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PUBLIC EMPLOYMENT
RELATIONS BOARD

Before the Arbitrator

Josh Tilsen

In the Matter of Interest Arbitration:

DES MOINES AREA REGIONAL TRANSIT AUTHORITY (DART or Employer)

And

AMALGAMATED TRANSIT UNION, LOCAL 441 (ATU, 441 or Union)

PERB CASE: CEO No. 281/Sector: 1:
Des Moines Regional Transit Authority/
ATU #441 (Blue Collar)

Appearances

For the Employer:

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Arbitrator Selected:

February 25, 2015

Hearing Conducted:

March 5, 2015

Award Issued:

March 12, 2015

STATEMENT OF JURISDICTION

This is interest arbitration between the Des Moines Area Regional Transit Authority (DART or Employer) and the Amalgamated Transit Union Local 441 (ATU or Union.) They are parties to a collective bargaining agreement (CBA) effective July 1, 2012 to June 30, 2015. The parties engaged in bargaining concerning successor terms. The parties reached a tentative agreement for settlement on January 23, 2015 (Employer exhibit 3) which was ratified by Local 441 members but rejected by the DART Board of Commissioners. The undersigned was notified of his selection by the parties to hear the issues at impasse. A hearing was conducted on March 5, 2015, at the DART facility at 1100 Dart Way, Des Moines, IA. Both parties had full opportunity to submit evidence and examine and cross-examine witnesses. The record was closed at the conclusion of the hearing.

As provided by Section 20.22 (11) of the Iowa Code, the Arbitrator has the duty to select "*the most reasonable offer, in its judgment, of the final offers on each impasse item submitted...*" These selections, together with issues not in dispute will comprise the final contract.

ISSUES AT IMPASSE

Item 1. Base Wage Increase:

DART's Final Offer:

Salary increases: DART proposes to revise Section XI of the Contract to provide a one-year salary increase of three percent (3%) across the board for all bargaining unit members.

ATU, Local 441's Final Offer:

Section XI of the previous agreement will be revised to reflect a 4% pay raise for all classifications of employees.

Item 2. Insurance Proposal

DART's Final Offer:

DART proposes to add a new article, Article 10.12 to read:
Article 10.12 - Part-time Hospital Medical, Surgical, and Dental Insurance:

The Company will provide part-time employees health and dental insurance in accordance with provisions of the Affordable Care Act (ACA) on July 1, 2015 or when compliance is required per the ACA. The Employer will provide a plan for part-time employees that will be deemed affordable per the ACA. The Company will also allow the employee to participate in the company's dental plan. All employees insured by the Employer agree to participate in the Annual Health Screen paid for by the Employer.

ATU, Local 441's Final Offer:

Maintain the status quo.

Item No. 3 Revision to Section 4.2 of the parties' agreement.

The parties are in agreement regarding the changes to Article 4, Section 4.2 as reflected in each party's Final Offer.

Item No. 4 Revision to Section 8.1 of the parties' agreement.

The parties are in agreement regarding the changes to Article 8, Section 1 as reflected in each party's Final Offer.

Item No. 5 One-Year Agreement

DART proposed a one-year agreement from July 1, 2015 through June 30, 2016. This is a permissive subject of bargaining. However, the result of proceeding to arbitration is a one-year contract

Item No. 6 Other Terms and Conditions of the contract remain the same.

The Parties concurred that all other terms and conditions of the collective bargaining agreement from July 1, 2012 through June 30, 2015 will remain the same, except those agreed to by the parties and those modified by the Arbitrator's decision in this matter.

The Parties agree that only item 1, wages, and 2, insurance represent genuine disputes to be resolved by the arbitrator. Accordingly items 3-6 are resolved and not addressed further here.

BACKGROUND

DART is the largest public transit agency in Iowa, serving eighteen cities in and around Polk County. The cities include Alleman, Altoona, Boundurant, Carlisle, Clive, Des Moines, Elkhart, Granger, Grimes, Johnston, Mitcheville, Pleasant Hill, Polk City, Runnells, Urbandale, West Des Moines, and Windsor Heights. The Greater Des Moines area has a population of approximately 569,633.

DART has two bargaining units:

ATU, Local 441, which includes full-time and part-time motor coach operators, parts employees, service employees, interior cleaners, collision and body repair employees, tire employees, utility persons, technicians, and building and grounds

employees. There are approximately 157 employees covered in the bargaining unit, and seventy-four percent (116 employees) are full-time and part-time motor coach operators.

IBT, Local 238 represents the second bargaining unit which includes full-time and part-time paratransit drivers. There are approximately sixty employees covered in the bargaining unit.

STANDARDS

Iowa Code 20.22 (9) provides:

The arbitrator shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved.
- c. The interest and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

These factors are described herein as bargaining history, comparability, ability to pay, and power to tax.

The principle that an arbitrator's objective in these matters is to render an award that is reflective of that which the parties would have reached on their own is generally credited to the arbitration research text by Elkouri and Elkouri.

