IN THE MATTER OF INTEREST ARBITRATION	)	
between	)	ARBITRATORS' DECISION AND AWARD
AMALGAMATED TRANSIT UNION Local No. 1015	)	PERC Case No. 15129-I-00-337 15031-M-00-5287
and	)	
SPOKANE TRANSIT AUTHORITY	)	

BEFORE: Carlton J. Snow: Professor of Law
John Leinen: Union Designee
Terry Novak: Employer Designee

APPEARANCES: For the Employer: Thomas S. Kingen

For the Union: Steven A. Crumb

PLACE OF HEARING: Spokane, Washington

DATE OF HEARING: December 18-19, 2000

RECORD CLOSED: March 15, 2001

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TENTATIVE AWARD

IN THE MATTER OF ARBITRATION	)	
BETWEEN	)	
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AND	)	
SPOKANE TRANSIT AUTHORITY	)	
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I. INTRODUCTION

This interest arbitration came before the panel of arbitrators in accordance with Section 41.56.492 of the State of Washington Revised Code of Washington. Mr. Steven A. Crumb of Crumb & Munding represented Local 1015 of the Amalgamated Transit Union. Mr. Thomas S. Kingen, General Counsel, represented Spokane Transit Authority of Spokane, Washington. Assisting Professor Snow, neutral chairperson, as

members of the arbitration panel were Mr. John Leinen, Union Designee, and Dr. Terry Novak, Employer Designee.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. The advocates agreed to submit post-hearing briefs in lieu of closing arguments. All witnesses testified under oath as administered by the arbitrators. Ms. Stephanie L. Sage and Mr. Michael S. Kuplick, both of Storey & Miller, Court Reporters, reported the proceeding for the parties and submitted a transcript of 498 pages. The advocates fully and fairly represented their respective parties.

The parties stipulated that the matter properly had been submitted to arbitration, and there were no challenges to the jurisdiction of the arbitration panel to resolve any issues presented in the hearing. The parties agreed to submit the matter on the basis of evidence presented at the hearing as well as post-hearing briefs, and the neutral chairperson officially closed the hearing on March 15, 2001 after receipt of final materials from the parties.

II. CONTEXT OF THE DISPUTE

The Spokane Transit Authority is a public corporation. It was formed in 1981 and assumed responsibility for public transportation in Spokane County, Washington. Service had been provided by the City of Spokane, Washington. A sales tax levy provided funding for transportation services when the City of Spokane provided such services, and the sales tax continues to be a main source of funding for Spokane Transit Authority.

Amalgamated Transit Union has represented fixed-route operators, maintenance workers, mechanics, and some clerical employees since well before 1981. Another bargaining unit represents supervisors, and the American Federation of State, County and Municipal Employees represents Paratransit employees. Employees in the various bargaining units do not engage in coordinated bargaining with the Employer.

Spokane Transit Authority is directed by a nine-member governing board. It consists of three county commissioners, two city council members, and five mayors of cities served by the Authority. An area of approximately 370 square miles constitutes the operating area for Spokane County Authority. The Authority serves approximately 365,660 people. In addition to fixed-route services, the Authority also provides

Paratransit service for individuals with disabilities who are unable to use regular bus service.

In 1997, the Spokane Transit Authority and a consultant conducted a comprehensive operational analysis of services provided by the Authority in an effort to determine needs of the public and to better serve constituents in the operating area. The comprehensive operational analysis focused on only fixed-route service. Spokane Transit Authority determined that it would better serve the public if the Authority moved from a model of responding to demand to a model of responding to the public on the basis of need as well as efficiency. The Governing Board moved toward its goal by implementing a new service plan. Aspects of the new service plan will be reviewed in relationship to issues that are directly relevant to it.

Voters passed a number of initiatives in 1999 that significantly affected Spokane Transit Authority. In Initiative 695, voters repealed the Motor Vehicle Excise Tax. This tax had provided the Authority with roughly $16,000,000 a year or 40% of its budget. The Supreme Court of Washington later held the initiative to be invalid, but the Washington State legislature, then, capped the Motor Vehicle Excise Tax at a flat rate. The Spokane Transit Authority is now dependent on sales tax revenues for a substantial portion of its operating budget. Initiative 722 was passed by

voters at the same time as Initiative 695. Initiative 722 requires all increases in sales taxes or other public fees, including bus fares, to be approved by voters before such increases take effect. Accordingly, the Authority is unable to raise taxes or fees without a formal vote of the citizenry.

The Spokane Transit Authority has reduced fixed-route bus service where management deemed it reasonable and efficient to do so. The plan of the Employer is to continue cutting service and expenses all the while using up reserves until they are gone. If no alternative sources of revenue are found, the intent of the Spokane Transit Authority is to reduce service drastically until management is able to balance its budget. Paratransit services cannot be cut. In a negotiated settlement of a class action lawsuit brought under the Americans With Disabilities Act by Paratransit riders, the Authority agreed to leave Paratransit services unchanged until 2004. Accordingly, all reductions in service must come from fixed-route services, at least until the settlement agreement expires and a new agreement is reached.

Since Spokane Transit Authority assumed responsibility for the transportation system in the region, parties to the arbitration proceeding have negotiated a new contract approximately every three years. The last contract between the parties expired on September 30, 1999, and the parties

have continued operating under it, pending conclusion of the current interest arbitration proceeding. In an effort to negotiate a new collective bargaining agreement, the parties reached an impasse. After mediation failed to resolve all issues in dispute between the parties, they proceeded to interest arbitration pursuant to state law. Mandates of the interest arbitration law have been met in this proceeding.

III. THE ISSUE OF COMPARABILITY

Modern use of interest arbitration reflects a rethinking of an earlier assumption about adversarial labor relations. Unilateral decision-making with regard to wages and terms of employment is often inefficient, and adversarial working relations often do more harm than good. Interest arbitration offers an effective middle ground that permits parties zealously to advocate their special interests while providing a mechanism for balancing the interests of the parties in conjunction with needs of the public.

Use of interest arbitration in the United States has deep roots some going back to the copper mines of Connecticut in the early 18th century. American industry has used interest arbitration for over 100 years,

most notably in public utilities, railways, glass and the printing industry. Comparability standards have been a part of employee compensation in the federal government since 1862. The Federal Pay Comparability Act of 1970 continues the use of such standards. Virtually all states with modern collective bargaining laws use interest arbitration to resolve public sector disputes. Most states authorizing interest arbitration enact statutory criteria to be followed in making decisions. Such criteria typically instruct interest arbitrators to be guided, in part, by comparability data.

Comparability data refer to information from other jurisdictions involving similarly situated employees. Such comparisons provide a significant source of information for making decisions in an interest arbitration proceeding. Such comparisons help provide a relative test of fairness. Despite, however, the importance of comparisons in interest arbitration, they are not dispositive and certainly not problem free.

One difficulty is establishing objective standards for comparisons. With whom and what should be the basis of the comparison? Do inherent differences in communities justify a difference in the price of labor? Is it sensible to compare job titles without an in-depth understanding of job requirements? What is the rationality of comparing hourly wages in

the absence of an understanding of total compensation? Is proof of differentials between various communities necessarily proof of inequity?

Nor can the ability to pay be understated. What happens typically is that unions tend to stress an employer's ability to pay during times of prosperity, and employers tend to emphasize inability to pay during hard economic times. Ability to pay is a criterion meriting significant attention, but it is not the only factor deserving scrutiny. Likewise, what happened in the immediate past cannot be used as an absolute forecast of future conditions. The past is not necessarily a prologue to the future.

The public welfare is also an important factor. In making decisions based on community comparisons, an interest arbitrator must remain sensitive to the fact that the decision will influence the public's welfare. Because of the impact of a decision on community resources, the development and viability of an organization may be directly affected. If an interest arbitration panel wrongly allocates public resources, it well may affect the survival of an organization. But fairness dictates that a balance be found, and a community must not expect public employees to subsidize services benefiting an entire geographic region. A blending of economics and equity needs to co-exist in an effort to advance the respective interests of employees, the employer, and the citizenry.

IV. SPOKANE COMPARABLES

Comparing communities cannot be done with mathematical precision. The more unique a community, the more complicated is the process of comparison. Each party submitted data from communities it considers to be comparable to Spokane Transit Authority. Agreement has been reached by the parties on three comparable groups, and each has offered other comparability data in addition to the three on which they agree. The three are:

1. Pierce Transit (Tacoma and Pierce County, Washington).

2. Community Transit (Snohomish County, Washington, excluding the City of Everett).

3. C-Tran (Vancouver and Clark County, Washington).

Many factors must be evaluated in determining whether one community or organization can be fairly compared with another. Evaluative criteria may vary depending on contractual provisions affecting seemingly similar communities. Reasonable comparative factors include the size of an organization, its proximity to a major metropolitan area, the state where an organization is located, the economies of a state as well as the economies of a local area where an organization is located, the size of an organization's service area, and the number of patrons residing in a service area. An

organization that compares favorably with regard to some of these factors may not necessarily compare favorably with regard to all of them.

Spokane Transit Authority would add five additional entities of comparison. They are as follows:

1. Ben Franklin Transit (Tri-Cities, Washington).
2. Kitsap Transit (Bremerton and Kitsap County, Washington).
3. Fort Worth Transportation Authority (Fort Worth, Texas).
4. Madison Metro Transit (Madison, Wisconsin).
5. Indianapolis Transportation Corporation (Indianapolis, Indiana).

