



In the Matter of the Interest Arbitration

between Washington State Council of County and City
Employees, Council 2, AFSCME, AFL-CIO, Local 3939
("AFSCME" or "Union"),

and

Findings,
Discussion and
Award.

Spokane Transit Authority ("STA" of "Agency").

Case Numbers: PERC Case 25521-I-13-0625; Arbitrator's O74.

Representing AFSCME: James M. Trefry, Director of Public Safety, WSCCCE,
PO Box 750, Everett, WA 98206.

Representing the Employer: Bruce L. Schroeder and Summit Law Group, PLLC,
315 Fifth Avenue South, Suite 1000, Seattle, WA
98104-2682.

Arbitrator: Howell L. Lankford, P.O. Box 22331, Portland, OR
97269-0331.

Hearing held: In STA's offices in Spokane, Washington, on
December 11 & 12, 2013.

Witnesses for AFSCME: Dean Vercruyssen, Dennis Houlihan, Judy Cassell, and
Amy Weber.

Witness for STA: Steve Blaska, Denise Marchioro, Lynda Warren, and
Steve Doolittle.

Post-hearing argument received: From both parties by email on February 26, 2014.

Date of this award: March 24, 2014.

THIS IS AN INTEREST ARBITRATION, FOR ONLY THE PARATRANSIT SIDE OF STA'S OPERATION, UNDER THE authority of RCW 41.56.492 and WAC 391-55-200 et seq. STA's fixed-route employees are in a separate bargaining unit. PERC certified these issues at impasse: Article 2.3.1, Union Business, Article 11, Hours of Work (Actual versus guaranteed pay when requesting to be off on time); and Wages- Appendix A parts a) General wage increases, b) Wage rate for reservationists, and c) Retroactivity of all wage increases. The parties resolved their disagreement over retroactivity. They appointed me as the sole arbitrator, and they agree that all the preliminary steps leading to interest arbitration under the statute have been completed and that I have jurisdiction to address the remaining issues certified by PERC. The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross-examine witnesses, and to argue the case. A court reporter took down the testimony, and the advocates had the transcript for the preparation of their post-hearing briefs, which were received and considered. The parties agree that STA will become the custodian of the record with the issuance of this Award and will hold me harmless in that regard.

The primary dispute is over wage rates: AFSCME proposes to put the Paratransit Reservationists at the same rate as the fixed-route Customer Service Representatives effective July 1, 2012, and to then increase all rates by 3.5%, on July 1, 2012, 2013, and 2014, while STA would not change Reservationists rates except for STA's proposed 1% general increases on those dates.

FACTS

STA is an independent municipal corporation governed by a nine-member Board of Directors representing the various communities it serves. The service area covers 80% of Spokane County—about 405,000 people¹—making STA the second largest transit employer in the State, whether measured by total revenue or by service area population. On the fixed route side, STA operates 34 routes, seven days a week, with about 148 vehicles. The paratransit side of the agency operates about 70 vehicles to provide door-to-door service (and not just curb-to-curb service) for the disabled population on weekdays between 6:00 a.m. and 6:00 p.m.² It is not uncommon for some paratransit services to be partially contracted out to private sector employers; and STA contracts out some of its weekday peak hour work along with all the evening, weekend, and holiday work, to MV, a private sector employer which operates 38 vehicles provided by STA. (MV's drivers are currently represented by ATU.) That means that the drivers at issue in the case at hand work straight shifts or split shifts on weekdays only and have evenings and weekends off.

1. The number is OFM's estimate as of September 27, 2013.

2. Public transit agencies are required to provide similar service for disabled citizens, but the cost per trip of paratransit service is vastly greater than the cost of fixed route service. STA calculates its fixed route per-passenger-trip costs for 2012 and 2013 at \$3.49 and \$4.03 and its paratransit costs at \$24.68 and \$24.55 for those same periods. (The decrease in paratransit costs is probably attributable to STA's new program of providing vans and their maintenance to some medical facilities which have high paratransit usage.) Washington law limits the agency per-trip fare box charge to what it charges for fixed route service.

