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PUBLIC EMPLOYMENT  
RELATIONS BOARD

IN THE MATTER OF ARBITRATION BETWEEN

LABORERS' INTERNATIONAL UNION	)	<b>OPINION AND AWARD</b>
OF NORTH AMERICA	)	
LABORERS' LOCAL #353 (BUS DRIVERS)	)	
	)	<b>PERB CEO: 813/Sector 1</b>
AND	)	
	)	
PANORAMA COMMUNITY SCHOOL DISTRICT	)	<b>IMPASSE ARBITRATION</b>

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ARBITRATOR: Charlotte Neigh

HEARING: August 13, 2015

AWARD: August 24, 2015

**REPRESENTATIVES**

For the Union:

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**JURISDICTION AND PROCEDURE**

Pursuant to the Iowa Code and the procedures of the Iowa PERB, Charlotte Neigh was appointed to arbitrate this matter. A hearing was held in Panora, Iowa, at which time both parties had a full opportunity to offer evidence. The record was closed at the conclusion of the hearing, starting the statutory 15-day period within which an award must be rendered.

The parties had entered into an Independent Impasse Agreement on 1/29/15, by which they waived the statutory deadline of April 15th for completion of impasse procedures, and agreed to participate in impasse procedures until a collective bargaining agreement (CBA) was reached as a result of an arbitrator's award.

## BACKGROUND AND UNDISPUTED FACTS

The Panorama Community School District (CSD) operates one centralized campus for grades K-12 in the town of Panora, about 40 miles west of Des Moines. Its certified enrollment for the most recent year was 715 students. It covers 197 square miles in the counties of Guthrie, Dallas and Greene in central Iowa, divided into ten regular bus routes driven by ten bus drivers who constitute the bargaining unit (BU) involved in this proceeding.

Under the existing CBA a regular route is retained by the same driver from year to year until a vacancy occurs; if the vacancy is to be permanently filled, it is awarded by bid to the most senior driver. The drivers are paid a daily wage of \$90.89 per route for one round-trip in the morning and another in the afternoon. In the most recent year they were paid for 180 days although there were only 178 student days; the extra compensation is considered as payment for whatever additional time may be required to attend meetings or attend to other work-related matters.

In addition to the regular route assigned to each driver there are three other daily routes driven by some of these same drivers; the manner in which these three daily routes are assigned to drivers would be affected by the new language proposed by the Union. Two of the other daily routes are at midday and one is after school. Four days per week preschool children from the morning session are bused home and preschool children for the afternoon session are bused to the school; these children travel on the regular route bus coming to the a.m. session and on the regular route bus going home from the p.m. session. The preschool route drivers are paid \$21.64 per hour; during the most recent year they worked 130 days. The after-school shuttle serves older children who stay for after-hours activities, driving to designated drop-off points in each of the five towns in the District; it also pays \$21.64 per hour and during the most recent year it ran 125 days.

This BU was certified in 2013 and negotiated its first CBA in 2014 for a one-year term, which will also be the length of the new CBA for the 2015-2016 school year. In 2014 the parties agreed to a 3% wage increase and a provision that the Union is now proposing to modify. The existing language is:

### *ARTICLE VII: SENIORITY/VACANCIES*

- A. *Seniority Definition: "Seniority shall be defined as the length of an employee's continuous service from the first day of service in a driving position with the District.*
- B. *Vacancies.*
  - 1. *Definition. "Vacancy" is defined as an open position as defined by the Employer that the Employer desires to fill.*
  - 2. *Vacancies and Regular Routes. When a vacancy occurs in a regular route, the Employer may fill it temporarily if it arises during the school year. Any vacant routes will be posted prior to the start of the school year or mid-year (if to be permanently filled) and Employees may bid on them. A vacant route will be awarded to the most senior, qualified driver.*
  - 3. *Other Daily Routes. Vacancies in other daily routes will be posted when the vacancy arises. The vacant route will be awarded to the most senior, qualified driver.*

## FINAL IMPASSE OFFERS

The Union's position regarding the assignment of other daily routes is presented as additional paragraphs to Article IV: Hours, Work Provisions and Work Assignments; however, its effect would be to change the provisions of Article VII. B. 3.

### UNION'S PROPOSED LANGUAGE

"ARTICLE IV: HOURS, WORK PROVISIONS, AND WORK ASSIGNMENTS:

B. Work Provisions

*(in addition to paragraphs 1 to 3 relating to: show-up pay, absences, and notice of extra work time)*

4. Each year, any route, trip or shuttle less than one-hundred and sixty (160) days shall be put up to bid for any driver interested, seniority will be the deciding factor.
5. After School Shuttle will be bid on a seniority basis yearly."

"ARTICLE VI, WAGES AND PAYMENTS: change article number *(currently found in Article V)*

- A. The same basic compensation rate (2014-2015 school year) will be increased by three percent (3.00%) for 2015-2016 school year."