Spokane Transit Authority used data obtained from the 1997 National Transit Database. This is a database compiled by the U.S. Department of Transportation Federal Transit Administration. Spokane Transit Authority compared organizations according to eleven criteria selected in discussions with the Employer's operating managers. Spokane Transit Authority chose to use organizations that fell within a 25% range of Spokane Transit Authority in at least six of the eleven criteria. Of the three comparable entities from outside the State of Washington, Fort Worth Transit compared favorably in ten of the eleven criteria; Madison Metro of Madison, Wisconsin compared favorably in seven of eleven; and

Indianapolis Public Transit of Indianapolis, Indiana compared favorably in ten of eleven criteria. The only comparable organization from within the State of Washington selected by Spokane Transit Authority that did not meet the "six of eleven" standard is Ben Franklin Transit of Tri-Cities, Washington. It compared favorably in only three of the eleven criteria. The Employer, nevertheless, proposed using Ben Franklin Transit because it is the closest comparable organization in Eastern Washington, and management argued that using a comparable organization in the same geographical area is beneficial.

Spokane Transit Authority asserted that comparable organizations with more than twice the population of the Spokane, Washington service area should not be used. Likewise, the Employer contended that comparable organizations within 50 miles of major metropolitan areas should not be used. The Employer contended that a different type of economy is to be found in metropolitan areas. It is the belief of the Employer that the sort of economy found in a major metropolitan area has an impact on collective bargaining agreements negotiated in the region that is distinctly different from other regions.

The Union also would add a number of comparable organizations to the list of comparable jurisdictions. They are as follows:

1. Everett Transit (Everett, Washington).

2. Intercity Transit (Olympia, Washington).

3. King County Metro (Seattle, Washington).

4. Whatcom Transportation Authority (Bellingham, Washington).

5. Tri-Met (Portland, Oregon).

6. Boise Urban Stages (Boise, Idaho).

7. Santa Clara Valley Transportation Authority (Silicon Valley, California).

Although the Union did not list Santa Clara Valley Transportation Authority in its official list of comparable entities, it referred to this organization throughout its post-hearing argument. The theoretical basis for the Union's selection of a particular comparable entity was not formulaic. Spokane Transit Authority recognized Intercity Transit of Olympia, Washington as a reasonable comparative jurisdiction. As large cities at the hub of a megalopolis, it did not seem reasonable to management to include King County Metro, Santa Clara Valley Transportation Authority, and Tri-Met of Portland, Oregon as comparable entities.

V. THE ISSUE OF WAGES

A. Introduction

These employees have not had a wage increase for two and a half years. The last pay increase was 2.75% on October 1, 1998. A pay increase inevitably is influenced by a blend of principles of equity and objective measures of salary criteria. Interest arbitration decisions typically are influenced by objective criteria more frequently than by any other evidence. Comparisons are an important source of guidance. (*See* Kochan, Thomas A., "Dispute Resolution Under Factfinding and Arbitration," American Arbitration Association, 1979.)

Comparisons are important because they are viewed as a principled way of testing fairness. As the eminent economist, Thorstein Veblen, stated, "The propensity for emulation, for invidious comparisons, is of ancient growth and is a pervading trait of human nature." (*See* Veblen, The Theory of the Leisure Class 53 (1934).) Comparisons, however, are not an absolute guideline and must be balanced against other relevant information, and such a balance has been struck in this report with regard to wages.

B. Position of the Parties

1. The Employer

Spokane Transit Authority proposed a two percent a year pay increase. Effective dates of the increases are in dispute. The effective date for the wage increase can be separated from the duration of the contract, and the issue of duration will be addressed later in the report. The effective date of the Employer's proposal is unclear. In Exhibit 1.7, dated April 3, 2000, Spokane Transit Authority proposed:

> Wages: 2% effective upon signing and ratification, 2% effective 10-11-2001, and 2% effective 10-1-2002.

In Exhibit 5.10, Spokane Transit Authority proposed:

> Effective October 1, 1999, a basic wage increase for all bargaining unit employees of 2%.

The proposal lists the same increase for October 1, 2000 and also October 1, 2001. The matter was not clarified at the hearing.

The Employer evaluated a number of factors in making its wage proposal. They included:

1. The Employer's proposal would maintain its relative position among comparable employers;

2. The Employer's proposal compares favorably with the Consumer Price Index changes, although the Employer argued that the CPI comparison does not merit substantial weight;

3. The Employer's proposal is equitable when compared with settlements reached with other employees of Spokane Transit Authority;

4. The Employer's proposal is equitable when compared to wage increases offered to noncontract employees;

5. The Employer's proposal compares favorably with settlements concluded with other local public employees; and

6. The Employer's proposal would maintain its leadership in the local labor market.

Spokane Transit Authority did not rely on wage settlements outside of Spokane County in determining its wage proposal. Mostly, management relied on local government wages, such as city and county employees. In addition to focusing only on base wages, the Employer argued that it is also a useful source of guidance to compare total compensation packages, including payments made by the Employer to Social Security as well as to the retirement plan. The Employer maintained that, when comparing total packages of comparable jurisdiction, only Community Transit of Snohomish County, Washington provided a higher total economic package. Exhibit 5.10.25 shows that, in comparing total packages with comparable jurisdictions put forth by the Union, the only organization with higher total packages (that are not part of a major metropolitan area) are Everett Transit of Everett, Washington, and

Whatcom Transportation Authority of Bellingham, Washington. Excluding comparable entities put forth by the Union that have much higher total packages due to their location in a major metropolitan area, the Employer argues that its proposal compares favorably with the list. When comparing total compensation packages, the Employer urges the panel of arbitratorss not to consider insurance benefits in the calculations. Costs of coverage and coverage received allegedly do not compare on the same economic level as wages and retirement benefits, and the Employer believes that comparing them would be "comparing apples and oranges."

Spokane Transit Authority believes that the purpose of interest arbitration is to maintain the relative wage position of employees in the bargaining unit vis-a-vis their economic rank in the community. As management sees it, it is not the goal of interest arbitration to better employees' relative wage position in the community. The Employer argues that its proposal is fair and equitable in view of low inflation rates as well as the trend of the Consumer Price Index in recent years. Hence, management believes its proposal should be adopted.

2. Position of the Union

The Union seeks a three percent pay increase that is retroactive to October 1, 1999 and three percent for the three year duration of the contract. It is the belief of the Union that most influence in determining what wage increase is appropriate should be given to internal comparisons, that is, comparisons among employees actually working for Spokane Transit Authority. The Union's last wage increase was 2.75% on October 1, 1998. Since then, management itself has received a total increase of 6.5% (2% in early 1999, 2% in July of 2000, and 2.5% on January 1, 2001). In addition to management receiving a 6.5% wage increase while bargaining unit members received nothing, management is paid on a salary basis and allegedly already received considerably higher pay even before the recent increases. Yet, as the Union sees it, bargaining unit members are performing the essential functions of operating Spokane Transit Authority. Without their contribution, the organization would not function. The Union also contends that the Employer's argument regarding inability to pay due to Initiative 695 should receive little weight. The Union reasons that, since management found sufficient resources to give itself a total pay increase of 4.5% since Initiative 695 took effect, it should not now be permitted to use

the initiative as a shield against equitable wage increases for members of the bargaining unit.

The Union also contends that the Employer's proposal fails to compare favorably with other bargaining units within Spokane Transit Authority. For example, supervisors of Spokane Transit Authority are represented by ATU Local 1598, and supervisors received a pay increase of 2.85% in 1999 as well as 2.75% in 2000 and 2001. Paratransit employees represented by AFSCME Local 3939 received 2.4% for 2000, 2.65% for 2001, and 2.75% for 2002. But the Employer would limit transit workers to a 2% a year increase.

The Union also believes that support for its position is found in comparability data from other bargaining units. For example, Pierce Transit for Tacoma and Pierce County, Washington provided a pay increase for Coach Operators of 3.5% in 1999, 3% in 2000, as well as 3% in 2001. Both parties agree that Pierce Transit is a comparable organization. Moreover, the Consumer Price Index for most of 1999 and all of 2000 has been above 2%. Hence, the Union concludes that its wage proposal should be adopted by the panel of arbitrators.

C. What the Evidence Supports

Spokane Transit Authority did not make an explicit "inability to pay" argument based on Initiative 695, although one might be implied. The Employer did point out various cost issues that influenced its proposal. For example, fuel prices are currently 34% ahead of previous levels, causing the Employer to be a half million dollars over its current budget. Likewise, 21% of the Employer's budget is allocated to Paratransit services, and they cannot be reduced due to a negotiated settlement of a class action lawsuit. Such cost considerations are significant and merit considerable weight. It would not advance the Union's goals to grant bargaining unit members a large wage increase, only to trigger employee layoffs due to a lack of resources.

An Employer's duty is to treat its represented employees fairly and in the spirit of their long bargaining history. At the same time, management has an obligation to respond to needs of the public by finding ways to operate the organization with reduced revenue. Moreover, it is not consistent with the interest arbitration process for a panel of arbitrators to impose on parties contractual requirements they probably would never have agreed to accept under any circumstances. Nor is it the function of interest arbitration to embark on new ground which is not related to the bargaining

history of the parties. An arbitration decision ought to be a natural extension of where parties found themselves at the point of impasse. An interest arbitration award ought to flow naturally from the unique relationship parties have nurtured in the years before they arrived in interest arbitration. Any other approach undermines the incentive of the parties to engage in the collective bargaining process.

In reviewing data of proposed comparable organizations, it is not prudent to compare straight percentages. Each of the organizations has a somewhat different wage structure. Moreover, the Union represents Coach Operators, maintenance workers, mechanics and some clerical employees. Comparable jurisdictions have devised different ratios of pay between these positions than the one used by Spokane Transit Authority. The Union's reliance on Pierce Transit of Tacoma and Pierce County, Washington cannot be treated as dispositive. Choosing a single comparable entity among many for an economic issue, when that comparable organization is in a slightly different type of economy than Spokane Transit Authority, fails to provide the most insightful comparative guideline. Additionally, the cost of living in Tacoma and Pierce County is notably higher than in Spokane County. It is more useful to consider internal

comparisons as well as public employee comparisons within the community to find an appropriate solution to the dispute.