The parties' July 1, 2009 to June 31, 2012 collective bargaining agreement ("CBA") recognizes AFSCME as the exclusive representative of all employees of STA's Paratransit Division in the classifications "Data Clerk/Documentation, Dispatcher, Dispatch Specialist, Reservationist, Next Day Scheduler, Eligibility Specialist, and Van Operator." Of the 69 employees in the Paratransit bargaining unit, 57 are Van Operators. The fixed route Operators are in a considerably larger separate bargaining unit—totaling about 367—represented by ATU; and ATU also represents a small unit of supervisors.

GENERAL WAGE RATES

Comparables. STA offers an orderly procedure for selecting the appropriate comparables. The process begins with determining Washington and Oregon transit agencies with service populations within $\pm 50\%$ of STA's own. That produces the list, Pierce County Transit, C-Tran (in Clark County, Washington), Lane Transit (around Eugene, Oregon), Ben Franklin (Washington's Tri-Cities area), and Kitsap Transit. This first criterion eliminates Community Transit, which has too large a service area population (about 174% of STA) and Intercity Transit, which has too small a service area population (about 41% of STA).³ STA then considers four secondary factors: Unlinked Trips, Vehicles Operated in Maximum Service, Vehicle Revenue Miles, and Vehicle Revenue Hours; and STA proposes to exclude other providers who fall outside the $\pm 50\%$ range in more than two of those respects. Pierce, C-Tran, and Lane are perfect matches in all four secondary respects; but Ben Franklin has too few unlinked trips (27% of STA), too few Vehicle Revenue Miles (39% of STA), and too few Vehicle Revenue Hours (35% of STA). STA proposes to include Ben Franklin nonetheless, because it is the most nearly similar transit agency on the East side of the Cascades, and by far the nearest to STA. Kitsap Transit falls short in Unlinked Trips (26%), Revenue Vehicle Miles (37%) and Vehicle Revenue Hours (48%).

AFSCME agrees to the comparability of Pierce Transit, C-Tran, and Ben Franklin but would not compare to Lane Transit (or to Community Transit, which STA does not propose), which contracts out the entire paratransit operation. On the other hand, AFSCME would add Kitsap Transit, pointing out that Kitsap meets STA's own selection criteria if demand/response vehicles are included, has almost the same number of vehicles (113 compared to STA's 102) and is 48.5% of STA in Vehicle Revenue Hours and, according to AFSCME's numbers, 49.1% of STA in Revenue vehicle miles.⁴

Most importantly, as a group, these transit agencies subcontract all or some of their paratransit work;⁵ and STA proposes to a comparability analysis that reflects both the in-house and

3. This case demonstrates changes in comparables based on changes in population and in service areas: Both differences in growth rates and forced service reductions have shifted this list of comparables in recent years.

4. AFSCME's selection process was, in the late Arbitrator Carlton Snow's wonderful expression in STA's 2001 interest dispute with ATU, "not formulaic."

5. Pierce County Transit contracts out about 80%, Ben Franklin Transit contracts out about 23%, Lane County Transit contracts out all of its paratransit work, and C-Tran does all its

the sub-contracted hourly base wages paid by these agencies *and* by their paratransit subcontractors, including MV, STA's own paratransit subcontractor. Averaged on that basis—i.e. counting both the proposed comparable public transit agencies and any private contractor doing part or all of their paratransit work—STA concludes that its proposed 1% per year increase would leave it about 5.1% above the average 2012 top step hourly base wage and about 4.8% above that average for 2013. (The discussion of that proposal begins in page 8, below.)

