

STATE EMPLOYMENT RELATIONS BOARD

CASE NO. 97-MED-06-0699 Aug 23 10 16 AM '87

OHIO TURNPIKE COMMISSION

The Employer

-and-

UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA

The Union

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FACT FINDING
OPINION AND AWARD

APPEARANCES

For the Employer:

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Gino Zomparelli, General Counsel
Robert Arlow, Deputy Executive Director, Operations
Sharon Isaac, Director of Toll Operations
Gary W. Cawley, Superintendent of Toll Operations
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For the Union:

Al J. Smith, Jr., Union Representative
Sherri Nelson, Local Union President
Alan Hart, Field Organizer
Mary Lou Ivan, Part-Time Toll Collector
Catherine Herrlich, Chief Steward, East
Patricia Blanchard, Part-Time Toll Collector
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I. SUBMISSION

This matter came before this fact-finder pursuant to the State Employment Relations Act, the fact-finder having been commissioned by the State Employment Relations Board to hear the impasse issues and to thereafter file a fact-finding award. The hearing in this matter took place on August 8, 1997, in Cleveland, Ohio, at the offices of the attorney for the employer whereat the parties presented their evidence in both witness and document form. The parties waived the filing of briefs. It was upon the evidence and argument that this matter was heard and submitted and that this opinion and award was thereafter rendered.

II. STATEMENT OF FACTS

At the outset, it was agreed by the parties that there were nine issues of impasse that still existed. Those issues involved the following:

1. Promotions from part-time to full-time toll collectors.
2. Wages.
3. Health care.
4. Fair share.
5. Paid leave.
6. Seating accommodations at the booth for those that are medically disabled.
7. Attendance policy.
8. Overtime when new system of electronic banking for collector is fully operational.
9. Drug and alcohol testing.

A history of the employment practices of the Ohio Turnpike Commission revealed that the employer had in the past and for a period of time employed two work forces, namely a full-time unit of toll collectors and a unit of part-time toll collectors. The impasse matter herein involved the part-time toll collectors. The same union represented both units but the units existed separate and apart, each having their own collective bargaining agreement with the same employer and each having their own terms. The union now presented the issue of a promotion by way of bid from the part-time toll collector classification to full-time toll collector classification.

It might be noted that in the past, each collector was forewarned by way of sign-off, the following:

"6. I understand that my employment as a part-time toll collector does not qualify me nor does it imply that I am eligible for full-time employment in any position with the Commission."

or

"5. I understand that initiation of procedures for prospective full-time employment does not commit the Commission in any way to employ me in that status for any position."

The current contract just expired contained only the following language:

"13.1 Part-time collectors may apply for any full-time opening."

The union desired that the part-time toll collectors automatically

advance, by bid, into full-time toll collector jobs as those full-time collectors positions or classifications become open because, according to the union, the part-timers are more experienced than new hires off the street. The union requested the following:

"Replace current Article XIII with new ARTICLE XIII - UPGRADE TO FULL TIME:

13.1 All full-time collector openings will be posted at all toll plazas for a period of two weeks. Bid forms will be available at each toll plaza, and any current part-time collector interested in a full-time position will submit a bid to the District Supervisor during the posting period. All available full-time collector positions will be filled by interested part-time collectors.

13.2 Each full-time collector opening will be awarded to the most senior part-time collector from among those who have submitted a letter of request, provided that collector has worked at least 700 hours in the preceding year. In cases where part-time collectors requesting a full-time opening have the same seniority, the opening will be awarded to the collector with the better past work record (grades and yearly evaluations.)"

The employer pointed out that the part-timers have always been treated separate and apart from full-time toll collectors; that there are employment practices for each group and that the request of the union in this case is without merit.

The next issue that came before me was the issue of wages. The parties agreed that the term of contract be three years. The union sought an increase of 6%, 5.5% and 5.5% for all categories and steps. The union also sought that the steps be;

Step A 0 to 1100 hours
Step B 1101 to 2200 hours
Step C 2201 to 3300 hours
Step D 3301 to 4400 hours
Step E Over 4000 hours

The current steps are;

Step A 0-1500 hours
Step B 1501-3000 hours
Step C 3001-4500 hours
Step D Over 4500

Thus, the thrust of the union is to obtain 17% over three years with a chance to reach the higher wage faster. The employer offered no wage increase whatsoever stating that the OTC wage structure for part-timers presently compare favorably with states that have toll road part-time collectors, being higher in wages than the adjacent and contiguous states of Indiana and West Virginia.

