

AUG 17 10 09 AM '98

IN THE MATTER OF FACT-FINDING

BETWEEN

STARK COUNTY REGIONAL TRANSIT AUTHORITY
(SARTA)

AND

AFSCME, OHIO COUNCIL 8, LOCAL 1880

BEFORE: Robert G. Stein

SERB CASE NO. 97-MED-10-1138

PRINCIPAL ADVOCATES FOR THE UNION:

Robert L. Thompson, Regional Director
AFSCME, Ohio Council 8/AFL-CIO
1145 Massillon Road
Akron OH 44306-4161

and

PRINCIPAL ADVOCATE FOR SARTA:

Christopher A. Lencewiz, Esq.
45 East Washington Street, Suite #303
Chagrin Falls OH 44022

INTRODUCTION

The bargaining unit is comprised of some one-hundred and eighty (180) employees in the classifications of Motor Bus Operator, Mechanic, Sheet Metal Body, Service Employees, and Mechanic/Electrician with SARTA. SARTA has been in the midst of reinventing itself since the passage of a sales tax in May of 1997. The Company has gone from a City transportation provider to a County-wide provider. Service demands have doubled and manpower needs have tripled. This has represented a "C-Change" for the company and its employees. Growth of the size and speed that will need to occur requires patience and tolerance by employees and managers alike. A "business as usual approach" is simply unrealistic given the expectations of the public who are anticipating a vastly improved service for their money.

The bargaining relationship between the Union and SARTA has existed for several years. The parties held several bargaining sessions in the Interest Based Bargaining format lead by representatives for the Federal Mediation and Conciliation Service. The parties successfully resolved several issues using this new approach, but were unable to resolve the issues of Article 35 Hospitalization, Article 39 Mechanics and Service Employees, Article 42 Wages, Article 46 Duration and Termination, and a New Article on Part-Time Employees.

On July 7 and 14, 1998, a fact-finding hearing was held and the parties presented the Fact-finder with the above listed unresolved issues. During the hearing the parties

agreed to and welcomed an effort by the Fact-finder to mediate the dispute. A large block of time was devoted to mediation. Both Advocates represented their respective parties well and actively pursued creative solutions to each issue in dispute. In spite of these vigorous efforts, an agreement could not be reached by the parties.

In order to expedite the issuance of this report, the Fact-finder will condense the arguments of each party. When possible, references shall be made to sections of the Collective Bargaining Agreement (CBA) in place of reproducing said sections.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. 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 itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUES 1 ARTICLE 35 HOSPITALIZATION

Union's position

- (A) Increase the cost to the Employer for the AFSCME Care Plan by \$3.00/mo./employee, Section 7 A. of the CBA. The contribution would go to \$33.25 effective January 5, 1998 (see CBA for text, and Appendix A).
- (B) The Union wishes to maintain the current healthcare plan with no increase in employee costs or reduction in benefits.

Employer's position

(A) The Employer wishes to maintain current language, but agrees to raise the contribution toward the AFSCME Care Plan to \$33.25 per month for each employee.

(B) The Employer proposes to replace the current plan of benefits with a more cost-effective plan of coverage (see Appendix B).

The Employer argues its proposal is more consistent with plans that are common in the public and private sectors in Stark County. In addition, for services provided “in-network” (which is the majority of employees) the change will have minimal impact on employees.

Discussion

The Employer's plan is supported by the trends in collective bargaining healthcare coverage. Many employers and unions are seeking creative ways to hold healthcare costs down. One of the primary strategies in this struggle is to take advantage of “network discounts” that are offered through large hospitals and their healthcare plans. In Stark County, it makes sense to seek such discounts because many doctors and other medical professionals are already members of such plans.

I find that the Employer's approach has minimal impact on employees who stay “in-network.” For some employees this may require some adjustments in choosing

physicians if the employee wants to keep his costs low. However, this plan still provides employees with a choice if they need to go “out of network.” AFSCME has been a leader in seeking cost effective methods to save on health care and its AFSCME Care Plan is unique among many unions in the private and public sector. This Fact-finder recalls when the plan began in the 1970’s. At that time it was a modest plan, but it has now grown to become one of the premier health benefits available to public sector unionized employees.

