

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT FINDING PROCEEDINGS

STATE EMPLOYMENT  
RELATIONS BOARD  
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AS ISSUED  
NOVEMBER 18, 1998

REPORT & RECOMMENDATIONS  
OF THE FACT FINDER

IN THE MATTER OF:

**Cleveland City Schools**

*(Employer)*

*-and-*

**Truck Drivers Union Local 407**

*(Union)*

Case No. **98-MED-08-0729**

**HEARING:**

As the result of an evidentiary session held on November 12, 1998  
at the Teamsters District Council 41 offices in Cleveland, Ohio.

**APPEARANCES:**

*On Behalf of the Union:*

Sorrell Logothetis  
Bob Vibonese  
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Vice President  
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Steward - Negotiating Committee  
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*On Behalf of the Employer:*

Michael J. Angelo  
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Labor Counsel  
Chief of Labor Relations  
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**GREGORY JAMES VAN PELT**

LABOR ARBITRATION  
MEDIATION & DISPUTE RESOLUTION

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## SUBMISSION

The Agreement between the Cleveland City School District and Truck Drivers Union Local 407 was entered into on July 1, 1996 and obtains until June 30, 1999. That Agreement provides, in Article XXXII, for the reopening of negotiations between the Parties, predicated upon "any improvement in the economic benefits to any other recognized labor group". In the summer of 1998 the Cleveland City School District concluded negotiations with the Cleveland Teachers Union, which included economic benefits. Accordingly, Local 407 was informed by the District, and a Notice to Negotiate was filed with the State Employment Relations Board on August 14, 1998.

In accordance with the provisions of Rule 4117-9-05(D) of the Ohio Administrative Code, the undersigned was appointed Factfinder in the present matter, effective on September 23, 1998. The Parties attempted settlement of issues in dispute, and entered into a mutual agreement to extend the period for fact finding, as provided for in ORC 4117.14(C)(5).

That settlement effort resulted in resolution of a number of issues, including: extension of the Agreement through June 30, 2000; wage increases for each year of the Agreement; alterations of the grievance procedures; employee disclosure requirements; severance pay; interim negotiations; and, the addition of a drug testing policy. Despite tentative agreement on a number of proposals, three issues remained unresolved. An offer was made to mediate these issues prior to commencement of evidentiary proceedings. Believing that mediation would prove fruitless, the Parties determined to present the matter to the Factfinder for his recommendations, under the procedures of the SERB. Accordingly, the positions of both Parties were submitted to the Factfinder prior to the evidentiary hearing and the Parties were afforded an opportunity to present evidence and argument in support of their respective positions on Thursday, November 12, 1998, commencing at 10:00 am.

### ISSUES AT IMPASSE

The Parties identified three issues as remaining unresolved:

1. **Article XIX - Overtime**
2. **Article XXI - Route Bidding for Attendants and Drivers**
3. **Retroactivity of Wage Increase**

### STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations delineated in OAC 4117-9-05(K):

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(2)** Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 4117-9-05(K)(3)** The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## BACKGROUND

In July of 1998 the Cleveland City Schools concluded negotiations with the Cleveland Teacher's Union; an agreement that included wage increases and other monetary benefits. Under the terms of its agreements with other bargaining units, the District opened interim multi-unit negotiations with Locals 47, 407, two units of Local 701 and Local 777. Of these, all but Local 407 of the Truck Driver's Union, representing some 758 school bus drivers and attendants, have settled their negotiations.

Excepting retroactivity of the agreed-upon wage increase, the issues at impasse between the Parties here are essentially unique to the functions of bus drivers and attendants. While distribution of overtime opportunities is not limited to the present bargaining unit, the nature of route assignments, availability and other factors make the provisions of Article XXIX particular to Local 407's members. Likewise, Article XXI - Route Bidding, is limited to members of this bargaining unit. Clearly, neither is a monetary issue.