*Fiscal responsibility.*⁶ STA calculates the combined costs of the Union's proposals here at almost \$761,000 over the life of the contract at issue. Although STA does not argue a technical "inability to pay" the increases proposed by AFSCME, the agency paints a dismal fiscal picture. There is no serious dispute that public transit providers in Washington have never recovered from the 1999 repeal of the motor vehicle excise tax. That tax base had allowed the State to match the local sales tax income base of such agencies; and STA, in particular, lost about 40% of its income base with the repeal. STA fought its way part way back from that impact with a 3% sales tax rate increase which was initially voter approved with a sunset provision in 2004 and was then approved permanently in 2008, bringing the current rate to 6%.⁷ But 2008 also brought the recession which hammered the sales tax revenues which STA depends on. Taking 2007 as the pre-recession baseline, STA lost almost \$29 million—8.8%—over the next six years ending with 2013.⁸ The projected sales tax revenue for 2013 will still fall 4.5% short of the 2007 level, and sales tax accounts for over two-thirds of total revenues. Over that same six year period that sales tax revenues fell from the 2007 level by 4.8%, the Agency's labor costs climbed by over 21% despite a 10% fixed route service reduction (3% in 2010 and another 7% in 2011), which accompanied the loss of 22 full-time and five part-time operator positions—all by attrition—on the fixed-route side of the house. STA once anticipated a third round of service reductions in 2012 but avoided the necessity thanks to one-time grants on the capital side and a sales tax income increase which exceeded the conservative budget estimate. There were no staffing reductions on the paratransit side during that period; and only AFSCME, of all STA's employee unions, continued to receive previously bargained wage increases in 2010 and 2011.

paratransit work in-house.

6. The usual analytic shorthand, "Ability to Pay," fails to capture the heart of the argument here. As I wrote in *Clark County Deputy Sheriffs' Guild* (PERC #23615-I-10-0559), 2012, "Financial responsibility' might be a better term for this traditional factor. The basic economic argument offered by public sector employers in interest arbitration cases amounts to a claim that the union's proposed allocation of the employer's financial resources would be irresponsible, i.e., that funding the union's proposal would deprive the employer of its ability to fund its other statutory responsibilities at a responsible level or would leave the employer in a fiscally irresponsible condition either immediately or in the future."

7. Voters rejected a rate increase, in 2002, when STA had substantial cash reserves on hand.

8. A small part of that loss was balanced by one-time grants for capital projects under the American Recovery Act.

STA managed to keep revenue slightly above operating costs through 2011; but operating costs surged ahead in 2012. With no structural change in its underlying finances, and based on 1.5% per year increases in sales tax revenue and on fare increases in 2015 and 2018, operating expenses will permanently outstrip operating revenues beginning in 2018. Almost two-thirds of operating expenses here are wage and benefit costs.⁹ The paratransit side of the house consumes less than 19% of those costs, but it serves only about 5% of STA's total ridership.

The picture on the capital cost side is no brighter. STA already operates its fixed-route buses for 15 years, rather than for the FTA's recommended 12 (and has found no significant maintenance cost increase during those additional years). By 2018, the costs of scheduled coach and van replacement alone totals almost \$10 million more than STA's capital funding for that year.

The Board has chosen to budget for a cash reserve level of 15% of operating expenses. Taken together, the revenue, capital expense and operating expense projections of STA show that the agency will dip below that reserve level in the third quarter of 2018 and will fall below zero about a year later, although those results may be postponed by a third service reduction or by voter approval of the sales tax rate from the current 6% up to the 9% legal maximum.

Cost of Living. Using the US All Cities (U) data, the January CPI increased by 2.6% in 2010, 1.6% in 2011, 2.9% in 2012, and 1.5% in 2013.

Recruitment and Retention. The record shows no problems of recruitment and retention for this bargaining unit. STA points out that the lowest number of applicants in the last four years was 173 in 2013 for four job openings. Although, as AFSCME points out, only about 10% of those raw applicants turn out to be employable, that still does not show a substantial recruitment problem; and the voluntary departure rate—other than retirement—has been just 1.5 employees per year.

Eight to ten operators have moved from STA's contractor into STA paratransit positions over the years, possibly suggesting that MV employees are content with evening, weekend and holiday work. On the other hand, STA has declined to hire some of the applicants from its subcontractor from time to time; and MV has always had a substantial turnover rate of around 40% per year.