The Employer deals with other represented employees, and wage increases granted to other bargaining units point toward an appropriate determination. All increases for both bargaining units over the course of their current contracts are between 2.4% and 2.75%. The average increase for these employees during the relevant time period is 2.69%. The Union's proposal is closer to the increases of Spokane Transit Authority's other bargaining units, but the average falls between the two proposals.

With respect to noncontract employees of the Employer, management received 2% in 1999, 2% in 2000, and 2.5% in 2001. The Union failed to discuss the fact that it seeks retroactivity when it compares management's increases. What the Union failed to explore is the fact that, if management's proposal were to be awarded and made retroactive to the effective date it would have enjoyed if the initial bargaining had been successful, bargaining unit members would be within a half percent of management's pay increases during that time. Management's proposal compares most favorably with noncontract Spokane Transit Authority pay increases.

Guidance is also found in pay rates for local public employees. Various Spokane County employees received 2% in 1998, 2% in 1999, 1.5% on January 1, 2000, and 1.5% on July 1, 2000. Spokane Correctional Supervisors, Spokane County Public Works Department, and Spokane County Sheriff's support personnel received the same pay increases. Those increases averaged 2.33%. Management's proposal is closer, although the average falls between the two.

With regard to the effective dates of the increases, it is appropriate to make the increases effective on October 1, 1999, October 1, 2000, and October 1, 2001. These are the dates proposed by the Union as well as one of the conflicting proposals outlined by Spokane Transit Authority. Members of the bargaining unit should not be penalized by the delay in reaching an agreement. To do so would encourage dilatory practices. Bargaining unit members already have been penalized by being without a pay increase for two and a half years. It is reasonable for the increases to be retroactive to that time. No persuasive justification was put forth for not making increases retroactive to October 1, 1999. The increases should have no impact on employees who have retired since October 1, 1998. Accordingly, the effective dates of the increases will be October 1, 1999, October 1, 2000, and October 1, 2001.

The amount of the increase still must be addressed. The Employer proposed 2% a year, and the Union sought 3% a year. While 2% is almost exactly what managerial employees have received during the time in question and is close to other public employees in Spokane County, 2.4% is a more precise amount and is even closer to the wage increase for other bargaining units with which the Employer negotiates.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Employer shall grant pay increases on October 1, 1999, October 1, 2000, and October 1, 2001 in the amount of 2.4% each year. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 5, 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Employer shall grant pay increases on October 1, 1999, October 1, 2000, and October 1, 2001 in the amount of 2.4% each year. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 7/16/01

VI. DURATION OF THE CONTRACT

A. Introduction

The parties are in dispute with regard to the length of the contract. All prior contracts between the parties have been for a term of three years.

B. Position of the Parties

1. The Employer

The Employer asked both for a three year contract term beginning on October 1, 1999 as well as for a three year term beginning on the first of the month following the effective date of the arbitration decision. In a letter dated December 14, 2000, the Employer sought the "first of the month following the arbitration award" as the term of the contract. (*See* Exhibit No. 1.9, Item 9.) At the arbitration hearing, the Employer sought the same resolution. (*See* Tr. 82.) In its post-hearing brief, however, the Employer asked for an effective date of October 1, 1999. (*See* Employer's Post-hearing Brief, p. 11.) No doubt, a degree of ambiguity arose as a result of discussing both contract duration as well as the effective dates for wage increases.

2. The Union

The Union seeks a three year term for the parties' agreement, with monetary issues retroactive to October 1, 1999. The Union never stated explicitly when the agreement should become effective apart from the matter of retroactivity for monetary issues. If the Union is seeking a three year contract term starting at the date of the arbitration decision as well as retroactivity for wage increases to October 1, 1999, what, in effect, is being sought is a six year agreement with regard to wage increases.

C. What the Evidence Supports

As indicated earlier, wage increases will be effective on October 1, 1999, October 1, 2000, and October 1, 2001. It is highly inefficient to have the contract expire in October, 2001 or even in September of 2002, for that matter. All the effort of the parties would have produced a contract that lasted only six months or, at most, one and a half years. It is more sensible for the contract to extend to three years from the date of the arbitration decision, while making wage increases retroactive to October of 1999. The dilemma is that such an approach leaves unresolved wage increases during ensuing years of the parties' agreement. All work

rule changes proposed by the parties obviously cannot be made retroactive. One solution is to provide a reopener provision, and it seems a sensible resolution in this case.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the following provision shall become a part of the next agreement between the parties:

Duration, Termination and Renewal

A. The term of this agreement shall be through the close of September 30, 2004. Since, however, wages have not been set in the agreement beyond October 1, 2001, either party may reopen the agreement no earlier than August 1, 2002 and no later than August 15, 2002 to negotiate wage increases for the duration of the agreement plus any two additional contract articles either party desires to reopen.

B. For the overall contract between the parties, negotiations on proposed changes to terms of this collective bargaining agreement shall begin not later than fifteen (15) days prior to the expiration date of any subsequent yearly period. Should terms of this agreement expire while ongoing contract negotiations are taking place, no changes in terms of this agreement will be implemented until and unless an impasse has been declared by the parties.

Signature Page: Duration Award

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 30, 2001

Terry Novak
Employer Desingee

Date:

Signature Page: Duration Award

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date:

Terry Novak
Employer Desingee

Date: 4/16/01

VII. COST OF UNION ACTIVITIES

A. Introduction

The parties are in disagreement with regard to costs related to the administration of the collective bargaining agreement. The current agreement between the parties caps the number of hours union members may perform contract administration during regular work time. The number of hours depends on an employee's position in the Union. Spokane Transit Authority pays an employee's wages for time spent on contract administration, and the Union reimburses the Employer for the employee's wages plus 25%. The purpose of this provision was to enable union officers to continue receiving retirement contributions and other benefits for the time they performed union duties. If the Union paid employee wages outright, these Union officials would not receive benefits for the time they spent on contract administration. The extra 25% above wages that the Union reimbursed the Employer was designed to cover costs to the Employer of providing benefits.

B. Position of the Parties

1. The Employer.

The Employer proposed to eliminate the limit on the number of hours a Union officer could devote to union work during his or her regular schedule. Likewise, management proposed to eliminate any subsidy by the Employer for time spent on union duties. Such duties have more than doubled since 1986. The Employer also maintains that the 25% over an employee's wages that the Union currently reimburses the Employer is completely inadequate. The actual cost of benefits is roughly 55% of an employee's wages. Thus, the Employer maintains that increased union time has undermined the Employer's productivity by taking employees from their regular work. As the Employer sees it, the increasing cost of benefits has created a subsidy for the Union by enabling it to pay less for an employee's time than the Employer must pay. Recognizing that Union officials need sufficient time to conduct contract administration, the Employer proposed removing any limitation on hours while also discontinuing any subsidization of any such activities.

Spokane Transit Authority maintains that comparability data support its proposal. For example, Pierce Transit in Tacoma and Pierce County, Washington gives management the option of granting paid leave for

union work, but the Union fully reimburses Pierce Transit for the time. Community Transit in Snohomish County, Washington offers employees paid time off only for contract negotiations, and the Union fully reimburses Community Transit for the time.

2. The Union

The Union argued against the Employer's proposal on the theory that, if implemented, it would compel union officials to perform contract administration after working hours. It is the belief of the Union that permitting employees to complete such duties during the work day is a benefit to both employees and the Employer. If management were compelled to meet with union officials in order to conduct contract administration on weekends and evenings, it would undermine their efficiency as well by eliminating much free time in their personal schedule. It is the belief of the Union that the Employer's proposal removes necessary flexibility in the system. According to the Union, the cost of the proposal is only approximately $14,000 a year; and management seeks to eliminate a program with a long history dating back to at least 1986.

C. What the Evidence Supports

Interest Arbitration is essentially a conservative process where innovative procedures unrelated to the parties' bargaining relationship generally are not adopted. Changes in this forum are generally linked to proof of problems. In this instance, the Employer failed to demonstrate a sufficiently significant problem to change a long-standing system. The Union established that the current system had worked well and had benefited the parties for many years. If Union officials no longer received retirement and medical benefits for contract administration, it is reasonable to believe that they would use personal time to perform the work. It is far more important for the parties to find a mutually agreeable compromise using traditional methods of negotiation. Without more of a showing that the current program is unworkable and has been the cause of documented problems, the Employer's proposal should not become a part of the next agreement between the parties.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the proposal for changing time off and compensation for union officials must be denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 5, 2001

Terry Novak
Employer Designee

Date:

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the proposal for changing time off and compensation for union officials must be denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2021

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 4/16/21

VIII. THE ISSUE OF OVERTIME

A. Introduction

Coach Operators and shop employees currently receive overtime when they exceed eight hours of work in a day. Clerical Workers, also represented by this Union, receive overtime when they exceed 40 hours in a week.

B. Position of the Parties

1. The Employer

Management consistently has brought this proposal to the bargaining table in negotiations for the last several collective bargaining agreements. The Employer proposes that Coach Operators move from a system of receiving overtime pay after working eight hours in one day to a system of receiving overtime pay after working 40 hours in one week. Spokane Transit Authority's reason for proposing the change is to reduce absenteeism. The parties agreed that the issue has little monetary significance.

The Employer wants to encourage Coach Operators to work all five days in a week by changing the system so that, if an employee has worked more than eight hours in one or more days already in the week, the employee will lose the overtime pay if he or she fails to come to work on

the last day of the week and, thus, does not work over 40 hours. If a week includes a paid holiday or an employee's vacation time, it will count toward worked time when calculating overtime hours worked. The Employer urges that this change is one of fairness to employees who regularly attend work five days a week.

