agreement between the parties on the significance of some of the existing MOUs. There are also some different views on the value of particular MOUs. These are issues the parties need to resolve by discussing them. There is not sufficient evidence presented by either party for this Fact-finder to make a wise recommendation on the significance or merits of the offered MOUs going forward. They do carry weight in resolving issues between the parties because they were agreed to and signed by the parties.

Received before business hours on 2/1/16, processed same business day

Recommendation:

It is not recommended that the offered MOUs, not in the current contract, be placed in the contract. The Fact-finder is concerned about the unforeseen consequences of selecting certain MOUs for inclusion in the contact and leaving other MOUs out of the contract. This recommendation is not intended to diminish the weight of the MOUs that have been signed by the parties. All of the MOUs signed by parties are to remain in full force and effect, and cannot be changed without agreement of both parties.

Received before business hours on 2/1/16, processed same business day

The Fact- finder recommends all of the above and all the Tentative Agreements reached by the parties.

This Fact- finder respectfully submits the above recommendations to the parties this 1st day of February 2016 in Mahoning County, Ohio.

William C. Binning Ph.D.
SERB Fact-finder