Recommendation

- (A) The increase in contribution to the AFSCME Care Plan of \$3.00 per month per employee as provided for in Section 7 is recommended.
- (B) The Employer’s proposal for changes in the healthcare plan is recommended as outlined in Appendix B.

ISSUE 2 ARTICLE 39 (Mechanics and Service Employees)

Union’s position

The Union’s position in this matter is to protect the concept of overtime for hours worked in a day or a week.

Employer's position

The Employer proposes to change current language (see Appendix C). The Employer claims the current language restricts the Company's ability to schedule employees and otherwise utilize employees in the most efficient manner. Secondly, the Employer needs to schedule employees throughout the week and needs the flexibility to develop schedules that accommodate its operational needs as well as the personal needs of its employees.

Discussion

The Employer makes a convincing argument for the need to have greater flexibility in scheduling employees. The once five day a week service of old is going to a six and seven day a week service in the future. A six or seven day a week operation is vastly different than businesses that run Monday through Friday. It is a reflection of providing better customer service, and it is important that employees and managers alike respond to the needs of the public. In a seven day a week model the concept of premium pay is related to excessive amounts of work rather than having to work a particular day of the week. The City of Canton is an example of a pioneer in this area.

However, the price of said change cannot be so great that it places the work lives of employees completely out of balance. It is one thing to agree to more flexible scheduling; it is quite another to retreat from monetary gains that have been fought for

and won over the years. This is particularly true of overtime for working over a normal shift in a day and for excess days of work. Of course, said premium payments must reflect the change in times and schedules that are commonly applied to longer work days and 6 to 7 day a week operations.

Recommendation

The following changes are recommended in Article 39:

Replace current paragraph A with the following:

Employees working more than their normally scheduled hours in a day (e.g. 8 hours, 10 hours) or forty (40) hours in any work week, Monday 12:00 am to 11:59 p.m., shall be paid at time and one-half (1/1/2 X) their hourly rate. In addition, employees shall be paid double time (2X) for working a 7th shift during a 7 consecutive day period (if they scheduled to work 8 hour days), or if they work a 6th or 7th shift during a 7 consecutive day period (if they are scheduled to work 10 hour days).

Sections B through F shall remain current language.

Section 3 shall be deleted (but this deletion shall not constitute a waiver of an employee's rights to file a grievance).

Section 8 and Section 10 shall be deleted.

All other Sections of the Article shall remain current language.

ISSUES 3 Article 20, Section 5B JURY DUTY

Union's position

- B. Any employee who is subpoenaed in a case involving the Authority as a party will receive up to two (2) days pay for actual time lost **on the job over the two (2) days** in an amount equal to the difference between what he receives as a witness and his normal rate of pay provided the employee submits a copy of the subpoena to the Authority.

The changes in bold represent the changes being proposed by the Union.

Employer's position

The Employer is concerned about the clarity of the language. The Employer proposes that the language should reflect its intent. The intent is to make sure employees do not lose money for being subpoenaed in cases in which the Authority needs their testimony.

Discussion

I find that the Union's position and the Employer's position both have merit regarding the changes they are proposing. Both parties are clarifying the intent of the language and this makes sense.

Recommendation

Section A of this Article shall remain as agreed to by the parties.

Section B shall read as follows:

B. Any employee who is subpoenaed by the Authority in a case involving the Authority as a party will receive up to two (2) days pay for actual time lost on the job over two (2) days in an amount equal to the difference between what he receives as a witness and his normal rate of pay provided the employee submits a copy of the subpoena to the Authority for accounting purposes. Remainder of the paragraph shall be current language.

ISSUE 4 Article 33 VACATIONS

Union's Position

The Union proposes to maintain current language

Employer's position

See Appendix D

Discussion

The Employer's position of modifying the vacation schedule back to a six (6) week cap is in line with other comparable public sector jurisdictions. Seven weeks of vacation is

not common in Cities, Counties, or Statewide contracts. For example, the State of Ohio caps out vacation at 6 weeks, but there are other jurisdictions that have 4 and 5 week caps. The changes in Sections 1 and 3 and 4 being sought by the Employer are largely administrative in nature and do not affect the level of benefits for employees.