From the outset of re-opening negotiations, the Union has acceded to discussion of non-monetary issues, while reserving its position that interim negotiations under Article XXXII should be limited to wages and benefits. Interpretation of the predecessor collective bargaining agreement is beyond the authority of this fact-finding forum. However, insofar as the provisions of Article XXXII predetermine the appropriateness of the issues here, some consideration must be given their intentions and implications. In that regard, it is apparent the Parties meant Section 32.1 to constitute a "me too" provision, according bargaining unit members an opportunity to better their own contractual arrangement when other labor organizations obtained increased economic benefits. While the Parties clearly delineated improvement in "economic benefits" as the trigger to reopen contract negotiations, they did not specifically limit the target of that bargaining to monetary issues. Indeed, the Parties declined to include language limiting interim negotiations to economic issues, providing only that "this Agreement shall immediately reopen for negotiations." Accordingly, it must be determined that overtime and route bidding are appropriate matters for consideration here.

The Final Proposal presented by the Employer on October 6, 1998, bears in its title the term "Package"; and in its introduction stresses the "global" nature of the proposed settlement, "acceptance of any single item being contingent upon acceptance of

all items submitted". However, the fact-finding process requires that recommendations be considered and proffered on an issue-by-issue basis. Despite this inherent segmentation, the Factfinder is not unmindful of the number and nature of the issues thus far resolved by the Parties, and urges that this report be regarded in light of the collective bargaining relationship as a whole.

In consideration of this background, the following recommendations are respectfully submitted:

### Article XIX - Overtime

#### ***District Proposal:***

The District proposes the addition of a new contract provision at Section 19.8, modifying the assignment of overtime based on availability and classification seniority:

- 19.8** If an employee is found to have been improperly passed over for an overtime opportunity, his remedy shall be limited to an offer of the next available opportunity for overtime of equal or greater hours, **exclusive of field trip overtime**. The District shall not be required to pay for missed overtime opportunities with cash, **except where the Union establishes that such improper pass over was intentional**.

In the complex operation of the District's transportation system, some errors will naturally occur, the Employer argues, and overtime opportunities may unintentionally be awarded to Employees not entitled to them. The result of these inadvertent errors is that the District is required to pay twice for each assignment; to the bargaining unit member who actually makes the run, and to the Employee who was mistakenly passed over.

Rather than incur this double payment, the District proposes to remedy drivers and attendants who have been passed over by making available to them the next overtime assignment of equal or greater hours. This, says the Employer, is an equitable solution that has worked in similar situations in other bargaining units. Moreover, the District argues that the proposal reflects the current practice between the Parties.

In those cases in which Employees are intentionally passed over, the District agrees to make a cash settlement equal to the hours in question. In such cases, the Employer asserts that its own monitoring of overtime assignments might well reveal

abuses, and its internal records and other documentation would serve to assist the Union in establishing violations.

***Local 407's Position:***

The Union contests the District's assertion that the proposed contract language reflects current practice between the Parties. The established practice has been, and remains to remedy overtime violations with cash payment, says Local 407. In support of this position, the Union presents the testimony of a number of its Stewards, and the records of various grievances.

Further, it rejects the Employer's argument that all other units involved in re-opened negotiations have accepted similar language. While it concurs with the District that Service Employees International Union Local 47 agreed to the proposal, it contends that none of the other labor organizations accepted the plan.

Local 407 argues that the elimination of cash remedies for overtime violations would have a substantial economic impact on members of the bargaining unit. It maintains that it has made significant concessions in these interim negotiations, and is entitled to retain the cash remedy. Therefore, Local 407 urges the Factfinder to recommend the present contract language.

***Discussion:***

The current system for the assignment of overtime would seem reasonably straightforward: Overtime assignments are posted on a depot-by-depot basis, as they become known. Those drivers eligible for the opportunities sign up. The most senior eligible driver available is then awarded the overtime. While clerical errors and other occasional mistakes might occur under this system, it is difficult to believe that the unintentional passing over of drivers is frequent. Moreover, despite the District's assertions, evidence presented by the Union indicates that past practice has been to compensate passed-over drivers in cash, rather than with the next available opportunity.