The next issue was a request by the union that part-time toll collectors receive the ability to obtain health care insurance of the same type that the full-time collectors receive with the employer obtaining payment of premium from the part-time toll collector through a payroll deduction. There is no present health care plan for part-timers.

The employer is of the opinion that such activity proposed by the union would be an administrative nightmare. The employer further believed that the deduction would be a hardship to a part-timer since it would cause a high percentage of wage deduction. The employer further believed that a goodly number of part-timers have coverage with their

full-time job. The employer further argued that only a minimum number of health care employees in the USA have medical health care coverage through their part-time employer.

The next issue was that of fair share collection by way of check-off, this being a new article request. The union requested the following:

"21.1 The Union shall assess a fair share service fee against members of the Union or employees who elect not to become members and against new employees who do not become members of the Union as provided by the following provisions. The fees charged against non-members shall not exceed the amount of dues uniformly required of members of the Union.

21.2 Bargaining unit members who do not elect to become members of the Union within sixty (60) calendar days after the effective date of this Agreement or within sixty (60) days following his/her initial day of work, shall be required to pay Union fair share fee. No service fee shall be assessed or collected during the first sixty (60) days following a new employee's initial day of work.

21.3 Any person making fair share service fee payments to the Union, in lieu of dues, shall have the right to object to the expenditure of a portion of such payments for activities not related to the negotiation or administration of a collective bargaining agreement. The procedure for objecting shall be made available to the employees upon request from the Commission or the Union. The proportionate share of the disputed fees at issue shall be escrowed by the Union until the matter is resolved.

21.4 Any member of the bargaining unit who objects to the payment of the fair share service fee by reason of membership in and adherence to the tenets or teachings of a bona fide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization and which is exempt from taxation under provisions of the

Internal Revenue Code may submit proper proof of religious conviction to the State Employment Relations Board ('SERB') to seek a declaration from SERB that the member not be required to financially support the local in accordance with the provisions of Section 4117.09(C) of the Ohio Revised Code.

It is recognized that SERB shall, if it finds that the employee is not to be required to pay a service fee, require payment of an equal amount to a non-religious charitable fund pursuant to the requirements of Section 4117.09(C) of the Ohio Revised Code.

21.5 If any member of the bargaining unit from whom a service fee is charged objects to the imposition of such fee either on the grounds that the amount charged is inaccurate or that the bargaining unit member is one against whom a service fee may not be assessed, this objection shall be raised with the Union and be subjected to the Union's internal rebate procedure.

21.6 The Union shall indemnify and save the Commission harmless from any and all claims, suits, orders or judgments brought or issued against the Commission as a result of any action arising out of or resulting from the implementation of this Article."

The employer has argued that such activity would be an administrative cost to the employer and inconsistent with the expressed wishes of the present majority of employees. The employer further argued that of the present 285 part-time collectors, only 136 have authorized payroll deductions for union dues. That figure represents less than 50%. The union on the other hand stated that employer never provided a list of the entire bargaining force, making it a very difficult task to obtain check off because the employers employs the 285 employees at approximately 25 work sites.

Another new issue sought by the union is to allow part-time

employees to accumulate one-half hour of paid leave for each eight hours actually worked with a maximum of twenty-one days with a year to year carry over.

The employer argued that such benefit is reserved for full-time employees and stated that the national averages reveal that such request is under 25% to the part-time public sector employees.

Seating in the toll booth for disabled part-time toll collectors was requested. The employer argued that it follows the rules set out in the American for Disabilities Act and its state counterpart; that the practice of sitting in the toll booth is dangerous and that such requests have been allowed in the past when medically necessary, without a contractual clause. The contract further stated that "any difference arising between the employee and the Commission shall be handled immediately----". This arbitration clause language is broad. The employer further stated that there is presently an adequate remedy both under the contract and under the law, therefore.

