

THE MATTER OF THE INTEREST)
)
ARBITRATION BETWEEN)
)
KING COUNTY METRO)
)
"METRO" or "THE EMPLOYER")
)
AND)
)
AMALGATED TRANSIT UNION 587)
)
"ATU 587" OR "THE UNION")

HEARING:
March 16, 18 and 19, 2015
Seattle, Washington

HEARING CLOSED:
April 6, 2015

NEUTRAL ARBITRATOR:
Timothy D.W. Williams
2700 Fourth Ave., Suite 305
Seattle, WA 98121

ATU 587 PARTISAN ARBITRATOR:
Bruce Tiebout

KING COUNTY ARBITRATOR:
Cynthia McNabb

REPRESENTING THE EMPLOYER:
Otto Klein, Attorney
David Levin, King County Labor Relations
Laird Cusak, King County Metro Labor Relations
Aaron Bouschor, King County Metro employee
Matt McCoy, Labor Relations Analyst
Anrea Germinasi, Labor Relations Analyst
Ralph Keyport, King County Metro, Operations
Cindy Sattler, King County Metro Vehicle Maintenance HR

REPRESENTING THE UNION:

Cliff Freed, Attorney
Beth Bloom, Attorney
Paul Bachtel, President Local 587
Tom Roth, President The Labor Bureau
Paul Teftt, Research Committee Local 587
Neal Safrin, Vice-President Local 587
Barbara Pastores, Research Committee Local 587
Kermit Gipson, Executive Board Local 587

APPEARING AS WITNESSES FOR THE EMPLOYER:

Kevin Desmond, General Manager King County Metro
Ralph Keyport, King County Metro, Operations
Randy Winders, King County Metro, Vehicle Maintenance
Manager
Deborah Stenoien, King County Metro, Vehicle Maintenance
Superintendent
Jerry Rutledge, King County Metro, Facilities Maintenance
Manager
David Levin, King County Metro, Labor Relations
Laird Cusak, King County Metro Labor Relations

APPEARING AS WITNESSES FOR THE Union

Cory Rigtrup, Mechanic and Executive Board ATU 587
Barbara Pastores, Research Committee Local 587
Tom Roth, President The Labor Bureau
Brian Vujovich, Metro Supervisor
Clint DeVoss, Vice-President Maintenance

EXHIBITS

Employer

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2. Transit Interest Arbitration Statutes
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1. **Issue 1: Supplemental Worker's Compensation (Article 12.9 and R12.7)** -withdrawn
2. **Issue 2: Conversion of AC Time (Article 12.13 and R 12.11)**
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 - 3.4 Analysis of Time Cancelled
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 - 3.6 Part-time to Full-time Recruitment List
 - 3.7 Part-time Operators: Bargaining History
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 - 5.2 Cost of Union Vacation Proposals
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 - 5.4 Vehicle Maintenance Policies and Procedures (exerpts)
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- 6. **Issue 6: Wages (Article 14, 14.1, 14.1B, 14.2, R14.2, Exhibit A and RA)** - The Parties have submitted identical proposals on this issue
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- 7.16 Bureau of Labor Statistics Changing Compensation Costs in Seattle Metro
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BACKGROUND

King County Metro (The County) and Amalgamated Transit Union 587 (Union) have a collective bargaining relationship. The 2010 - 2013 collective bargaining agreement (CBA) expired on October 31, 2013. They are in the process of completing the negotiations for a successor agreement. Negotiations have been unsuccessful at resolving all issues.

Under the State of Washington public sector collective bargaining statutes, the instant bargaining unit has access to interest arbitration in order to resolve a continuing dispute over the terms of a collective bargaining agreement. The Parties can proceed to arbitration on issues certified by the Public Employment Relations Commission (PERC). By letter dated June 12, 2014, PERC certified the following issues for arbitration:

| | |
|--|---|
| Article 12.9 and R 12.7 | End supplemental works compensation benefits in excess of those required by State law. |
| Article 12.13 and R12.11 | Require mutual agreement between Metro and employee for conversion of overtime into compensatory time ("AC Time") |
| Article 15.2 C&D Article 16.3 A Article 164 B&C | Increase work available to Part-Time Transit Operators |
| Article 17.10.G | Remove craft line restrictions within Vehicle Maintenance |
| Article 9.1.G | Vacation accrual rates. |
| Article 9.1 | Employees may use vacation as accrued. |
| Article 14.1.B | Shorten wage progression for Part-Time Operators. |
| Article 15.2.D | Limit number of Part-Time Operators |
| Article 14.new section Article 14, new section Article 14.1 and R 14.1 | Wage increase. Cost of living. Rate of Pay - three years wage freeze. |
| Article 14.2 and R 14.2 | Rates of Pay - if a wage increase is granted that it be granted as a fixed rate as opposed to a formulaic COLA. |
| Exhibit A and RS | Rates of Pay - no retroactivity. |

In accordance with WAC 391-55-205, each Party had the right to name one partisan Arbitrator to serve as a member of an arbitration panel. Cynthia McNabb was selected to serve as King County Partisan Arbitrator and Bruce Tiebout was selected to serve as ATU 587 Partisan Arbitrator. Arbitrator Timothy

Williams was selected as the neutral chairperson. For the purposes of this document, the terms "neutral chairperson" and "interest arbitrator" or "arbitrator" shall be interchangeable. A hearing was held on March 17, 18 and 19, 2015 in Seattle, Washington. At the hearing, both Parties had full opportunity to make opening statements, examine and cross-examine sworn witnesses, present documentary evidence, and make arguments in support of their positions.