Recommendation

I recommend the Employer's position as described in Appendix D.

ISSUE 5 Article 46 DURATION

Union's position

The Union is not opposed to a three year agreement

Employer's position

The Employer would like to continue the trend of negotiating a three year agreement.

Discussion

The parties are not in disagreement over the length of the agreement and past history supports establishing a successor agreement of the same length.

Recommendation

A three year agreement is recommended

ISSUE 5 NEW ARTICLE ON PART-TIME

Union's position

The Union is proposing that there be a prohibition against part-time employees with the exception of the Extra Board positions that exist in the Agreement. Extra Board employees are employees who are guaranteed 64 hours biweekly and receive full-time benefits. The Union is also concerned that part-time employees will pose a threat to the full-time work force, especially in a layoff situation. The Union would like to see some type of cap placed upon the amount of part-time employees that can comprise the work force.

Employer's position

The Employer argues it already has a right under the Agreement to hire part-time employees and proposes that the amount of money paid to them be fixed in the Agreement along with exceptions regarding fringe benefits. The Employer asserts it needs the flexibility and cost savings inherent in the use of part-time employees. SARTA has undergone a tremendous growth in the past year and will continue to grow. The Employer argues that establishing the right mix of staff and hours will take time, especially considering the fact that service keeps expanding. The Employer acknowledges that part-time employees are members of the bargaining unit.

Discussion

The Employer convincingly argues that in order to be a viable organization in the future, it must retain the option of having part-time employees as part of the organization. The history of the parties has not included the use of part-time employees (except Extra Board); however, this history has never anticipated the level of service being provided by SARTA or the size of the work force. The current work force is some 180 employees or three times what it was just over a year ago.

This is a highly emotional issue, and I realize that unions are suspicious of employers who start to use large numbers of part-time employees. However, sometimes emotions run beyond the reality of a situation and people act out of fear rather than facts.

SARTA already has Extra Board personnel and has had them for years. These are part - time people and there was no evidence presented to this Fact-finder that these people have posed a threat to the bargaining unit. If the Employer uses part-time workers in the context of the bargaining history between the parties, its position in this matter does not seem to be unreasonable. In fact, the bargaining unit has enjoyed 300% growth in the past year and promises to get bigger in the future. These days such growth and prosperity are rare among unionized employees who face continued threats of downsizing and outsourcing. It is hoped the Union takes a complete view of what is happening here and does not view this situation so narrowly that it missing the advantages that size can bring.

Recommendation

Article ___ PART-TIME EMPLOYEES/EXPERIMENTAL AGREEMENT

During the life of the Agreement* only, part-time employment shall be used under the following conditions:

1. The Employer agrees that the hiring of part-time employees that shall consist of no more than 25% of the full-time work force.
2. Part-time employees shall not be eligible for fringe benefits if they work less than 64 hours during a pay period. However, if they average 64 hours or more of paid time per pay period over 13 consecutive pay periods, they shall receive

fringe benefits and shall go to the full rate of pay in accordance with the Agreement (pay retroactive to the 1st pay period of the 13 pay period time frame).

3. Part-time employee shall be paid at 70% of the top rate of the classification.
4. Part-time employees shall not displace any full-time employees who are being affected by a layoff. This means if there is a layoff of full-time personnel the least senior part-time employee within the affected classification shall be laid off first if a full-time worker gets laid off and bumps into the part-time employee's position in order to avoid a layoff. However, a full-time employee is not required to bump into part-time employment and shall have the option to accept a layoff without jeopardizing his layoff and recall rights to full employment under Article 14 and 15. In such case, the unaffected part-time employee may retain his employment.

* This Article shall expire at the end of this Agreement unless otherwise negotiated by the parties in a subsequent agreement.

ISSUES 8 Article 42 WAGES/HOURS

Union's position

The Union is seeking a wage increase of 5% each year of a three year Agreement.

The Union also argues that the Agreement reflect the practice of paying new employees 70% of the top wage during the first three weeks of employment.