The employer sought a recognition from the union that new computerized banking equipment is being installed, all of which will probably cause no need for an automatic one-half hour of overtime as now contemplated under the current contract just concluded. See Article VI. The union rejected this request out of hand because it is mere speculation. The section of the contract just lapsed stated the following at Article VI:

"ARTICLE VI - OVERTIME

6.1 All part-time toll collectors shall be entitled to pay for overtime worked at the rate of one and one-half times their regular hourly rate.

6.2 Part-time toll collectors shall be entitled to overtime pay for all hours worked in excess of eight consecutive hours in any one shift.

6.3 An allowance of ten minutes pay at time and one-half overtime rates for check-in and twenty minutes pay at time and one-half overtime rates for check-out shall be made to a part-time toll collector for each eight hour shift that collector works an exit lane. Should an exit collector work overtime, that is more than eight hours, only one such pay allowance at overtime rates shall be made. An additional payment for checkout, amounting to one-fourth of that earned in any calendar quarter (January, February, March; etc.) shall be made to any part-time collector who, for the entire calendar quarter had no chargeable bank deposit errors. Such payment, if due, shall be made no later than the first day of the third month in the succeeding quarter."

The attendance policy impasse issue and the drug and alcohol policy impasse issue were both withdrawn during the course of the hearing being signed off without fact-finder intervention. It was upon the evidence and argument that this matter rose for a fact-finding award on the indicated seven open impasse issues.

III. OPINION AND DISCUSSION

I have closely reviewed all of the evidence placed into the record by the parties. That includes the prehearing presentation of both parties, the exhibits of both parties and the arguments of both parties. As indicated, there were nine issues, two were settled leaving an impasse on seven issues. They will each be covered independently.

It is a desire of the union that part-time toll collectors have an automatic ability to bid into a full-time position by seniority as it is necessary for the employer to hire full-time toll collectors. Historically, the bargaining units have remained separate and apart from each other in that the full-time collectors and the part-time collectors each have their own bargaining agreement with the Ohio Turnpike Commission. There has never been an intermingling of the two units. Hirings have taken place by the appropriate employer departments for each of the units based upon the ability and efficiency and experience of the individual applying. It is clear that while the union is the same for each of the units, there has never been a mingling of personnel for any of the benefits whatsoever under the terms of the contract of each party. Many times part-time collectors have applied for vacancies when they occurred for full-time collectors. On occasion part-time collectors have been hired to fit into the work patterns of a full-time collectors. There never has been a rookie squad, so to speak, of collectors on the part-time roster to automatically add to the full-time roster.

As a matter of fact it is noted that when the part-time collectors are hired, they have signed off a statement that a full-time vacancy would not automatically cause them to be advanced to that position. The employer rejects this thought on the basis that each unit is separate; that historical they have always been separated and that there is no need at this point to cause an automatic elevation of job from part-timer to full-timer.

This fact-finder can find no reason in the record to change the

historical activity of the parties in having two separate units, one encompassing the full-time toll collectors and one encompassing the part-time toll collectors. The union is seeking is to create one unit while having two bargaining agreements. That is somewhat unique but impractical and is hereby rejected by this fact-finder.

The bargaining unit has requested a 17% increase over a period of three years. The bargaining unit has also requested a lessening of the steps between step A and B, between step B and C and between step C and D. They are set out in section II hereinabove.

A 17% increase by the bargaining unit is somewhat adventurous. The employer has offered a wage freeze for a period of three years on the basis that the State of Ohio Turnpike Commission, the only toll road in the state, is higher in wage than any other part-time toll collectors in Indiana and West Virginia. Thus argued the employer, that there is no need to raise any wage.

Upon a review of the facts and upon a review of the increase received by other state personnel in the State of Ohio, a wage increase seems appropriate. I am willing to raise the wage of those in step B, C and D, 3% each year of the contract. As indicated a wage raise of 17% is extremely high but a 9% increase is comparable to those wages increased throughout the state by public employees generally. The decrease in step hours is hereby rejected as is the wage increase for those in the first step.