RESERVATIONISTS' RATES

Reservationists schedule trips for disabled paratransit customers. STA does not dispute the Union's observation that the work is not easy: it involves some negotiation with the customers and some policing of eligibility. Moreover, Paratransit customers are not always well equipped to express their transportation needs, and the reservations must fill that gap. But STA argues that the work involves no cash-handling, no *formal* customer complaint intake, and no face to face counter work, and Customer Service Representatives—whose pay rate the Union proposes to duplicate for

9. TSA's fuel costs and employer PERS contribution rates are significant parts of those costs and have increased substantially since 2012; and PERS costs face an actuarially recommended additional steep rate increase in the relatively near future.

Reservationists—also process pass-by-mail applications and web sales. On the other hand, Customer Service Representatives determine routes by simple input into a program, while Reservationists must figure routes by hand and must take into account the physical conditions and limitations of individual riders (as shown in the riders' customer records).

REIMBURSEMENT FOR UNION BUSINESS TIME

The CBA calls for release time for union representatives but requires that the Union reimburse the employer monthly for the full amount of wages and for 50% of the cost of fringe benefits. Fringe benefits actually cost about 68% of wages; and STA wants full reimbursement and proposed this change to Article 2.3.1. Union Business:

~~*** the Union will reimburse the EMPLOYER monthly for the full amount of wages and for fringe benefits at a rate of fifty one hundred percent (50/100%) of the regular straight time wage rate for all normal of the cost of fringe benefits at a rate established annually, for all hours of union time work hours of authorized leave of absence time paid by the EMPLOYER. ***~~

The language STA proposes comes from its two contracts with ATU. But AFSCME's notes that ATU's President and Vice President service the employees of transport agencies other than STA and that the fixed route unit's authorized union time amounts to a great deal more than the paratransit unit's.

OFF-ON-TIME / HOURS OF WORK / GUARANTEE

Paratransit drivers do not have fixed routes but are dispatched as dictated by the calls of the day (and some longer term, "standing" orders). On average, paratransit drivers work about 20 minutes per day of overtime. That makes it difficult for a driver to schedule end of shift medical and other appointments. In order to address that problem, STA has a policy of a occasionally granting an employee's request ending the day on time; but it is often impossible for such an employee to work right up to his or her scheduled end-of-shift, and if the schedulers must end the employee's day a bit early in order to accommodate his or her requested quitting time, that employee is currently paid the daily minimum. STA proposes to address that situation by the addition of this language to Article 11 - Hours of Work and Overtime:

11.1.3 In the event of an employee voluntarily requesting to be off on time, the employee shall be paid for actual time worked that day with no guaranteed paid time.

Off-on-time requests present an additional complication for the dispatchers; and a joint committee addressed the increasing frequency of such requests in September of 2012. After that memo, the number of such requests declined from a high of 401 in 2011 to 293 in 2012 and down to about 174 in 2013 (extrapolating from the October 16 total in the record).

DISCUSSION

Statutory factors. The statutory directive for resolving interest disputes involving Washington public transit employees is very broad. RCW 41.56.492 (2) requires me to “take into consideration the following factors:”

- (a) The constitutional and statutory authority of the employer.
- (b) Stipulations of the parties.
- (c) Compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case;¹⁰ and
- (d) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

Although I have considered all those factors, and all the evidence and arguments presented in the case at hand, the most compelling factors are comparability and fiscal responsibility.

Wages. The parties agree about the comparability of the agency paratransit operations of Pierce, Ben Franklin and C-Tran. The only disputes arise over Kitsap and Lane.¹¹ The parties used Kitsap in the past. Although the Kitsap County area has not grown at the rate of Spokane County, the Kitsap numbers are close enough, particularly considering that Kitsap meets STA’s standards if we include paratransit vehicles as part of the basis of comparison in this paratransit case. And finally, the inclusion of Kitsap here does not substantially inflate the resulting comparison; in fact, Kitsap comes in at below the average both at the base and at top step.