The type of work done by Coach Operators does not fit neatly into eight hour increments. Thus, many operators work regular schedules that involve some overtime. Furthermore, if operators receive overtime after 40 hours of work, more flexible operator schedules would be possible, such as working four ten-hour days. Focusing on other employees of Spokane Transit Authority, AFSCME Local 3939 agreed to an over 40 hours system in 2000. Since then, overtime in that employee group has been reduced by 20%. (*See* Tr. 215.) In 1993, Local 1015 agreed to a 40 hour system for clerical employees. Management argues that, if the system works for clerical workers, the same union ought to agree to it for Coach Operators. "Among Washington properties, the only properties that strictly pay overtime after eight hours are Spokane Transit Authority and Whatcom Transportation Authority." (*See* Employer's Posthearing Brief, 50.) Both Pierce Transit of Tacoma and Pierce County as well as Intercity Transit of Olympia, Washington offer overtime after 40 hours.

2. The Union

The Union argues that the current system has been in place for approximately one and a half decades. While conceding that the nature of the work in question does not always allow for eight hour shifts, the Union maintains that it is a managerial prerogative of the Employer to set work schedules so that overtime is minimized. If the Employer concedes that the issue is really about attendance and not about money, then the Employer, according to the Union, ought to be focused on the attendance policy. At the same time, the Union is quick to respond that absenteeism is not really a problem in this bargaining unit. It is the belief of the Union that the Employer seeks to obtain in interest arbitration what it has been unable to obtain at the bargaining table but that management has failed to carry its burden of showing that the current overtime system constitutes a significant problem.

The Union concedes that, in 1993, it approved a change in overtime for clerical employees it represents. They now receive overtime after 40 hours in a week. The Union rejects any suggestion that its approach to this issue is discriminatory. In fact, the Union asserts that it approved the change for clerical employees at the request of those employees. It was a bargained-for change in which clerical employees

received something in return for agreeing to the change.

C. What the Evidence Supports

The Employer's proposal has a fiscal impact, but the problem to be solved by the proposal is mainly an attendance issue. In other words, the Employer proposed an overtime pay solution in an effort to solve what it views as an attendance problem. The internal point of comparison is an important source of guidance with regard to this issue.

Of all internal comparability data, the most important comes from maintenance workers. They receive overtime after eight hours of work, and management did not propose a change for them. Clerical workers chose to move to a 40 hour overtime system. They are not as useful a source of comparability because of inherent differences in the work they perform and because of structural differences in work hours required of Coach Operators compared with clerical positions. Management argued that granting its proposal would allow for more scheduling flexibility by allowing management to schedule work weeks of four ten-hour days. This

type of work schedule is one that can be bargained into existence by the parties. An arbitration award ought to flow naturally from the point where the parties found themselves when negotiating face to face. Implementing the Employer's proposal would take the parties well beyond that point.

In support of its proposal that operators work forty hours in an assigned workweek before receiving overtime, the Employer pointed to Community Transit, Everett Transit, and King County Metro as organizations "that pay overtime after eight hours on a five-day-per-week schedule and 10 hours on a four-days-per-week schedule." (See Employer's Posthearing Brief, 50.) What, however, the Employer pointed to as a comparable system was one not like what the Employer is proposing. If the Employer had proposed the Community Transit, Everett Transit, King County Metro system, it might have produced an agreement on this issue at the bargaining table. If a 4/10 work schedule is to be implemented, it is a sufficiently unique change in the organization of work by the parties that it ought to be brought into existence at the bargaining table and not through interest arbitration.

AWARD

Having carefully considered all evidence submitted by the parties concerning the issue of overtime, the arbitrators conclude that the Employer's proposal must be denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 10 2001

Terry Novak
Employer Designee

Date: _____

IX. LOSS OF COMMERCIAL DRIVER'S LICENSE

A. Introduction

As it currently stands, the Employer must create a position for an operator if he or she loses the Commercial Driver's License and must provide the Coach Operator with modified duties until the license is restored. The Employer need only provide one such position at a time. A Coach Operator is required by law to have a Commercial Driver's License to perform duties of the position.

B. Position of the Parties

1. The Employer

The Employer wants to remove the current provision from the parties' collective bargaining agreement. Since the program never has been used, the Employer argues that it is unnecessary. The only way a Coach Operator could lose his or her Commercial Driver's License is through a violation of law and not through improperly performing duties of the job. The Employer argued that it no longer desires to be responsible for subsidizing a bargaining unit member's illegal activities. No other bargaining

unit enjoys this benefit, and no comparable organization on which either party relies provides it as a benefit.

2. The Union

The Union argues that the effect on the Employer, if the benefit were used, would be slight. The parties' agreement has required the Employer to create only one such modified position. Moreover, the Employer has never been inconvenienced by the program due to its lack of use.

C. What the Evidence Supports

Interest arbitration is not typically a place of innovation. The presumption is that a party in interest arbitration who seeks a change needs to carry the burden of proving a substantial need for the change. Parties to this particular bargaining relationship in good faith have agreed in the past on a method of doing business with regard to what happens if a Coach Operator should lose his or her Commercial Driver's License. That prior agreement merits strong consideration. To do otherwise invites damage to

the negotiation process. A party seeking a change in interest arbitration has a considerable burden of demonstrating a compelling reason for the arbitration panel to deviate from established procedures on which the parties previously agreed. Absent a compelling need, interest arbitrators ought to be cautious about removing benefits previously secured through negotiation. Numerous arbitrators have used this "compelling need" standard as a means of testing proposed changes in the status quo. (*See, e.g., City of Blaine,* 90 LA 549, 552 (1988); *Williamson Central School District*, 63 LA 1087, 1090 (1974); and *Adam County Highway Department,* 91 LA 1340, 1342 (1988).)

The Employer proposed cancellation of the CDL benefits. It was management's burden to justify the proposed change. The benefit has never been used. Accordingly, management was unable to establish any problem with it. The proposal must be denied.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Employer's proposal with regard to loss of a Commercial Driver's License must be denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union designee

Date: April 20, 2001

Terry Novak
Employer Designee
Date:

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Employer's proposal with regard to loss of a Commercial Driver's License must be denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union designee

Date: _____

Terry Novak
Employer Designee
Date: 4/16/01

X. THE ISSUE OF BIDDING ON TEMPORARY RUNS

A. Introduction

As it currently stands, when a Coach Operator is absent from work for a period of over two weeks, the run is designated as a "temporary run." The Employer need not create more than ten temporary runs at one time. To fill temporary runs, operators bid on them according to straight seniority. An operator with the highest seniority has an opportunity to bid the run being vacated. If this most senior operator chooses not to submit a bid, the opportunity moves down the seniority list. When an operator successfully bids a temporary run, the operator's regular run, in turn, becomes a temporary run, unless there are already ten runs in the bid process. The Employer sometimes creates more than ten temporary runs in order to fill each run. If a temporary run is not filled through the bidding process, it moves to the Extra Board. If the regular operator of a temporary run returns to work earlier than expected, the regular operator may resume the run on the first of the week, provided that the regular operator gave the Employer notice by the previous Wednesday. If the operator gave notice after the previous Wednesday, then the regular operator works the Extra Board until the following week.

B. Position of the Parties

1. The Employer

The Employer proposes to remove the contractual requirement calling for bidding on temporary runs by seniority. Spokane Transit Authority would like to place all temporary runs directly on the Extra Board, as is the current process for runs vacant for less than two weeks. In the view of the Employer, such a procedure would increase the efficiency and effectiveness of the work force. When an operator with high seniority vacates a temporary run, it creates a domino effect. An operator with relatively high seniority would be able to bid the vacant run. The successful bidder, then, leaves a run, and it must become a temporary run and go through the bidding process the same way. The result can be the bidding of many temporary runs based on only one operator's absence. The process requires a considerable amount of supervisory time which could be more efficiently used on other projects.

The Employer also argues that removing this contractual provision would reduce absenteeism. Currently, if an operator wants to return to work earlier than expected, he or she must notify the Employer by the previous Wednesday in order to resume regular runs at the first of the week. If operators do not know that they will be returning by Wednesday

but still return the following Monday, they must work the Extra Board for that week and resume regular runs the following week. If this requirement were removed from the parties' agreement and all vacant runs were moved to the Extra Board, regular operators could return to their regular runs whenever they returned with less notice. Thus, operators would not be tempted to stay out of work the full time of their planned absence, even if they were able to return early. Otherwise, they might do so in order to avoid a week of working the Extra Board.

The Employer argues that removing the "temporary run" bidding requirement would also improve the quality of work on the Extra Board. If all vacant runs went to the Extra Board, operators on the Extra Board occasionally would have an opportunity to work better pieces of work. As it currently stands, Extra Board operators are able to bid regular runs if they have sufficient seniority. Successfully bidding on a temporary run might change an Extra Board operator's scheduled days off. The Employer, then, would need to create additional temporary runs to encourage other Extra Board operators to change their days off to insure coverage every day. The Employer maintains that the process is inefficient and operationally unnecessary. If temporary runs moved directly to the

Extra Board, they could be assigned in a way to minimize confusion and work shifting, in the view of the Employer.

2. The Union

The Union argues that the current system has been in place since before Spokane Transit Authority itself came into existence. In the view of the Union, the existing system is not broken and, therefore, should not be "fixed" by the arbitration panel. The current system is one of the benefits of seniority. Every benefit that comes with seniority allegedly benefits the Employer by encouraging employees to remain with the Employer for a longer period of time. The main concern of the Union with regard to this proposal is rooted in the issue of seniority and having a benefit removed that senior employees rely on and from which they benefit. Moreover, the Union argues that it has been highly flexible in working with the Employer with regard to implementing the existing system. When a run is to be vacant for only three or four weeks, the Union frequently waives the need to have it bid as a temporary run and allows it to move straight to the Extra Board. The Employer allegedly never has complained to the Union about its need for greater flexibility with regard to this issue. (*See* Tr. 291.)