Evidence indicates the District has made a concerted effort to eliminate preferential overtime assignments. Yet under the Employer's proposal, responsibility for maintaining the integrity of the overtime assignment system would be shifted from the District to the Union. As both Parties astutely observed, the probity of overtime assignments must be a matter of trust.

In the end, it must be determined that the remedy proposed by the Employer simply will not work equitably, and might well lead to an almost unbroken chain of violations. For example, under the proposal, Employee No. 20 is passed over for an opportunity in favor of Employee No. 30. The next equal available opportunity is desired by Employee No. 10, whose eligibility and seniority would ordinarily result in the assignment. However, to remedy Employee 20 for loss of the previous opportunity, Employee 10's rights are forfeit; an inherently inequitable system that does little to discourage preferential overtime assignment. And, more damaging, tears at the fiber of the relationship between the Parties. Accordingly, the Employer's proposal cannot be recommended.

***Recommendation:***

Current contract language.

**Article XXI - Route Bidding for Attendants and Drivers**

***District Proposal:***

The District seeks deletion of Sections 21.2(G)(1),(2) and (3), effectively eliminating the second bid for routes occurring prior to the District's second semester. The Employer maintains that drivers and attendants have significant contact with both students and parents, and changes in the continuity of that relationship adversely impact the school community. Moreover, a second bid is entirely unnecessary, according to the Employer, as most drivers and attendants historically bid on the same routes to which they were assigned during the first term. Additionally, the bidding process itself is exhaustive, says the Employer, and as such places an administrative burden on the District. One bid, it maintains, would be sufficient to allow bargaining unit members to determine their routes for the entire year.

Under the current contract language the second bid is triggered by a change of 30 minutes or more in 10% or more of the routes bid during the first semester. But administrative changes required by statutory and scholastic considerations cannot necessarily be handled within the contractually prescribed margins, says the District. In the current year, according to evidence presented, some 15,000 changes in school

assignments resulted in 12,000 transportation changes effecting 50% of the routes bid. Consequently, many of the factors which might result in a burdensome second bid are beyond the District's control. Therefore it asks the Factfinder to determine one bid per year to be adequate, and to accordingly recommend elimination of the language cited by the Employer.

***Local 407's Position:***

The Union argues that two bids per year are necessary; both to enable bargaining unit members to structure their lives and to afford preferred routes, related overtime opportunities and other income sources to more senior members of Local 407.

Bus Drivers and Attendants are often single parents needing to arrange child care, assume second jobs or make other provisions for their families, says the Union. Some attend school; others suffer physical limitations. In all these cases, changes of 30 minutes or more in assigned schedules may result in major disruptions to their lives, according to the bargaining unit.

Provisions for a second bid, which had been included in past contracts, were eliminated in the 1990 Agreement, Local 407 contends. The results, it says, were unsatisfactory, with senior drivers and attendants supplanted by less senior bargaining unit members as routes changed and were reassigned. Members were forced to endure the resulting disruptions and loss of income opportunities for the entire year, and the provision was re-instituted in the 1993 Agreement, although without the 10% margin, latitude introduced in the current Agreement.

In consideration of these factors, Local 407 urges the Factfinder to determine the second bid necessary, and to accordingly recommend its retention.

***Discussion:***

There is little doubt the present arrangement serves neither Party well. Employees, required to attend the bidding process during break, must re-structure their lives in the second half of the school year, whether such changes benefit them or not. The District, faced with the instabilities of student residence changes, school closings and reassignments and other vagaries, is forced to devise a transportation plan with little margin for error. Should it fail, both Parties undergo the disruptive, burdensome, expensive, exhausting re-bidding of routes .