10. Interest arbitrators have traditionally left considerable discretion to the parties in presenting “compensation package comparisons.” Here, as in many other transit cases, beyond very brief mentions of medical insurance benefits the parties have taken contractual pay schedules to adequately reflect compensation packages. In cases where one party offers careful and more complete data, I will generally adopt that presentation; but when both parties treat the bare contractual rate schedules as reasonably reflective of the compensation packages, those presentations satisfy the requirement of the statute.

11. STA has gone to interest arbitration with ATU over the pay for fixed-route operators twice. The first time, in 2001, before arbitration Carlton Snow (NAA) (PERC #15129-I-00-337), STA and ATU agreed on the comparability of Pierce, Community Transit, and C-Tran; but those parties disputed a veritable witches’ brew of other agencies (from Texas, Wisconsin, Indiana, etc.), and the resulting Award did not resolve the issue of comparability. In 2005-2006 (PERC #19013-1-04-0443) the parties agreed on the comparability of Ben Franklin, C-Tran, and Kitsap; and arbitrator Herman Torosian agreed with STA’s proposal to add Lane. He disagreed, however, with ATU’s proposals to add King County Metro, Tri-Met (in the Portland metropolitan area), Pierce, and Community Transit. Only the fixed-route operators were at issue in that case, so there was no occasion for a dispute over inclusion of subcontractors’ employees’ rates of pay.

The comparability of Lane Transit—which employs no paratransit drivers directly but contracts out that entire function—brings us squarely to the main dispute in this case.¹² STA proposes to compare its paratransit rates to the rates paid by its comparables *and* to the rates paid by the comparables’ various subcontractors. That proposal is unique. I examined every public transit interest award on PERC’s website; and no interest arbitrator has ever added in the private sector subcontractors for determination of comparable compensation. Perhaps more significantly, no public transit agency has ever *proposed* to average in the rates paid by subcontractors.¹³

Averaging in the subcontractor rates would make a huge difference, of course. Table 1 sets out the base and top rates for the four comparables and for STA. On that basis, STA’s current rate is well over 15% behind. (Drivers are evenly distributed in seniority, with 15 drivers of five years or less, 11 of twenty or more, and 31 of between six and nineteen years.) And even this is something of a “rosy scenario,” because C-Tran and Ben Franklin were in successor contract negotiations at the time of hearing, the Pierce contract

Agency / Employer (2012 schedule rates)	Base	Top
Pierce in-house (20%)	\$21.25	\$27.00
Ben Franklin in-house (75%)	\$13.95	\$23.94
C-Tran in-house (100%)	\$15.09	\$21.27
Kitsap	\$14.37	\$22.41*
AVERAGE (inside only)	\$16.17	\$23.66
Spokane	\$15.21	\$19.01
% STA behind average	6.28%	24.43%
Mid-way lag	15.35%	

Table 1. *Note that these are 12/1/13 Kitsap numbers.:

12. Arbitrator Torsorian found Lane Transit to be a comparable in his 2005-2006 case involving STA’s fixed-route Operators, despite Lane County’s remoteness and Oregon location. STA points out that I, too, have sometimes found Oregon comparables appropriate in Washington transit cases; but proximity counts, and Eugene is a long way from Spokane.