The fundamental objective of interest arbitration is to formulate awards from the evidence which represents the agreement the parties would have ultimately reached, mindful of whatever influence a work stoppage might theoretically have provided, had the parties been able to continue negotiating to a successful conclusion.

Elkouri & Elkouri, *How Arbitration Works*, 105 (5th ed. 1997)

This principle underlies the Arbitrator's considerations herein.

ANALYSIS

Item 1. Base Wage Increase

Bargaining History

The Parties did not submit detailed information about the bargaining history that led up its current or prior bargaining agreements. Information was presented concerning the tentative agreement reached during mediation (Union 3 and Employer 3). In short, when the Employer was unable to persuade the Union to agree to its part-time insurance proposal, it proposed a 4% across the board increase in an effort to reach final agreement. The Union agreed and its members subsequently voted to ratify. When the proposal was put before the DART Board of Commissioners they voted 6-1 in favor of a motion to reject. (DART Board meeting minutes, February 3, 2015, <http://www.ridedart.com/sites/default/files/about-dart/commission/7A-February%203%2C%202015%20Minutes.pdf>.)

ATU argues that these facts should weigh in favor of its position on wages because it shows that the DART bargaining committee thought that a 4% increase would be reasonable. DART argues that it made this proposal in mediation as an effort to reach voluntary settlement. The Employer further noted that it told the ATU that 4% was beyond the authority delegated to its

bargaining team, but it would none-the-less make the offer and support its ratification when presenting it to the Board of Commissioners. The Union's argument is seductive but ultimately unpersuasive. What happened here is a common event in labor mediation. In a push for voluntary agreement one bargaining committee took a chance by making a proposal higher than its delegated authority. As always, both sides knew that the proposal was subject to ratification by elected officials and union members. If the act of stretching toward a settlement is treated as factor showing adverse bargaining history it will serve to discourage both sides from such serious and often risky efforts in future rounds of bargaining.

Comparability

Comparisons in interest arbitration generally have two dimensions.

First, the proposals of each party must be compared with settlements reached by other bargaining units both external and internal for the same bargaining period.

Second, current salary levels of bargaining unit members at issue are compared with those of other comparable bargaining units.

Comparable settlements for the 2015 contract year were presented in the record. The Union asks that the Arbitrator use as the comparable group, the bargaining units containing motor coach operators for the following public transit operations in Iowa: Sioux City Transit System\ATU Local 779, City of Davenport\ATU Local 312, City of Cedar Rapids\ATU Local 638, and Metropolitan Transit Authority of Black Hawk County\ATU Local 1192 (Union Exhibit 1 pages pp 13-22.) The Employer acknowledges those as a comparable group and asks that the Arbitrator also consider a

large list of transit operations in cities nation-wide with which the ATU has collective bargaining agreements (Employer Exhibits 8 and 9.) Further the Employer calls for consideration of the internal DART bargaining unit of paratransit drivers represented by Teamsters Local 238. In this case the Arbitrator will use as comparison groups only the settlements for comparable Iowa groups and the internal paratransit unit. This is due to the number of complex and unknown factors influencing settlements from other states such as different state labor laws, local economic conditions, and bargaining history.

Examining 2015 Iowa wage settlements; in three of the four operations the Union used for comparison, Sioux City, Davenport, and Waterloo, ATU negotiated 2.5% wage increases. While in Cedar Rapids the Union negotiated a 2.5% wage increase (Union Exhibit 1, page 18.) For the only the internal comparison, the DART contract with the Teamsters paratransit drivers, the negotiated settlement for the same period was 2.5%.

Next we examine comparable wage levels. Throughout their comparisons the parties focused their attention on motor coach operator pay. ATU notes that the beginning pay for motor operators is higher than the Iowa comparable group but falls significantly below at the top of the pay schedule. The Arbitrator examines here the pay of full-time and part-time motor coach operator pay at the top of the pay scale because the pay progression in the contract is only twelve months. This comparison is illustrated by the following chart:

IOWA TRANSIT UNITS 2015 TOP LEVEL MOTOR COACH OPERATOR HOURLY WAGE

Transit Operator	2014 Full Time Operator Top Hourly Pay	2014 Part Time Operator Top Hourly Pay	Difference DART ATU FT	Difference DART ATU PT
DART (ATU)	\$21.34	\$16.73		
Dart (IBT) (paratransit drivers)	\$17.32 7 years to top	\$16.59 7 years to top	+ \$4.02	+ \$0.14
Sioux City	\$23.05	\$18.68	- \$1.71	- \$1.95
Davenport	\$24.12	NA	- \$2.78	NA
Cedar Rapids	\$22.08	NA	- \$0.74	NA
Waterloo	\$21.67	\$16.27	- \$0.33	+ \$0.47

(Union Tab 1 and Employer Tab 7)

Next we compare the effect of each party's proposal.