At hearing the Parties informed the Arbitrator that only four of the issues were still in dispute and the hearing proceeded with both Parties presenting evidence in support of its position on each issue. They include:

ISSUE 1: Vacation Usage

ISSUE 2: Vacation Accrual

ISSUE 3: Part Time Operator Utilization

ISSUE 4: Craft Lines

RCW41.56.450 requires that a recording of the proceedings shall be taken. For this requirement an official transcript of the proceedings was made and a copy provided to the Arbitrator. At the request of the Parties, oral closing arguments were held via a conference call on April 6, 2015. The Arbitrator had an audio recording made of those arguments and a copy provided to both Parties.

INTEREST ARBITRATION OVERVIEW

Interest arbitration is a process commonly used in the public sector for bargaining units that provide critical public services and whose work is deemed essential for public safety. Police, fire and prison guards usually fall into this category and interest arbitration is granted by statute in exchange for a prohibition against a work stoppage (strike). The State of Washington also extends interest arbitration to public transportation employees. RCW 41.56.492 provides in pertinent part that:

In addition to the classes of employees listed in *RCW 41.56.030(7) the provisions of RCW 41.56.430 through 41.56.452, 41.56.470, 41.56.480, and 41.56.490 shall also be applicable to the employees of a public passenger transportation system of a metropolitan municipal corporation, county transportation authority, public transportation benefit area, or City public passenger transportation system, . . .

The statutes that provide for interest arbitration inevitably include a set of criteria that the Arbitration Panel must use in fashioning his or her decision. The State of Washington follows this model and in RCW 41.56.492(2) sets forth the following criteria:

In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decisions [decision], shall 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 determine by the arbitration panel to be pertinent in the case; 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.

The Arbitration Panel's opinion and awards are submitted, having given careful consideration to the above criteria, on an issue-by-issue basis. This interest award is based on a thoughtful analysis of the evidence and argument presented during the hearing, as well as the closing oral arguments provided subsequent to the hearing.

Following the close of the hearing, the Parties jointly approached the Panel with a concern over receiving a prompt decision. Noting that they had been able to resolve all of the major issues that had been certified for arbitration leaving four of a less complex nature, the Parties sought permission to provide closing arguments in oral form rather than providing written briefs. Additionally the Parties requested that the Panel provide its award in an expedited fashion. The Panel concurred with both requests, took oral closing arguments and is promptly providing this award written in an expedited manner. While expedited, all four issues were given careful consideration by the Panel members who ultimately reached a

unanimous point of view on each of the four issues. This document contains the Panel's final award and should provide closure to the Parties efforts to implement a new labor agreement.

POSITIONS, ANALYSIS AND AWARD

Prior to the start of the hearing, the Parties notified the Panel that progress had been made in resolving some of the issues certified by PERC for arbitration. The parties are required by WAC 391-55-220 to submit their final position on each of the certified issues at least fourteen days prior to the arbitration. In many circumstances, the parties adjust their positions at this point to more accurately reflect the realities of their comparables and other criteria established by RCW 41.56.492 (2) (a-d), and these parties did so. Ultimately, the parties submitted identical wage proposals for Article 14 and R14 to the arbitration panel in their respective submissions to the Arbitration Panel.

The Panel understands that the County submission on wages was an increase over its previous wage proposal, apparently based on changed circumstances. In addition, the Union made an adjustment in its wage submission to the panel. Since the respective proposals were the same, the panel adopts the COLA/COLA/COLA proposal submitted by both parties.

By the start of the hearing the Parties have both proposed current contract language on the certified topics of Accumulated Comp Time (Article 12.13 and R12.11), Workers Comp Supplemental (Article 12.9 and R12.7), and the allowable percentage of Part-Time Transit Operators (Art. 15.2.D). The Arbitration Panel therefore adopts current contract language on these certified issues.

Except as otherwise awarded herein, and except for those tentative agreements reached in bargaining, all other sections of the new collective bargaining agreement shall retain current contract language.

**ISSUE 1:
Vacation Usage**

Position of the Parties: Current contract language provides that vacation hours earned in one year are all made available to be used at the beginning of the subsequent year. The Union proposes to change the system so that vacation hours can be used as earned. King County argues to retain the existing language.

Award and Analysis: The Panel awards the Union proposal to eliminate what the parties commonly refer to as the "bucket system" of vacation accrual. Under the bucket system, accrued vacation time is held in a separate balance over the course of a year, known as the "bucket" by the parties. The bucket is "dumped" at the start of the next year and at that point can be used by the employee. The Union proposed what it has referred to as an "earn-it-and-burn-it" system, whereby vacation accrues to the employee each paycheck and can be available for use immediately; within the restrictions that currently exist on vacation usage.