13. In my 2005 *King County/TEA* case (17685-I-03-409), the *union* proposed to consider private sector contractors. My recent, 2013 award in *Intercity Transit*, PERC #25144-I-0609, addressed wage rates for both fixed route and paratransit operators and used Lane Transit as a comparable; but Intercity Transit did not argue that Lane Transit’s paratransit subcontractors’ wage rates should be averaged in as part of the comparability analysis. Arbitrator Timothy Williams (NAA) in his 2012 *C-Tran* Award (PERC #24063-I-11-0570) found the appropriate comparables to be “Whatcom, Kitsap, Community Transit, Intercity and Ben-Franklin.” The Award makes no mention of a proposal to consider the rates of the subcontractors doing various percentages of the paratransit work of those comparables. In his 2010 *Kitsap Transit* Award (PERC #. 22135-I-08-522) Arbitrator Alan Krebs (NAA) used Community Transit as a comparable for fixed route Operators, but for the paratransit drivers he did not, noting (FN9) that “Community Transit contracts out its paratransit services.” There is no sign of a proposal to average in the subcontractor rates. Finally, it is not clear whether paratransit driver rates were part of the dispute in arbitrator Gary Axon’s (NAA) 1994 *Jefferson Transit* Award (PERC #11148-I-94-239), but there is no sign of a proposal to average over the contractors’ pay rates.

was in its final year, and Kitsap rates have risen to a \$14.87 base and \$23.19 top between the hearing and the date of this Award.

Table 2 sets out the top rates when the various subcontractors are included, and STA shoots up from almost 25% behind at the top to just over 1% *ahead* at the top.

The most obvious problem with STA's proposal to average over the subcontractors too is that the record does not even suggest that the subcontractors meet the secondary test that STA sets up for comparability: The contractors cover the same service area as the agencies themselves, so they meet STA's primary criterion, but there is no reason to believe—and very good reason to doubt—that the subcontractors meet STA's secondary criteria of $\pm 50\%$ of its own Vehicles Operated in Maximum Service, Vehicle Revenue Miles or Vehicle Revenue Hours. (And it is not at all clear how one would apply the remaining secondary criterion, "Unlinked Trips," to paratransit-only operators.) The subcontractors, considered as entities independent of the public agencies that contract with them, are not reasonable comparables here.¹⁴

That means that STA is somewhere around 15+% behind its comparables on average. But STA demonstrated that its current fiscal situation will not allow it to make up all, or even most of that difference over the course of the three-year contract at issue here.¹⁵ STA is currently *able* to pay the three 3.5% increases proposed by AFSCME; but as arbitrator Timothy Williams (NAA) said in his 2012 *C-Tran* award (PERC #24063-I-11-0570), "operating reserves *created by cutting program, personnel and other important budget items* should only be used to fund wage increases if there is clear evidence that the wages are deficient (wages not comparable, high employee turnover, etc.)." Here the Agency's operating reserves *have* been created by cutting service levels and by real, "body-out-the-door" layoffs on the fixed-route side of the house.

Adding the Subcontractors		
Pierce contracted (80%)	The record does not show base or Kitsap rates	16.19
Lane contracted (100%)		15.25
STA contracted (48%) ^{Note}		13.27
Ben Franklin contracted (23%)		11.00
AVERAGE, inside & out		18.79
STA (current)		19.01
% STA <i>ahead</i> of combined average		1.16%

Table 2

14. The difference in turnover rate between STA and MV may also stand in the way of a comparability argument. Turnover is not usually used as a selection criterion for comparables; but such a substantial difference may suggest that the work—particularly in terms of work schedule and full-time/part-time characteristics—is not truly comparable. (The record does not show the respective turnover rates for other public agencies and for their subcontractors.)

15. I agree with STA that the Union's proposed analysis of STA's financial condition was fatally flawed because that analysis failed to reflect the capital costs side of the ledger and because it failed to address the Agency's primary argument in this part of the case: the claim that it cannot responsibly increase its *future* costs in the face of reasonably projected income which is to be so soon outstripped by reasonably projected operating costs. There are several points at which such a claim might possibly be attacked by a union in interest arbitration, but it really cannot be simply ignored.