Employer's position

The Employer is offering a \$250 bonus the first year of the Agreement and 1.5% increases effective January 5th of 1999 and 2000. Fundamentally, the Employer argues that the budget is tight and will continue to get tighter in the future. The expansion of SARTA and the increasing demands to provide additional service in the County has fueled this situation. The unusual situation here is that SARTA is in a rapid growth mode, yet it is growing so fast it is having a profound effect on monies available for increases.

Discussion

SARTA is under considerable pressure to provide a widely expanded service to Stark County with the funds provided by the tax payers through the levy passed in 1997. It is likely, given the demands of the public and politicians alike, that the money voted in does not match what people want. SARTA has to figure out a way in the next 3 to 4 years how it will meet these lists of demands and still run an efficient and effective operation. Part of running an efficient and effective operation is to provide for its employees in a reasonable fashion without making wage decisions that result in a reduced level of needed service.

It is likely that employees look around and see a lot of new equipment and many new faces. This represents growth which is sometimes mistaken for prosperity. The

budget figures provided by the Authority clearly indicate that the Employer is experiencing tremendous growth that may translate into prosperity, if the service to the public is good and if the public supports it with additional tax money in the future. At the same time, it would be a mistake to ignore the members of the work force who are the key to the success of SARTA by not providing as much of an increase as possible. It appears from the facts in this matter, that both the Employer and the bargaining unit will need to make some financial sacrifices in the next two and one-half years for the promise of a more stable future. Therefore, this Fact-finder cannot apply the current average rate of increases being bargained in the public sector (3 to 3.5%) to this unique situation.

The issue of probationary wages is a matter raised under this Article. The Union believes it should be 70% of the top wage rate, while the Employer argues said employees shall be paid at minimum wage. The minimum wage argument is not persuasive given the skill level required of these employees and the above average type of employees I would think SARTA would like to attract. More appropriately, wages for such probationary people should be tied to the regular wage rate in a similar fashion as part-time employees work off a percentage of the full rate of pay.

Recommendation

1. Retroactive to January 5, 1998, an across the board increase of 2.5%.
2. Effective January 5, 1999 each employee shall receive a bonus of \$250.00.
3. Effective January 5, 2000 , an across the board increase of 2.5%

Probationary employees shall receive 50% of the top rate of pay for their classification during the first three weeks of employment, retroactive to January 1, 1998.

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties this 15th day of August, 1998 in Summit County, Ohio.

A handwritten signature in black ink, appearing to read 'RGS', written over a horizontal line.

Robert G. Stein, Fact-finder



OHIO AFSCME CARE PLAN
 1603 East 27th Street • Cleveland, Ohio 44114-4217
 (216) 781-6420

Jack D. Sombati
 Executive Director



Al DiGregorio
 Office Manager

April 16, 1998

Portage County Nursing Home
 Larry Marburger
 7988 Infirmary Rd.
 Ravenna, OH 44266

Re: Ohio AFSCME Care Plan Rate Increase

Dear Mr. Marburger,

Listed below are the new rates for AFSCME Care Plan benefits. These rates are effective as of March 1, 1997 for all participating employer groups as their contracts terminate after March 1, 1997.

	<u>Present Rate</u>	<u>New Rate 3/1/97</u>
Dental I	\$ 15.75	\$ 17.75
Dental II	24.00	26.00
Hearing Aid	.50	.50
Life Insurance	6.50	7.50
Vision	5.75	6.75
Prescription Drug	7.50	9.50
Dental Level I Package	36.00	42.00
Dental Level II Package	44.25	50.25
Prescription Card	42.00	45.00 August 1, 1998
		47.00 August 1, 1999
		49.00 August 1, 2000

If you should have any questions on this matter, please feel free to contact my office.

Sincerely,

Jack Sombati
 Executive Director

cc: Robert Thompson, Regional Director
 Ken Stress, Staff Representative
 Shirley Starr, President, AFSCME Local 3630
 file



**ARTICLE 35
HOSPITALIZATION**

SECTION 1.

No change

SECTION 2.