C. What the Evidence Supports

The existing program has constituted a method of organizing work throughout the duration of the relationship between the parties. The requirement covers only ten runs at a time, and any additional runs are created at the Employer's option. The program clearly creates a significant benefit for more senior employees. There was no rebuttal to the contention that the Union has shown itself to be highly flexible and reasonable in working with management to minimize any disruptions the program might cause. Management has not previously complained to the Union about alleged inefficiencies with regard to the program. The program is an important aspect of prior bargains between the parties. It should not be changed in interest arbitration without a substantial showing of hardship on the part of the Employer No such burden has been carried in this case.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Employer's proposal with regard to bidding on temporary runs should not become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 5, 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Employer's proposal with regard to bidding on temporary runs should not become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 4/16/01

XI. THE ISSUE OF LATE REPORTS AND MISS OUTS

A. Introduction

A "Late Report" is a failure to report in person to the dispatcher by the time an employee's assigned duties are scheduled to start by no later than 60 minutes thereafter. A "Miss Out" is a failure of any Coach Operator to report in person to the dispatcher by 61 minutes past the time his or her assigned duties are scheduled to start. (*See* Art. 15, 1996-99 Contract, p. 40-41.) Two Late Reports are the equivalent of one Miss Out. If an operator has a Late Report, the employee is allowed to join his or her regular run at the next available relief point. The parties' agreement contains special rules regarding when Extra Board operators have Late Reports.

If an operator has a Miss Out, the operator loses the run and pay for the day. In the past, missing the run and pay were the only penalties for a Miss Out. Currently, if an employee has six Miss Outs in a rolling 12-month period, the individual is subject to dismissal without cause. The system of Late Reports and Miss Outs currently used by the parties is separate from the attendance policy covering employees. A 1986 arbitration decision validated this separation.

B. Position of the Parties

1. The Employer

The Employer proposes to reduce the threshold number at which an employee would be subject to termination. It currently is six in a rolling 12-month period, and the Employer would reduce it to two in the same period of time. In the Employer's view, the current Miss Out and Late Reports system provides unworkable rules. The system gives employees the ability to fail to show up for work and fail to call the Employer five times in 12 months without imposing any consequences and without permitting such conduct to be the basis of discipline through the attendance policy. Employees also could arrive at work up to 59 minutes late eleven times in a year without consequences.

From the Employer's perspective, the problem is that a handful of employees take advantage of the system. They have the equivalent of an extra week of vacation each year because of Miss Outs. Both management and union workers have been known to refer to Miss Outs as "fishing days." Contrary to what the Union asserts, the Employer maintains there is no great chance that an employee will lose his or her job without just cause. To avoid the risk of dismissal under the Miss Out or Late Report systems, employees need only call to report that they will be late or not at work that

day. These employees, then, would enter the regular attendance program and would go through progressive discipline, if necessary. A system allowing employees to miss work without sanctions and without notifying management of impending absences is a system designed to undermine the efficiency of an organization. No other employees of Spokane Transit Authority enjoy such a loose system. The only other comparable jurisdiction with a Miss Out system is Ben Franklin Transit of Tri-Cities, Washington, and even their system provides for a potential termination after two Miss Outs or five Late Reports.

2. The Union

The Union argues that the Employer again is attempting to fix a problem that does not exist. Few employees allegedly use the Miss Out and Late Report systems. The Union's main concern with the low threshold proposed by management is that employees who violate the Miss Out and Late Report systems are subject to discipline without just cause, as the Union sees it. Thus, if an employee experienced an emergency that prevented his or her calling or coming to work within an hour of the

scheduled time to report and did so twice in a year or were even one minute late for reporting to work four times a year, the individual could be discharged; and the Union argued that it would have no recourse to a grievance because there is no contractual requirement that an individual be discharged for just cause under such circumstances. Because of such draconian consequences, the Union urged that the Employer's proposal be rejected.

C. What the Evidence Supports

The Union emphasized at the arbitration hearing the dire consequences of adopting such a proposal. Although the Union listed many circumstances that might result in dismissal without just cause or recourse to the grievance procedure, such conclusions were hypothetical and speculative. The arbitration panel received no data with regard to how many employees might have been fired to this point in time if the proposed system previously had been used. The objective fact is that in other comparable work places, employees are not permitted so much missed work without even telephone calls and without incurring some sort of

potential sanction. Abusers of the existing system seem to be using Miss Outs to avoid reasonable consequences under the attendance policy. Hypothetical situations described by the Union involved emergencies where an employee simply was unable to reach a telephone before his or her report time.

The fact that the problem described by the Employer involved a relatively small number of employees does not undermine the reasonableness of the proposal. It continues to be a notable problem that merits a solution. If the Union remains strongly opposed to the modified Miss Out and Late Report systems, it will be possible to negotiate this system into the current attendance policy. Such an adjustment, of course, would overcome the Union's concern that the system is outside just cause protection.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Employer's proposal regarding Late Reports and Miss Outs shall become a part of the next agreement between the parties and shall be subsumed under the just cause provision in the collective bargaining agreement. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 20, 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Employer's proposal regarding Late Reports and Miss Outs shall become a part of the next agreement between the parties and shall be subsumed under the just cause provision in the collective bargaining agreement. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 4/20/01

XII. THE ISSUE OF RESTRICTIONS ON PART-TIMERS

A. Introduction

The current agreement between the parties limits part-time employees to a schedule of no more than 27.5 hours a week. Article XV(5) contains many other limitations on part-time employees. The number of part-time employees allowed at any time is 15% of the work force, plus seven. Part-time employees may only work 5.5 hours a day and are guaranteed two hours of pay for each pull out, even if they do not perform their duties for the full two hours. They may work trippers, except weekends and week days between 1:45 p.m. and 8:00 p.m. "Trippers" are "extra service provided during the a.m. and p.m. peak hours on any and all routes to assist regular scheduled coaches." (*See* 1996-99 Agreement, art. XV(5)(L)(1). It is important to note that Spokane Transit employees regularly use the word "tripper" to define short pieces of work in general. Contract restrictions on part-time employees use the contract definition of "tripper."

B. Position of the Parties

1. The Employer

The Employer proposes to remove all restrictions on the use of part-time employees except a requirement that they work only a maximum of 27 hours a week and a requirement that the number of part-time employees not exceed 15% of the full-time work force plus seven. It is the belief of the Employer that additional rules have become too cumbersome and unworkable due to changes made after implementation of the Comprehensive Operational Analysis. The original purpose of the system was to let part-time operators run trippers. They were also allowed to work any evening and weekend shifts.

A result of the Comprehensive Operational Analysis was the elimination of "trippers," as defined in the parties' agreement. In an effort to better serve the community, the Employer eliminated extra, nonscheduled buses during peak time and, instead, increased the number and frequency of regularly scheduled runs. Thus, part-time workers are no longer able to help alleviate peak time loads, in spite of the fact that allowing part-time workers to help at those times was the reason for incorporating the current limitation into the parties' agreement. As the Employer sees it, the purpose of allowing part-time workers to run trippers has been frustrated by giving

increased peak runs the name of "regular service," instead of "tripper." The Employer contends that the parties' agreement should be adjusted to reflect this change and to maintain the spirit of the provision. The Union consistently has been willing to waive morning limitations and to let part-time employees work some morning runs. It is the belief of the Employer that the Union's current refusal to accept this proposal is inconsistent with such frequent waivers.

Removing current restrictions from the parties' agreement would also benefit full-time employees without taking any work from them, in the opinion of the Employer. Because management still could work part-time employees only 27.5 hours a week, the Employer could not treat part-time workers as full-timers. Removing the restriction would result in a more efficient use of part-time employees, thus, helping to reduce spread time in full-time runs. Full-time runs are sometimes manipulated to work around part-time restrictions. The Employer also contends that removing the restrictions would not reduce the quality of full-time work because management is still required to maximize straight runs, make all night runs straight time, and offer overtime to employees according to seniority. (*See* Employer's Post-hearing Brief, p. 59.) Part-time operators would also benefit by having more work, gaining more experience, and having a greater

opportunity to advance on the job ladder. The Employer contends that its proposal would reduce operating costs by reducing overtime.

2. The Union

The Union contends that Spokane Transit Authority's unstated purpose behind its proposal is to gain the contractual right to use part-time employees the same way management uses full-time employees, without, however, any requirement of paying full-time benefits. "The STA is apparently attempting to convert part-time operators into potential full-time operators without having to pay certain benefits." (*See* Union's Post-hearing Brief, p. 46.) If the Employer was able to remove the requirement that part-time employees be paid for a minimum of two hours for each pull out, then management could schedule part-time workers for abnormally short shifts, in the view of the Union. Such scheduling would be unreasonably disruptive to part-time employees. The Union contends that management has not put forth any good reason for needing to make changes in the provision which the parties previously bargained into their agreement.

C. What the Evidence Shows

No empirical evidence validated benefits the Employer expected to reap from its proposal. The expected benefits of the proposal are speculative. When Mr. Don Reimer, Transportation Manager for the Fixed Route Division, testified regarding the proposal, he failed to be persuasive about the fact that expected benefits from the proposal would materialize. He stated:

> QUESTION: So what's the benefit to the employer if you eliminate the restrictions on what you can use part-timers for?
>
> ANSWER: For right now, there's (sic) a lot of restrictions that are not, that we're not being held to. If we were ever, we would have less opportunity to work these people. There would just be more flexibility with our proposal to utilize these people to possibly be more efficient, to reduce possibly overtime through utilizing them more. Possibly to reduce spread time. There could be some benefits here that we're not even able to look at or investigate because of the restrictions. (*See* Tr. 179, emphasis added.)