There is no real room for dispute in this record that STA is likely to see operating costs and unavoidable capital costs inescapably outstrip actual income levels in the fairly near future, and AFSCME's suggestion (Post-hearing Brief at 10) that there "is no evidence in the record of any substantial fiscal constraints" is insupportable. Of course, STA does not face that financial future alone: Washington has never really dealt long-term with the devastating effects on public transit of the elimination of the motor vehicle excise tax. (STA's Post-hearing Brief details impacts from around the State at 18.) Here, for example, sales tax revenues have *decreased* by almost 5% since 2007 while labor costs have *increased* by over 21%. It would not be reasonable or prudent for a public transit agency to fail to stave off as long as it can the day when rising costs forever outstrip actual revenue under the current system of public transport finance; but the language of the interest arbitration statute will not allow transit agency employees to be sacrificed as pawns in that struggle. 15+% behind is a lot of behind. When viewed in light of the comparable agencies' current contract posture—two in negotiations and one in the last year of its contract—15+% behind is unacceptable under a statute that requires consideration of comparability; and STA's proposed 1% increases are all too likely to be more than wiped out by intervening gains by the comparables over the life of the contract at issue here.

STA argues that paratransit employee rates have outstripped increases in the cost of living. Paratransit operators did make modest inflation-adjusted gains from 2004 to 2011, ending about \$0.48 per hour ahead in real, inflation-adjusted terms over that seven year period. But that gain eroded steadily since 2011, dropping to \$0.13 overall in 2012 and—on the basis of STA's 1% proposals here—to a penny in 2013 and three cents in 2014.¹⁶ On the other hand, STA points out that the compensation lag here is somewhat ameliorate by Spokane's cost of living.¹⁷

Similarly, STA points out that its in-house paratransit employees benefit substantially by STA's pattern of contracting out the evening, weekend, and holiday work. Virtually all the paratransit operators here work either straight shifts or short splits, and even the most junior driver has weekends off; and in most agencies such a work pattern would require something like ten years' seniority. Still, 15+% behind is a lot of behind.

16. If benefit costs are included, the year of maximum gain over the CPI came in 2010, when these employees had gained \$0.83 in inflation-adjusted dollars since 2004. And with STA's proposed 1% increases there would still be gains of \$1.00 in 2013 and of \$1.02 in 2014. Comparing with the fixed route Operators, STA reevaluated the market in 2006 and provided a substantial 7.9% increase to the paratransit drivers, but the total percentage increases from 2007 through 2013 (with STA's proposed increases here) would be virtually identical for fixed rate and paratransit operators, totaling 12.5% and 12.4% respectively over that seven year period. AFSCME points out (Post-hearing Brief at 9) that the ATU Supervisors have received a total of 54.7% and unrepresented employees have received a total of over 51% over the last 20 years. The CBA for the fixed-route Operators runs through March 31, 2014.

17. STA offers data showing that, compared to Spokane, the cost of living is higher in the areas of every one of STA's proposed comparables, a difference particularly driven by Spokane's modest housing prices. On the other hand, median per capita income is less in Lane and Franklin Counties but more than Spokane in Pierce, Clark, and Benton. Spokane County's management did not agree to any negotiated raises in 2013.

In short, STA's reasonably projected financial future simply will not allow it to responsibly bring its paratransit employees up to the compensation level of the comparables; but the lag in comparability simply will not allow STA to wait three contract years before beginning to address that shortfall. Considering where the comparables are in their contract cycles, and the possible magnitude of the lag in STA paratransit pay rates by the end of the contract at issue here, there is no escaping the need to cover some part of the compensation lag in the current contract period. While I quite agree with arbitrator Williams' observation in *C-Tran* that interest arbitration "is by its nature a conservative process that only reluctantly expands on existing benefits and provisions," my authority here comes from a statute that requires me to "be mindful of the legislative purpose enumerated in RCW 41.56.430," i.e., "...that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes." It would be inconsistent with that legislative policy to allow the rate lag here to continue—and probably to grow—through the period of the contract at issue.

In an attempt to allow STA to plan responsibly and to catch up on its deferred capital costs,¹⁸ I award AFSCME a 2% increase in each of the first two years of this contract and 3.5% for the final year. That makes the total increase not quite half of the paratransit employees' current lag behind the employees of the comparable employers: thus STA has some fiscal breathing room, and still will not come to the end of this contract shockingly far out of step with its comparables.