The bargaining unit is seeking health insurance for part-time

employees on a payment plan whereby the part-timer pays the entire cost through a check off of a portion of the wage for as much as the health insurance costs. Generally, part-time employees, especially in the public sector, do not receive health care benefits. The part-timer generally has a full-time job elsewhere and receives health care benefits in that full-time job. Further, the cost of the health care would cause the wage to be received by the employee to be severely lessened since the employee would pay the entire cost of the plan. The fact of the matter is, that would diminish the ability to obtain employees since the take home amount of money would be severely lessened. With the higher cost of administration and with the fact that this is a part-time position, it appears that the request of the union in this regard must fail.

The union has made a request for fair share. The unit herein is a certified bargaining unit and as such must be treated by the employer in that regard. Fair share is proper and legal in the State of Ohio for public employees and has been recognized throughout bargaining units of employees in this state and elsewhere. It is part and parcel of the union movement and like it or not, an employer has to accept a fair share payroll deduction.

However, there must be certain parameters and conditions that must be met before a fair share is allowed. In my opinion there must be a showing by the bargaining unit that at least 60% of the bargaining unit are members of the union. In other words, a minority should not control the majority. The union is entitled to a list of the bargaining unit members, the site of their work and the given latest address. If the

bargaining unit can prove to the employer within thirty days after the list is provided that 60% of the bargaining unit is unionized then in that event fair share may be deducted for a period of the ensuing twelve months. Each year, the right to fair share shall be determined in the same manner and that shall be on the anniversary date of the commencement date of this contract.

From all of that, it is my opinion that the union request for fair share should be honored under the conditions stated herein.

The union is seeking paid leave up to twenty-one days earned at the rate of a half an hour for each eight hours of work. Part-timers hardly accumulate paid leave. The calculation as to whether paid leave should be granted or when it should be granted would be a very troublesome area. Is the right to paid leave accumulated when the employer calls and a request for emergency work is made? Is the employee entitled to paid leave only when he or she is scheduled?

The employer has not acquiesced to such a request on the basis that this would be a very troublesome activity in calculating; that it would lead to a great number of confrontations between the parties and that paid leave requested is just not proper for part-time employees. This fact-finder is in agreement with the employer's contention in that regard.

The union has requested that an accommodation be made for disabled employees in order to allow those employees to be seated when they are on duty in the toll booth. The parties might be reminded that there is

now enacted and in use, an American with Disabilities Act (ADA). The state has similar legislation. The right that the union seeks is covered by those particular Acts and they are impacted upon the contract of collective bargaining. There is an all inclusive deposition of grievance clause indicated in the contract. It may well be that a protest could be filed also under the terms of the collective bargaining agreement and the employer's refusal to grant seating might be resolved under the terms of the definition of a grievance which was indicated and stated in full in the contract.

Given the right to such appeal under the Americans with Disabilities Act, similar law under the state Act and the right to file a protest under the agreement all leave this fact-finder to believe that the request of the union is already covered and therefore unnecessary.

The employer sought a request from the union to disregard the need for an automatic half an hour overtime when the new computerized banking system is fully installed and fully operational. The union rejected that request because the union has considered the request of the employer to be speculative and premature.

America and the new gadgets invented march on. There must be a recognition by the parties that as more technology is installed into the the working system, certain changes have to be made. There may be a need to have overtime just as before, even after the new system is installed and there may not be a need for any overtime whatsoever. The fact is, that that should be decided at the time that the equipment is fully installed and fully operational. Presently the equipment is being

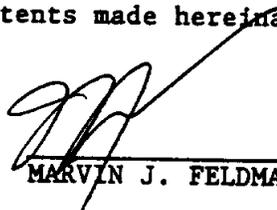
installed and the union must realize, however, what the effect of that will be.

It is my suggestion and award that paragraph 6.4 be added to the agreement which mandates that the parties shall bargain over necessary overtime if any when the new system is fully installed and fully operational. If the parties cannot reach an agreement then in that event that issue shall be forwarded to a fact-finder for resolution.

It is my understanding that the attendance policy and that the drug and alcohol policy have been settled by the parties. If that is incorrect then the parties shall refer those issues or issue back to me immediately and a fact-finder award shall be made.

IV. AWARD

My award is commensurate with the contents made hereinabove.


MARVIN J. FELDMAN, Fact-Finder

Made and entered
this 15th day
of August, 1997.