As the testimony highlighted, the Employer failed to establish the existence of a problem to be resolved. Management speculated about what would happen if the Union stopped cooperating with the Employer in ways that allow managers to work part-time workers in a certain way, but the Union has not proposed to discontinue its cooperation. The Employer

hinted that, since the Union frequently waived the provision, rights under them have been lost. The Union, of course, has the right expressly to waive contractual rights without absolutely losing the benefit of those rights. No persuasive data submitted to the panel of arbitrators described the existence of any sort of substantial problem with regard to this issue.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Employer's proposal on restrictions for part-timers must be denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 26 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Employer's proposal on restrictions for part-timers must be denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 4/20/01

XIII. THE ISSUE OF WAGE PARITY

A. Introduction

Currently, bargaining unit members who work as Customer Service Representatives are paid the 1999 rate of $9.06 an hour. The Paratransit Division has employees with the job titles of Telephone Operator and Reservationist. These employees are represented by AFSCME Local 3939. Reservationists are paid the 1999 rate of $12.33 an hour. Telephone Operators receive less per hour than do Customer Service Representatives.

In its list of issues to be submitted to arbitration, the Union proposed that Customer Service Representatives receive a "wage equal [to] that of Paratransit Telephone Operators." (*See* Exhibit No. 1.8.) At the arbitration hearing, the Union clarified its position by stating that it proposes the same wage for Customer Service Representatives as that paid to Reservationists. Some confusion was caused by the fact that the former name for Reservationists was Telephone Operator. The Union argues that the Employer understood the intent of the Union's proposal because management prepared Exhibit 6.2.1, which compares Customer Service Representative wage rates with those of Receptionists. The Union included job descriptions for each position in Exhibit 6.2.3.

B. Position of the Parties

1. The Union

The Union argues that no other ATU Local 1015 bargaining unit members are paid less than Customer Service Representatives, although Data Technicians receive the same wage. It is the contention of the Union that jobs of Customer Service Representatives and Reservationists are sufficiently similar that they merit equal pay. It is the belief of the Union that the current system of unequal pay for equal work breeds disharmony within the work force. Mr. Lonny Olson, a current Customer Service Representative, also asserted in his testimony that positions of Customer Service Representative and Reservationists are similar. Before he began working as a Customer Service Representative, Mr. Olson was a scheduler for the Paratransit Division; and he testified that, based on his work experience, he knew the duties of the two positions to be reasonably similar.

Pierce County Transit, a comparable jurisdiction with which both parties are in agreement has three levels of Customer Service Representatives. Their wages as of January 1, 2000 are $14.42, $15.29, and $16.62 an hour. The Union, accordingly, believes its proposal is eminently reasonable.

2. The Employer

It is the position of the Employer that the Union is not clear about the nature of its proposal. There was ambiguity in Mr. Olson's testimony with respect to whether he testified about what formerly was called a Telephone Operator and is now called a Reservationist or whether he described what is now called a Telephone Operator. It is the belief of the Employer that the Union attempted to gain special sympathy for Customer Service Representatives as some of the lowest paid members of the bargaining unit. In fact, the Employer contends that Data Technicians receive the same wage as Customer Service Representatives and that the Union has not sought an increase for Data Technicians beyond the yearly percentage. The Employer also argues that other positions in the Paratransit Division receive a lower wage than Reservationists and that this is another point of difference between Reservationists and Customer Service Representatives.

It is the belief of the Employer that the Union failed to establish the similarity of the two positions with sufficient precision to warrant equal wages. Mr. Olson's testimony revealed that he had not worked with nor visited Reservationists in the Paratransit Division for over nine years. (*See* Tr. 352.) It is the belief of the Employer that he did not qualify to testify

about the nature of duties currently performed by Reservationists. As the Employer views it, Mr. Olson is not qualified to compare job descriptions and to draw conclusions from the comparisons because such work is an area requiring special skill and training which Mr. Olson has not received. In asking for the special wage increase, the Union is seeking compensation for Customer Service Representatives above that received by Reservationists, in the opinion of the Employer.

The Employer contends that Reservationists and Customer Service Representatives are not comparable for a number of reasons. First, Reservationists must exercise discretion in their job duties. Customer Service Representatives do not have similar requirements. Because the Paratransit Division provides rides to disabled customers, it is necessary to comply with the ADA. Additionally, the Paratransit Division also must comply with a negotiated settlement agreement that resolved a class action lawsuit against Spokane Transit Authority, a lawsuit that alleged violations of the ADA. If Reservationists fail to comply with the ADA when scheduling rides, they could expose the Employer to another lawsuit. Moreover, the Employer contends that comparing wages of only the two positions does not constitute a fair comparison. For example, Paratransit employees do not receive Social Security. Customer Service

Representatives receive not only Social Security but also a retirement benefit. A comparison of total compensation packages of the two positions shows distinctions between the two.

The Employer also contends that wage comparisons with Customer Service Representatives should be limited to Spokane County. In Spokane County, the median wage for a Receptionist or an Information Clerk is $8.39. The wage for a Customer Service Representative in Spokane Transit Authority is higher. As the Employer sees it, wages of proposed comparable organizations outside of eastern Washington should not be taken into account. First, the economy of Pierce County Transit, a comparable entity the Union would use, is influenced by its proximity to Seattle and the higher cost of living there. Second, although the Union listed wages for Customer Service Representatives in Pierce County Transit, it included no job description. It is imprudent, according to the Employer to make comparisons of wages without an understanding of relevant job duties.

C. What the Evidence Shows

It cannot be that the Union is asking for parity with Paratransit Telephone Operators since their wages are lower than those of Customer Service Representatives. Yet, after addressing the issue in arbitration, the Union suggested that it sought equal wages to those provided Telephone Operators. (*See* Union's Post-hearing Brief, p. 13.) The Union also referenced Telephone Operators when discussing the merits of the issue. (*See* Union's Post-hearing Brief, p. 29.) Although the arbitration panel received a description of Mr. Olson's job, there was no effective comparison made with his job and that of a Reservationist. (*See* Vol. 2, Exhibit 2.) Using Pierce Transit for Tacoma and Pierce Counties, Washington, an organization located in a major metropolitan area, as the sole comparable entity failed to be persuasive. There was no job description from that organization. Without more data and a more detailed comparison, the proposal must be denied.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Union's proposal with regard to wage parity between Customer Service Representatives and Paratransit Reservationists shall not become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 20, 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Union's proposal with regard to wage parity between Customer Service Representatives and Paratransit Reservationists shall not become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 4/16/01

XIV. SHIFT DIFFERENTIAL FOR MAINTENANCE WORKERS

A. Introduction

Currently, there is no shift differential for employees working in a shift.

B. Position of the Parties

1. The Union

The Union proposes that Maintenance Employees receive a pay differential of $.25 an hour for swing shift and $.50 an hour for the graveyard shift. Its reasoning is that a shift differential is fair in view of the fact that these shifts are more difficult than the day shift. Working later hours significantly interferes with personal and family life and may have an impact on health of employees. The Union believes that employees who incur such risks and losses should be rewarded. Pierce Transit, a comparable entity on which the parties agree, pays a $.25 per hour differential for swing shift and a $.50 per hour differential for the graveyard shift.

2. The Employer

The Employer argues that one of its fundamental goals is to maintain equal pay for equal work in order to decrease opportunities for employees to feel unfairly treated. It is management's view that this proposal from the Union expressly provides unequal pay for equal work. Shifts are bid on the basis of seniority. All employees currently working swing and graveyard shifts bid to those shifts. If they are working those shifts because of lower seniority and are unable to bid to a day shift, they will gain more seniority as they work longer for the Employer and be eligible to bid to the day shift at a later time.

It is important to note that internal comparisons favor the Employer's opposition to this proposal. No Spokane Transit Authority workers receive a shift differential. Data from external comparable organizations show a mixed response to paying a shift differential. Comparability data, in the opinion of the Employer, failed to provide a useful guideline with regard to this issue.

C. What the Evidence Shows

It is for the party seeking changes in a past approach to pay rates to carry the burden of proving the reasonableness of its proposal. In prior good faith agreements arrived at by negotiating between the parties, they never included a shift differential as a part of the compensation package. The burden was on the Union to show a change in circumstances that justified altering the practice of the parties and to prove that such a result flowed naturally from the prior relationship of the parties.

The Union argued, in effect, it was the "nightness" of the work hours that justified providing a shift differential. Its abstract argument was that a penalty premium ought to be attached to nondaytime work hours on the theory that discouraging night work is good public policy. In other words, an employer ought to do what it can to avoid scheduling work at night so that workers can spend time with family and friends who typically work a day schedule. The Union argues that swing and graveyard shift workers should be rewarded with premium pay for foregoing social benefits connected with a daytime work schedule.

While on an abstract level, the Union's theory might have coherency, no data supported it. Work schedules have changed significantly in the last half century. It is reasonable to believe that some

workers now prefer swing and graveyard work as much as others desire day work. While swing and graveyard shift work might be disruptive in the lives of some, it might permit a rational schedule to emerge in the lives of others. Nor did data submitted by the Union establish the existence of an industry standard with regard to premium pay for shift work. In the absence of evidence demonstrating a significant problem, the Union's proposal must be denied.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Union's proposal seeking a shift differential for Maintenance Employees shall not become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date April 20, 2001

Terry Novak
Employer Designee

Date:

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Union's proposal seeking a shift differential for Maintenance Employees shall not become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date

Terry Novak
Employer Designee

Date: 4/16/01

XV. THE ISSUE OF MEDICAL INSURANCE FOR RETIREES

A. Introduction

Currently, the parties' agreement states that "the Authority agrees to accept medical insurance payments from persons who retire with 25 years or more of service and who are not on the payroll." (*See* 1996-99 Agreement, art. XIV(4)(E).) Retirees who elect to obtain medical insurance through this provision pay 100% of their health insurance premium.