Reservationists. The full position descriptions for Reservationists and Customer Service Representatives are in the record, and I have studied them in detail. I do a lot of classification dispute work, and frankly, I wish I had a fuller record on this issue. I am disinclined to tinker with a presumably coherent compensation scheme on the basis of a record as slight as this. But STA points to cash-handling, receipt of formal complaints, and face-to-face customer contact as justifications for a rate differential; and AFSCME points to the more difficult customer base that Reservationists must serve—including the necessity of accommodating the physical needs and limitations of that customer base—to the Reservationists' need to schedule manually rather than through a computerized database, and to the greater level of Agency concern and oversight of Reservationists as shown by far more frequent quality assurance oversight. Cash-handling is not necessarily a highly compensated skill component; but customer contact discretion and the ability to deal with a potentially problematic customer population *is* frequently highly compensated. And there is no dispute that Reservationists very commonly deal with *informal* complaints and head those issues off before they become formal. In short, the limited record before me gives me scant reason to leave Reservationists paid less than Customer Service Representatives, and I must award the parity proposed by AFSCME.

Union Business Time Reimbursement Rate. The record does not show that the Union has used this provision to any great extent in the past. In fact, a Local past President testified that her only use of union time had been to represent employees in disciplinary meetings, and that that time had been reimbursed. AFSCME points out (Post-hearing Brief at 13) that its Business

18. Even on its extended replacement schedule, STA will need \$8.3 million for coach replacement and \$1.7 million for van replacement in 2018 alone.

Representatives are selected by and employees of Council 2, the State organization, while ATU's business representatives are elected by local union membership and continue to be employees of their respective transit districts. As far as the record shows, this has not been a substantial cost item for STA, and STA has an institutional interest in having Union representatives available promptly from time to time. I cannot award STA's proposed reimbursement rate increase.

Off-On-Time / Hours of Work / Guarantee. The parties have agreed, through a labor/management committee, that operators can be expected to work an average of 20 minutes per day of overtime. That overtime apparently reflects slippage in the scheduling process: there is an obvious limit to the scheduling precision to be expected of the population served by a paratransit operation. Doctors run late; moving takes longer than anticipated; traffic is uncooperative. When STA accommodates an operator's request to be off on time, that requires having that driver back in the barn early enough that the usual scheduling slippage cannot trip that driver up. I agree with STA that it should not have to eat the productive time lost when that requires bringing the driver back before the scheduled end of the shift. But it seems to me that the average scheduling slippage should not change in an off-on-time situation, and I therefore award the following language, which limits the potential reduction in guaranteed time in an off-on-time situation:

11.1.3 If an employee voluntarily requests to be off on time, the employee's guaranteed paid time for that day shall be reduced by 20 minutes.

AWARD

1. Reservationists's pay rates shall be adjusted to match the then-current Customer Service Representative pay rates effective July 1, 2012; and then,

2. STA shall increase bargaining unit pay rates across-the-board by 2.0% effective July 1, 2012, and by an additional 2.0% effective July 1, 2013, and by an additional 3.5% effective July 1, 2014.

3. There shall be no change in Article 2.3.1, Union Business.

4. Article 11, Hours of Work, shall be amended to add this language as 11.1.3: "If an employee voluntarily requests to be off on time, the employee's guaranteed paid time for that day shall be reduced by 20 minutes."

Respectfully submitted,



Howell L. Lankford
Arbitrator

Boudia, Majel (PERC)

From: Howell Lankford [hll30@msn.com]
Sent: Monday, March 24, 2014 1:26 PM
To: James Trefry; Bruce Schroeder
Cc: Boudia, Majel (PERC)
Subject: STA Interest Arb. PERC Case 25521-I-13-0625; Arbitrator's O74.
Attachments: O74.pdf; O74\$2.pdf; W9.pdf

Here's the award, gentlemen, and the final invoice and another W-9. Thanks very much for the opportunity. It was a pleasure.

HL

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