Currently, the second bid is triggered by virtue of its presumable interference in the lives of only one in ten bargaining unit members. (The actual number of Local 407 members effected may actually be less than 10%, due to some Drivers and Attendants bidding multiple routes.) The solution, it would seem, would be to elevate the bar; that is, to allow the District more latitude in route changes before the second bid is triggered. The District this year made changes in 12.7% of 517 bid routes, according to its own evidence; it is doubtful that a better percentage is possible, given the exigencies of the Cleveland School System. Accordingly, changes in the contract language to allow for changes in 15% of bid routes before institution of the second semester bid will be recommended.

**Recommendation:**

Changes to the language of Sections 21.2(G)(1), as follows:

**(G) Second Bid**

- (1) There shall be a second bid for all drivers and attendants held during winter break, if ~~ten percent (10%)~~ fifteen percent (15%) or more of the first semester bids (including newly routed buses) change by thirty (30) minutes or more by November 15<sup>th</sup>. The Union will be provided the opportunity to verify this information by November 15<sup>th</sup>. Time spent at this bid will not be paid time unless vacation time is used. The procedures for the second bid shall be the same as those utilized in the first bid. In order to bid for the second bid, the driver or attendant must be physically, and otherwise qualified two (2) weeks before the bid.

**Retroactivity of Wage Increase**

**District Position:**

In its October 6, 1998 Final Proposal, the Employer specifically noted that:

“In the event the Parties must revert to the dispute resolution procedures under ORC § 4117, the position of the District will be that any wage increase will not be retroactive.”

It argues that, having informed the Union of this eventuality, it is not now obligated to retroactively award the 2% to September, 1998.

***Local 407's Position:***

The Union maintains that it was fully entitled to avail itself of the statutory fact-finding process provided by ORC § 4117. The Employer's objection to retroactive payment of the 2% increase afforded all other bargaining units participating in the reopened negotiations fails to recognize the significant concessions the bargaining unit made in other areas of the negotiation, Local 407 argues. Accordingly, it asks the Factfinder to recommend full retroactivity of the wage increase to September, 1998.

***Discussion:***

The District's argument that it predicated retroactivity upon execution of the reopened settlement agreement without resort to statutory resolution procedures is documented by the language of its October 6<sup>th</sup> Final Proposal. In the context of collective bargaining, it was fully within its rights to take this approach. Alternatively, the issues presented in this forum were largely specific to the duties and circumstances of members of this bargaining unit. In that regard, it was fully in the member's interest to avail themselves of the fact-finding process to resolve those issues.

It is the Union's assertion that concessions made elsewhere in the agreement entitle it to retroactivity. Local 407's entitlement is questionable. However, there is little doubt that to have agreed to significant District proposals, and yet not receive wage increases commensurate with those afforded other bargaining units would result in some ill feeling on the part of these Employees. Such resentments can only serve to undermine a labor relationship only beginning to heal itself. Accordingly, in the interest of supporting the good will developing between the Parties in this matter, full retroactivity of the two percent (2%) base wage increase to September of 1998 is recommended.

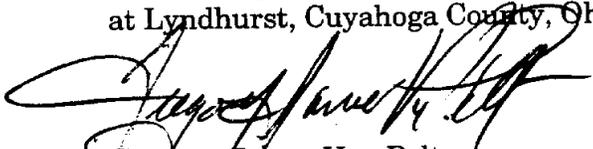
***Recommendation:***

Retroactivity of the two percent (2%) base wage increase to September of 1998 is recommended.

## SUMMARY OF RECOMMENDATIONS

1. **Article XIX - Overtime**  
Current contract language
2. **Article XXI - Route Bidding for Attendants and Drivers**  
Change of fifteen percent (15%) of routes required for second bid
3. **Retroactivity of Wage Increase**  
Recommended

Respectfully submitted  
this 18<sup>th</sup> day of November, 1998  
at Lyndhurst, Cuyahoga County, Ohio



Gregory James Van Pelt  
Factfinder