Recognizing that other King County employees are on the earn-it-and-burn-it-system, the Arbitration Panel adopts the Union proposal, with modifications as described below. The panel directs that the vacation "bucket system" cease at the end of the 2015 payroll year, and "earn-it-and-burn-it" shall be effective at the start of the 2016 payroll year. Thereafter, employees shall accrue vacation on each paycheck and be able to use that vacation, within the limits and restrictions on vacation use that are in place. New employees must wait six months before they can use any of their accrued vacation.

During the hearing, King County raised several concerns and questions as to how the new system could be implemented. The Panel understands that certain changes to contract language will need to be made in order to implement the Panel's decision. The parties themselves are in the best position to make these changes. We therefore order the parties to work together to amend the language in Article 9 of the collective bargaining agreement, and elsewhere if needed, to end the bucket system and to move to a system of immediate accrual. The Arbitration Panel will reserve jurisdiction for 30 days from the issuance of this decision and award in case the parties are unable to accomplish this task. Jurisdiction is reserved for the sole purpose of assisting the Parties to make the modifications necessary to implement the award, if needed.

**ISSUE 2:
Vacation Accrual**

Position of the Parties: The Union seeks to enhance the vacation accrual rate for more senior drivers. King County argues to retain the current accrual rate.

Award and Analysis: the Panel does not adopt the Union proposal to increase the vacation accrual rates for employees at 15 years of completed service through 24 years of completed service. That proposal is not supported by the comparable external jurisdictions submitted by the Parties. The existing accrual rates will remain in place.

ISSUE 3:
Part Time Operator Utilization

Position of the Parties: currently part time operators (PTOs) are severely restricted by the language of Article 16.4. King County proposes to remove some of those restrictions so that PTOs can be used for work where fulltime operators are not available. The Union argues to retain the existing restrictions.

Award and Analysis: Article 16.4:

The collective bargaining agreement contains numerous restrictions on the use of (PTOs). King County has proposed to modify Article 16.4 of the collective bargaining agreement to allow PTOs to perform work on weekday trippers, specials, standbys and extras and surplus weekend specials and extras when it is unable to find qualified full time transit operators (FTOs) to perform the work. The County seeks to avoid cancellation of service that has too frequently occurred in the past even though there were PTOs who could have done the work.

The Union opposed King County's proposal in the arbitration hearing and has proposed that current contract language in Article 16.4 remain. During the hearing, the Union acknowledged concerns regarding cancelled service, but urged King County to increase the number of fulltime operators and extra board operators in order to avoid cancellations.

The Arbitration Panel adopts King County's proposal. The cancellation of bus service to the public is a compelling rationale for eliminating a restriction in the collective bargaining agreement. King County's proposal is narrowly tailored to address this issue and it does adequately protect the interests of FTOs.

ISSUE 4:
Craft Lines

Position of the Parties: Article 17.10 G provides:

Except where modified by historical practice, duties traditionally performed by the Employees in the job classification listed in Section 1, will be performed only by Employees working in those classifications.

King County argues to remove this language from the new agreement while the Union seeks to retain it.

Award and Analysis: The Arbitration Panel recognizes that both parties have interests related to the proposal of King County Transit to remove Article 17.10G from the bargaining agreement. King County Transit has a significant interest in achieving greater workplace flexibility within Vehicle Maintenance, seeking to end inefficiencies and administrative disruptions caused by operation of Article 17.10G. King County also has concerns over the significant number of internal disputes that have arisen over this provision.

The ATU has a significant interest in ensuring that work performed in Vehicle Maintenance is done in a safe manner by employees in the bargaining unit trained and qualified to do the work.

After hearing all the evidence, and noting that Article 17.10G has been in the bargaining agreement since 1984, the Panel believes that further discussion by the parties on how to achieve an appropriate balance of their respective interests is warranted. Resolution is best achieved by the parties rather than an Arbitrator or a panel of arbitrators. This is an issue on how work should be performed at the job site and it needs the input of those who do the work. The Panel thus directs the parties to create a process for discussion (perhaps using the interest based principles that appear to have served the parties well in the past) with a goal of addressing the issues validly raised by both parties in the arbitration. The parties are each expected to engage in a good faith effort to achieve a mutually acceptable resolution. If those discussions are unsuccessful, the fact that the parties have gone through this process will hopefully yield a compression of points in dispute that will better enable a future arbitrator to rule on this issue. As should be clear from the Panel's adoption of this approach, hopefully that will not be necessary.

This interest arbitration award is respectfully submitted on
this the 13th day of April, 2015 by,

Timothy D. W. Williams

Timothy D. W. Williams
Neutral Arbitrator

Cynthia McNabb

Cynthia McNabb
County Partisan Arbitrator

I agree with the decision. I disagree with the decision
(If you disagree a statement of dissent can be attached)

Bruce Tiebout

Bruce Tiebout
Union Partisan Arbitrator

I agree with the decision. I disagree with the decision
(If you disagree a statement of dissent can be attached)