The Employer will provide employees with the minimum health insurance coverage (regarding carrier/provider) as follows:

Health Care Plan Changes

office visit	Increase from \$5 to \$10
drug card	AFSCME plan - copay
hospital stay	\$100/day deductible, max. 3 days per visit
out of pocket deductibles	Increase from \$100/\$200 to \$250/\$500 for per person/family
out of network co-pay	Coverage drops from 80% to 70%

SECTION 3.

Employees shall contribute \$75 per year to the insurance premium. Said payment shall be made through payroll deduction.

SECTION 4.

A. The Employer agrees to contribute to the Ohio AFSCME Care Plan for the purpose of providing vision, dental and hearing care benefits to eligible bargaining unit employees in accordance with the Rules and Regulations of the fund and all applicable Federal and State laws. Effective September 1, 1998, contributions shall be made on the 1st day of the month at the rate of \$33.25 per month for each bargaining unit employee.

B. The Employer agrees to contribute to the Ohio AFSCME Prescription Drug Plan for the purpose of providing prescription drug benefits to eligible bargaining unit employees in accordance with the Rules and Regulations of the fund and all applicable Federal and State laws. Effective September 1, 1998, contributions shall be made on the 1st day of the month at the rate of \$42.00 per month for each bargaining unit employee. Effective August 1, 1999 \$ 45.00 per month for each bargaining unit employee. Effective August 1, 2000 \$49.00 per month for each bargaining unit employee.

C. Former Section 7(B) - no change.

D. Former Section 7© - no change.

SECTION 5.

Former Section 8 - no change.

**ARTICLE 39
MECHANICS AND SERVICE EMPLOYEES**

SECTION 1. - HOURS OF WORK AND OVERTIME

- A. Employees working more than forty (40) hours in any week, Monday 12:00 am to Sunday 11:59 pm, shall be paid at time and one-half their hourly rate. The foregoing shall not be construed as a guarantee of hours of work per week. Employees shall be allowed a one-half hour unpaid meal break.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.

SECTION 2.

No change.

SECTION 3.

Delete

SECTION 4.

No change.

SECTION 5.

No change.

SECTION 6.

No change.

SECTION 7.

No change.

SECTION 8.

Delete

SECTION 9.

No change.

SECTION 10.

Delete

SECTION 11.

Delete

SECTION 12.

No change.

SECTION 13.

No change.

SECTION 14.

No change.

**ARTICLE 33
VACATIONS**

SECTION 1.

A full-time employee whose anniversary date is before September 1st, during a given calendar year, for purposes of vacation calculation, shall have his years of service computed as though his anniversary date of hire was March 1st of that calendar year. A full-time employee whose anniversary date is on or after September 1st during a given calendar year, for purposes of vacation calculation, shall have his years of service computed as though his anniversary date was March 1st of the following calendar year. Full-time employees who have completed the appropriate years of service, as described above, shall be entitled to vacation benefits as follows:

<u>Years of Service</u>	<u>Weeks of Vacation</u>
1 but less than 2	1 week
2 but less than 6	2 weeks
6 but less than 15	3 weeks
15 but less than 20	4 weeks
20 but less than 25	5 weeks
25 or more	6 weeks

SECTION 2.

NO CHANGE

SECTION 3.

Employees may select vacations in accordance with seniority. Vacation weeks and days may be selected at a vacation sign-up to be held during the first week of April (March sign-up in the case of Maintenance Department) at which time the employees shall indicate their first and second choices. A minimum of four (4) operators will be permitted to select the same vacation week during the vacation year and a minimum of one (1) employee per day shall be let off for individual day requests. An employee may sign up to ten (10) individual vacation days with a minimum of fifty percent (50%) of individual vacation days out of his/her vacation entitlement. In the Transportation Department an employee may only sign-up for one (1) Friday, one (1) Monday, and one (1) Saturday. No restrictions will be applied in the Maintenance Department other than manpower requirements. The individual scheduled days off may not be canceled. The remaining days of the employee's vacation entitlement may be used as floating holidays and be utilized pursuant to Article 32, Section 8 of this Agreement.

SECTION 4.

No change, except the word "maximum" in the first sentence shall be changed to "minimum."

SECTION 5.

No change.

SECTION 6.

Eliminate.

NEW SECTION 6.

Former Section 7.