B. Position of the Parties

1. The Union

The Union proposes that the "length of service" requirement which must be met before employees may elect to remain with Spokane Transit Authority's medical insurance after retirement should be lowered from 25 to 20 years of service. The Union's proposal is rooted in its belief that an employee who remains with Spokane Transit Authority for 20 years deserves this benefit. Of importance in justifying the proposal is the Union's explanation that the Employer pays no portion of premiums for retirees who elect to remain with the Spokane Transit Authority medical insurance. Accordingly, the Union believes that the proposal is without

cost to the Employer. Because the Employer is now hiring an older work force, fewer employees have an opportunity to work for 25 years before retirement, according to the Union.

2. The Employer

According to the Employer, lowering the "length of service" requirement for the medical insurance program would undermine the efficiency of the Employer's operation by increasing the probability that younger retirees would make use of the program. If younger employees could elect to retire and use the benefit, the Employer believes it is more likely that people in poorer health could make use of the program and, thus, cause premiums to increase in cost. Any cost increase in premiums is shared between the Employer and bargaining unit members. Accordingly, the Employer concludes that if premium fees rise, everyone will be compelled to pay more. Additionally, the Employer argues that just making the change, even if no more employees elect to use the system, likely would cause costs to increase.

The Employer also contends that, if the Union's proposal were accepted, other employees within Spokane Transit Authority would be treated unequally, since they would continue to face a 25-year requirement. None of the comparable organizations on which the Employer relied offer this benefit for any length of service. Of Union comparable organizations, King County Metro, Tri-Met of Portland, Oregon, and Santa Clara Valley Transportation Authority of Silicon Valley, California make some use of employer-paid medical benefits in retirement. It is the position of the Employer that all these Union comparable jurisdictions are inapposite in this circumstance because of their size and the nature of the major metropolitan areas in which they are located.

C. What the Evidence Shows

The Union argued that its proposal would cost the Employer nothing. The Employer responded that the change would increase costs. Neither party offered persuasive data in support of their respective contentions. The Employer's suggestion that the proposal would cause a significant number of people in poorer health to opt into the system was farfetched, but it was the Union that needed to carry the burden of proof

with regard to the proposed change. No persuasive data submitted to the panel of arbitrators enabled the Union to carry its burden of proof. Overall, the Union failed to justify its proposal, and it must be denied.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Union's proposed provision covering medical insurance for retirees must be denied and not made a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 10, 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Union's proposed provision covering medical insurance for retirees must be denied and not made a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date:

Terry Novak
Employer Designee

Date: 4/16/01

XVI. THE ISSUE OF DENTAL INSURANCE

A. Introduction

In the 1996-99 agreement between the parties, "the Authority agrees to provide Washington Dental Insurance, to include adults and child orthodontia coverage with a benefit equal to 50% of covered costs, to a maximum of $750 per covered participant, per dental contract year." (*See* art. XIV(4)(F).)

B. Position of the Parties

1. The Union

The Union proposes that the amount of dental/orthodontic coverage be increased in the next agreement between the parties from $750 a year to $1500 a year. The Union maintains that this increase is needed in order to cover rising costs of orthodontic care. It is the belief of the Union that the cost to the Employer would be minimal.

2. The Employer

The Employer argued that the Union's proposal is not supported by internal comparative data nor by external comparability information.

C. What the Evidence Supports

The Employer maintained without rebuttal that the Union's proposal would cost over $18,000, and this cannot be considered an inconsequential expenditure. Most comparability data support either no orthodontic coverage or a limit of $750. The arbitration panel received insufficient economic data to justify this proposal.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Union's proposal with regard to dental insurance must be denied and not made a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 20, 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Union's proposal with regard to dental insurance must be denied and not made a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 4/16/01

XVII. THE ISSUE OF ACCRUED SICK DAYS

A. Introduction

The current agreement between the parties states:

> Under the conditions and per the schedule as follows, employees who elect to retire will be eligible to collect pay at their prevailing rate and on the basis of eight (8) hours per day, to a maximum of eighty (80) days (six hundred forty (640) hours),for their accrued and unused sick leave.
>
> Employees who are a
>
> Minimum of age 60 with 30 yrs of service/Accrual up to 80 days
> Minimum of age 65 with 25 yrs of service/Accrual up to 80 days
> Minimum of age 62 with 22 yrs of service/Accrual up to 60 days
> (*See* 1996-99 Agreement, p. 30.)

B. Position of the Parties

1. The Union

The Union proposes to remove age requirements in the sick leave buy-out program contained in Article XIII(1)(C) of the current agreement between the parties. Thus, length of service alone would determine whether an employee was eligible to receive sick-leave buy-out pay. The program is already capped at 80 days, while the contract allows up to 80 days of accrual. Thus, employees using this program could already receive less than half of their accrued sick leave. The Union contends that removing the age requirement would encourage employees to

be absent from work less. If they could receive a sick-leave buy-out with a certain "length of service" requirement only, then employees would be more likely to receive it at some point, according to the Union. Knowing that they would be paid for those accrued days, employees, the Union argues, would use fewer sick days and allow them to accrue. The increased attendance rate would be a benefit to the Employer. The Union argues that this proposal would be of no cost to Spokane Transit Authority.

2. The Employer

The Employer maintains that the Union has misconstrued the purpose of this benefit. The purpose, in part, is to provide a retirement benefit. It also is designed to encourage longevity with the Employer. As the Employer sees it, the Union has proposed a change that would encourage early retirement; and this is exactly the opposite of what the program is intended to accomplish. No other employees of Spokane Transit Authority enjoy this benefit without an age requirement in addition to the "length of service" requirement. It is the belief of the Employer that comparability data supports its rejection of this proposal.

C. What the Evidence Supports

Comparability data failed to establish that the only purpose of permitting employees to cash in accrued sick leave days is to provide a retirement benefit. For example, Pierce Transit permits an employee to cash out sick leave at the time of resignation. A number of other comparable organizations on which the Union relied permit the benefit to be used at resignation. Moreover, data submitted to the arbitrators failed to show that comparable organizations tie the benefit to a minimum age the way it is done by Spokane Transit Authority. It is recognized that adopting the Union's proposal might create some internal inconsistencies among employees of Spokane Transit Authority, but internal comparisons are generally viewed as being especially important in resolving noneconomic issues. When evaluating the impact of standard operating policies within an organization or some language components, a more persuasive case can be made for relying on the importance of internal comparisons. External comparisons with regard to economic benefits lend rationality and objectivity to a party's proposal, and the Union's proposal is more consistent with external comparability data in this case.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Union's proposal with regard to cashing in accrued sick days shall become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 20, 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators concludes that the Union's proposal with regard to cashing in accrued sick days shall become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date:

Terry Novak
Employer Designee

Date: 4/16/01

XVIII. THE ISSUE OF MEDICAL INSURANCE PREMIUMS

A. Introduction

Under the 1996-99 agreement between the parties, bargaining unit members could select between two health plans, namely, the Group Health Plan and the PPO4 Plan. Some more senior bargaining unit members continue to be covered by the PPO1 Plan, but it is no longer an option for nonmanagement employees. The PPO4 and Group Health Plans have co-pay and deductible features. The Employer pays 100% of the cost of the plans for an employee and 90% of the cost for the family plan. Managerial officials are covered by the PPO1 Plan, and it has no co-pay or deductible features. The Employer pays 100% of the premium for its managers and their families, as well as for the few bargaining unit members still on the PPO1 Plan.

B. Position of the Parties

1. The Union

The Union proposes that the Employer pay 100% of the family plan for both PPO4 and Group Health Plans and that these additional contributions be retroactive to October 1, 1999. The Union contends that,

even though employees who are members of the bargaining unit are the backbone of Spokane Transit Authority, they are treated doubly unfairly when compared with managerial employees. Not only do bargaining unit members have a plan with co-pay and deductible features but also they must contribute to the cost of family premiums. Management pays none of these costs and enjoys higher salaries. The Union believes that comparability data support its proposal. Moreover, the Union maintains that management offers no legitimate explanation to explain why the Employer treats managerial officials and bargaining unit members differently with regard to health plan contributions. (*See* Tr. 482.)

2. The Employer

The Employer maintains that it is an industry standard for employees to contribute to health coverage. In the opinion of the Employer, there is no incentive for employees to help hold down spiraling costs if the Employer pays 100% of medical insurance costs. According to the Employer, the proposal put forth by the Union with regard to health insurance is the most expensive proposal in its entire package. Moreover, management believes that the Union currently would pay $107 less for

Group Health coverage if union negotiators had agreed to the Employer's language for the current contract, instead of insisting on its own. (*See* Tr. 470-472.) The Employer believes it should not now be penalized because union negotiators made a bad judgment when bringing the current agreement into existence, especially in view of the fact that the Employer warned the Union of the bad bargain at the time.

C. What the Evidence Shows

Evidence submitted to the arbitrators makes it reasonable to conclude that the bargain struck by the parties in the last round of negotiations helped contribute to the current dilemma with respect to the cost of an insurance program. To the extent that the current problem is a result of a bad judgment in the past, it is reasonable to expect the Union to help share responsibility for that decision. It is inconsistent for the Union to argue that the current plan is too expensive when its own contractual language is part of the reason for the expense.