FULL TIME OPERATORS

	Current DART CBA	Dart Proposal	Union Proposal	Difference
Top of scale	21.34	21.98	22.19	.21

PART TIME OPERATORS

	Current	Dart Proposal	Union Proposal	Difference
Top of scale	16.73	17.23	17.40	.17

Ability to Pay and Power to Tax

It is undisputed that the total cost difference between the 4% and 3% wage increase proposals is just under \$100,000. The Employer did not argue inability to pay. Nor was any argument presented concerning the Employer's ability to tax. Therefore neither of these issues is controlling in this case.

CONCLUSION

Either proposal will result in wage increases greater than 2.5%, the comparable Iowa settlements negotiated by ATU for the period in question. The Dart proposal is approximately .5% higher while the ATU's is about 1.5% higher. Expressed another way, the Employer proposes an increase 20% higher than the 2.5% comparable increases, and the Union proposes an increase 60% higher than the comparables (.5% ÷ 2.5% = .20%; 1.5 ÷ 2.5% = 60%.) Either proposal will bring the full time motor coach operators closer to parity with the comparable groups than they are now. The gap in top pay between the DART motor coach operators and comparable Iowa employees is troubling. Particularly so because DART serves the largest population area in Iowa. Yet this pay disparity did not arise in a one year period and it's reasonable to expect that mitigating it will take more than one year. Under either proposal the gap between top pay for motor coach operators at DART, and those at other Iowa public transit operations will be reduced. The largest gap in pay for full time top of scale motor coach operators is between Sioux City (23.05) and Dart (21.34) (\$23.05-\$21.34 = \$1.71.) ATU's proposal will reduce this gap from \$1.71\hour to \$0.64\hour, and DART's proposal reduces it from \$1.71\hour to \$0.85\hour. Therefore, ATU's proposal reduces the gap by 49.71% (49.71% x \$1.71 = \$.085), and DART's proposal reduces the gap by 36.84% (36.84% x 1.71 = \$0.63.)

The Employer's 3% proposal is closer to 2015 settlements negotiated with comparable groups than ATU's 4%. The Employer proposal also makes meaningful progress toward closing the pay gap with comparable groups.

The foregoing persuades the arbitrator that the Employer wage proposal is the more reasonable.

AWARD ITEM 1

The Employer position on wages is awarded.

Effective July 1, 2015, Section XI of the Contract is revised to provide a salary increase of three percent (3%) across the board for all bargaining unit members.

Item 2. Insurance Proposal

Bargaining History

The Employer's proposal to add a medical insurance provision for part-time employees would be new language in this agreement. No information was provided regarding any previous bargaining on this issue, or whether the idea had ever been proposed previously. Therefore bargaining history is not a factor here.

Comparability

The Union offered language taken from the insurance articles of the four comparable Iowa collective bargaining agreements (Union Exhibits 7-10). They summarized them as follows:

Of the three CBAs which provide coverage for part-time employees, the type of coverage offered is the same as that offered for full-time employees; and all provide for specified employer contributions to the cost of premiums (may be a different level of contribution than for full-time employees). The Union argues the Employer's proposal is not consistent with comparable transit operators, since it does not specify whether the coverage would be the same as for fulltime employees, nor does it provide for an Employer contribution to the cost.

DART made its proposal both because the federal ACA requires it to provide insurance to employees working 30 hours per week or more, and because it faces a recruitment problem in attracting and retaining part time motor coach operators. It also argues

that the recent agreement with its Teamsters bargaining unit is relevant and supports its proposal. (Employer Exhibits 4 and 7)

Ability to Pay and Power to Tax

As with the wage issue, the Employer has not argued an inability to pay for its insurance proposal, and in fact asserted the cost of its proposal is \$171,000 higher than the Union's (p.48 trans).

CONCLUSION

As noted in the standards discussion above, an important guidepost for the interest arbitrator is to strive for awards that represent as closely as possible, that which the parties would have bargained had negotiations proceeded to a voluntary agreement. This Arbitrator also holds that the interest arbitrator should avoid an award that significantly changes the existing internal balance embodied in the party's negotiated collective bargaining agreement. The Arbitrator is persuaded that awarding the Employer's proposal on part-time insurance poses such a risk.

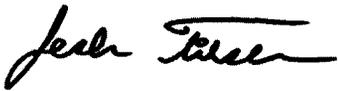
Further, it is unclear to the Arbitrator exactly what the health insurance benefits would be, were the Employer's proposal awarded. The proposal refers to requirements under the ACA which are not in evidence. Thus the Arbitrator is being asked to implement a new insurance plan on a group of employees currently not covered, absent any information about plan design. In addition, Employer's Exhibit 5 contains premium and payment amounts that are not in the Employer's proposal.

Interest arbitration is a blunt instrument. Significant, and nuanced changes affecting fringe benefits such as proposed by the Employer are best resolved by direct negotiations between the parties.

For the foregoing reasons the Arbitrator finds the Union proposal more reasonable.

AWARD ITEM 2

The Union position on insurance is awarded. Maintain the current language in the agreement with respect to insurance for part-time employees.



Josh Tilsen
Labor Arbitrator

Dated at St. Paul, Minnesota
March 12, 2015