No other represented employees within Spokane Transit Authority enjoy family medical coverage paid at 100% by the Employer.

Nonunion and managerial employees have 100% family coverage, but they do not provide an accurate source of comparison. While a comparative analysis of employees doing similar work in similar benchmark jurisdictions is generally a useful source of guidance, numerous interest arbitrators have urged caution when comparing nonunion work groups with unionized work groups. (*See, e.g., Sioux County Board of Supervisors,* 87 LA 522 (1986) and *City of Farmington*, 85 LA 460 (1985).) The fact is that managerial officials do not provide the best source of comparison with regard to this issue. Job duties are different, and historic methods of compensation are different. In order to make an accurate comparison, many more factors than economic benefits need to be taken into account.

Nor does external comparability data support the Union's proposal. Community Transit, Pierce Transit, Intercity Transit, Kitsap Transit, and Ben Franklin Transit all have a flat employer contribution. (*See* Exhibits Nos. 6.7.2 and 6.7.3.) A flat contribution places the burden of premium increases solely on employees. In this regard, the Employer's program is better for employees than a flat rate. Of the comparable organizations that the Union referenced as paying 100% for family plans, five of the six are located in major metropolitan areas. The sixth is within 50 miles of a major metropolitan area. A legitimate argument can be made

that they enjoy a different kind of economy from that of the Spokane region.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Union's medical insurance premium proposal shall not become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 20, 2001

Terry Novak
Employer Designee

Date:

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Union's medical insurance premium proposal shall not become a part of the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date:

Terry Novak
Employer Designee

Date: 4/16/01

XIX. BENEFITS FOR PART-TIME OPERATORS

A. Introduction

The current agreement between the parties states:

> Eligibility for fringe benefits for part-time operators is limited to vacations, medical-dental plan participation, dependent passes and uniform allowances, but does not include participation in the pension plan. (*See* 1996-99 Agreement, Art. XV(5)(0).)

B. Position of the Parties

1. The Union

The Union proposes that:

> Part-time employees shall receive vacation benefits, medical/dental plan participation, dependent passes, and uniform allowance. Part-time employees shall receive a $10,000 death benefit, along with participation in the pension plan after two years of continuous service. Additionally, part-time employees shall receive six prorated holidays per year after 180 days of service. (*See* Exhibit No. 1.10.)

The Union's proposal is rooted in fairness. Some part-time employees work on a part-time basis for many years. Paratransit part-time employees are eligible to participate in their retirement plan after two years of service. The Union argues that Coach Operators deserve the same opportunity. (*See* Union's Post-hearing Brief, p. 37.) Because part-time

employees work up to 27.5 hours a week, the Union argues that they deserve to participate in benefits on a pro rata basis. Half of the comparable jurisdictions on which the Employer itself relies gives part-time operators pro rata holiday benefits.

2. The Employer

The Employer argues that it is discriminatory for part-time operators and not part-time clerical employees to receive the proposed new benefits. As management sees it, the position of a part-time operator is not long term and is merely an entry level position. The Employer argues that part-time employees who remain in part-time status for years often do so by choice and that most are able to leave part-time work after two or three years based on their seniority. It is the belief of the Employer that the Union's proposal would create a permanent part-time work force and eliminate the training opportunity of using part-time work as an entry level position. Part-time operators already receive vacation, medical-dental benefits, a uniform allowance, and employee and dependent transit passes.

The Employer concedes that part-time employees in the Paratransit Division receive pension benefits after two years of service, but they also receive a much lower hourly wage at the top step of their wage scale when compared with regular, fixed-route, part-time operators. Comparability data allegedly do not support the Union's proposal. Moreover, the Employer maintains that it pays its part-time operators a higher wage than most comparable organizations.

C. What the Evidence Shows

1. Death Benefit

None of the comparable organizations on which the Employer relies provides a death benefit to part-time operators. Of the comparable entities on which the Union relies, Intercity Transit, Everett Transit, King County Metro, and Santa Clara Valley Transportation Authority offer some sort of insurance benefit, although the extent of those benefits is not consistent. King County Metro and Santa Clara Valley are not especially instructive comparable jurisdictions because of the notably different metropolitan area when compared to the Spokane region. The industry

standard does not seem to be one of providing death benefits for part-time employees.

2. Pension Plan Participation

Two of the Employer's comparable organizations, namely, Kitsap Transit and Madison Metro, provide deferred compensation plans for retirement for part-time employees. Excluding King County Metro and Santa Clara Valley Transportation Authority, the only Union comparable organization with a retirement benefit for part-time employees is Intercity Transit. The industry standard does not seem to be one of extending pension plan participation to part-time employees. Moreover, there was no rebuttal to the contention that the Union's proposal would be unduly expensive during the life of the contract. The additional benefit would cost approximately $183,593.

3. Holiday Pay

All three of the comparable organizations on which both parties rely extend holiday benefits to part-time employees. Of the comparable entities on which the Union alone relied, only Tri-Met does not offer such benefits. The only comparable organization in eastern Washington, Ben

Franklin Transit, offers pro rata holiday pay to part-time employees. In fact, all of the Employer's comparable organizations within the State of Washington offer some version of holiday benefits to part-time employees. The statewide industry standard appears to be that of offering some sort of holiday pay for part-time employees.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Union's death benefit proposal shall not become a part of the next agreement between the parties; the Union's pension plan participation proposal shall not become a part of the next agreement between the parties; and the Union's pro rata holiday pay proposal for part-time employees shall become a part of the parties' next agreement. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 30 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Union's death benefit proposal shall not become a part of the next agreement between the parties; the Union's pension plan participation proposal shall not become a part of the next agreement between the parties; and the Union's pro rata holiday pay proposal for part-time employees shall become a part of the parties' next agreement. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 4/16/01

XX. EXTRA BOARD OPERATORS

A. Introduction

The current agreement between the parties permits Extra Board Operators to refuse work after 12 hours of work or a spread of 14 hours within a day. Time and a half wages are paid to Extra Board Operators for work performed after 12 hours spread time. "Spread time" is the amount of time from an employee's first report time to the time when the employee leaves work for the day, without continuous work in between.

Extra Board Operators receive their position on the Extra Board either by bidding to the Extra Board through seniority or, more commonly, by being compelled to join the Extra Board because employees do not have sufficient seniority to bid a regular route. The maximum amount of work to which management may assign an Extra Board employee is 12 hours in a 14 hour period per day. Extra Board employees work a regular five-day week, although their days off vary. The hours that these employees may work can vary day-to-day. Employees find out what hours they are assigned to work by 3:00 P.M. the preceding day. The earliest possible time is 4:30 A.M. If an employee were assigned to start work at 4:30 A.M., he or she still would not know of the time until 3:00 P.M. the day before. For each report time, an Extra Board employee is guaranteed two hours of pay. Each

day an Extra Board employee is guaranteed eight hours of pay. All P.M. Extra Board Operators have a maximum work spread of 13 hours because of the timing of the P.M. runs. (*See* Tr. 373-380.)

B. Position of the Parties

1. The Union

The Union proposes that the maximum spread time for Extra Board Operators be reduced to 13 hours in a day. According to the Union, the issue is one of safety. Working employees for greater spread time increases their level of fatigue, and this can lead to safety risks as well as to a lower quality of customer service. The average spread time for comparable organizations is 12.38 hours or 12.59 hours, depending on the set of comparable organizations on which one relies. Only C-Tran has a larger spread time than Spokane Transit Authority, with a 15 hour maximum.

2. The Employer

The Employer argues that spread time is not explained so much by managerial prerogative as it is by the nature of the work. According to the Employer, "pieces of work" in the transportation industry do not fit into neat eight-hour packages. Often, splitting shifts is the most efficient way to schedule employees. The Employer contends that management does its best to keep spread time within 12 hours because of a requirement that overtime be paid for each half hour over 12 hours of spread time. The Union contends that its proposal is rooted in a concern for safety, but no evidence of a safety problem has been brought forth to the arbitrators. Moreover, the Employer believes that decreasing Extra Board maximum spread time would increase full-time and part-time overtime. Arguably, this result would create a safety issue for full-time and part-time operators. In fact, no other full-time or part-time operators with the Employer have any spread time restrictions, and the Union does not seek such restrictions for any other employees. According to the Employer, comparable organizations provide no definitive guidelines with regard to this issue.

C. What the Evidence Shows

It is accurate to conclude that the issue of spread time does not result from management's haphazard scheduling practices as much as from the nature of the work. This is an area in which there is a considerable need for cooperation between the parties in order to make the system as workable as possible. What the evidence failed to show is the existence of a significant problem with the current system. The Employer has a built-in incentive to minimize spread time because of its impact on overtime wages. Management also has a contractual obligation to maximize straight runs, and the Union has the authority to review management's decisions.

It is reasonable to conclude that granting this proposal would create more overtime for non-Extra Board employees. Exhibit 6.9.3 demonstrates the increased overtime that would result from such a change on a specific day. Although the day represented in the exhibit is not a typical day, the point is still instructive. Other days might not demonstrate as dramatic an impact on overtime, but increases would result nonetheless. It is also significant that full-time regular operators do not have spread time limits, and the Union has proposed none. The Union's proposal would have a significant impact on the parties, both in terms of scheduling as well as in terms of the amount of overtime needed to cover all pieces of work. It is

the sort of substantial change that is not a natural extension of where the parties found themselves at the point of impasse and is a change better accomplished in face-to-face negotiations.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Union's proposal with regard to the Extra Board work spread is denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: April 20, 2001

Terry Novak
Employer Designee

Date: _____

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrators conclude that the Union's proposal with regard to the Extra Board work spread is denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 5, 2001

John Leinen
Union Designee

Date: _____

Terry Novak
Employer Designee

Date: 4/16/01