### DISTRICT'S ARBITRATION POSITION

"Wages - 2% increase (Relates to Appendix C wage rate items including route pay, special ed route pay and pre-school route pay, activity trip rate and after school shuttle rate). The Parties have agreed to delete all references to substitute driver pay in Appendix C."

"Article VII: Seniority/Vacancies. Current contract language to be retained as is. The District's position is that per current contract language, including Article VII Section B specifically, that pre-school routes and after school shuttle routes are only to be bid when they become vacant, i.e. when a driver no longer wishes to retain the route or otherwise relinquishes the route through retirement or resignation, etc."

### STATUTORY CRITERIA

IOWA CODE §20.22(7) sets forth the criteria by which an arbitrator is to select, pursuant to §20.22 (9), "the most reasonable offer" on each impasse item submitted by the parties:

*The arbitrator or panel shall consider, in addition to 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 the 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 interests 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.*

## ANALYSIS AND DISCUSSION

### WAGE ITEM

#### *PAST CBA & BARGAINING*

The parties have had only one previous CBA and only one round of bargaining prior to the current one. They reached agreement on terms for their initial contract, presumably after mutual concessions, including a 3% wage increase. They have had the experience of working under the existing CBA for one school year, and neither party has claimed problems arising from any particular terms.

#### *COMPARABILITY*

##### *Union's Comparables*

In support of its position of a 3% wage increase, the Union's proposed comparison group (CG) includes three other Districts where it represents the drivers, some of which are included in a BU with other classifications. They have negotiated wage increases of 3%, 3% and 2.9% for 2015-16. The Union points out that: the Employer has not claimed an inability to pay the increased cost if its position, calculated at only \$1500 more than the Employer's offer of 2%; there are no other cost increases in this CBA; and the teachers in this District have received an increase of 3.6%

The Union representative who negotiated the Iowa CBAs prepared a chart showing a comparison between this District and the other three already negotiated by the Union for 2015-16, showing: rates of pay for the regular and preschool routes and for the occasional special trips; the percentage of wage increase for 2015-16; the number of students enrolled; and benefits such as paid sick and personal days, holidays, insurance option, and payout upon separation. Because of a difference in how the regular route rate is calculated in one District, it is difficult to compare. Nevertheless, it appears that this District paid the highest route rate in 2014-15 and will continue in that position for 2015-16 even after calculating the wage increases in the other Districts of 3%, 3%, and 2.9%, compared to a 2% increase in this District. It also apparently paid the highest hourly rate for the preschool routes; it fell in between two other Districts on the rate paid for special activity trips. On cross-examination the Employer elicited an acknowledgement that this District also allows for three paid personal leave days per year, and the CBA provides for a payout of accumulated sick days upon separation, which one of the other Districts does not. It is concluded that the Panorama District bus drivers are paid well in comparison to the Union's CG.

### *District's Comparables*

The District points out that: its offer of 2% will increase transportation costs by \$4,766.50 and that the Union's 3% would cost an additional \$2,383.25; the District has historically had excessively high transportation costs relative to the state average, which it has been trying to improve through efficiencies; and the District will receive less than a one percent increase in "supplemental state aid" for next year, which is the basic infusion to cover wage and benefit increases. The District also asserts that the teachers needed a larger increase due to falling behind in comparison to other Districts over the previous four years.

The District offered two different CGs for bus drivers: Districts statewide nearest to the same enrollment that might have similar economies of scale; and nearby Districts with similar costs of living. Regarding the hourly rate for special activity trips, the District ranks 4th of 17 at 6.53% above the average in one CG, and 3rd of 6 at 3.8% above the average in the other CG. The District's exhibits presented the wages for regular routes as an hourly rate, necessitating converting its own daily route rate and that of some other Districts from a flat rate. Assuming that its drivers work an average of 2.93 hours per day, the Employer calculated an hourly rate of \$31.02, ranking it at the top of one group and second in the other. However, both the assumed average hours in the District and the method of converting route rates to hourly rates for this and other Districts were challenged by the Union.

Employer's exhibit 12B as presented admittedly contained a 20-minute error for all p.m. departure times, which throws its calculation of total regular route hours per day off by 200 minutes or 3.3 hours. Also, a Union witness testified that: the time shown for his a.m. departure erroneously cited the time for his first pick-up, creating a discrepancy of approximately ten minutes in his route; and he is the last to depart in the a.m., making the listed departure times for other drivers incorrect. These discrepancies show that the Employer's calculation that its drivers earn \$31.02 per hour is incorrect, and it is difficult to ascertain what the correct number should be for this District as well as the comparable Districts.

Correcting for the 20-minute error and using the disputed a.m. departure times (which likely also distort the calculation) give an average of 3.26 hours per day, which gives an hourly rate of \$27.88. However, it is questionable whether calculating the average is helpful, given the significant variation in route times in this District, which is nearly one hour more for the longest than for the shortest. The route shown as taking the most time at three hours and 48 minutes (3:48) gives an hourly rate of \$25.47; while a calculation for the route taking the least time at 2:50 gives an hourly rate of \$32.12. Moreover, the Union witness testified that in the 2014 negotiations it was agreed to assume a workday of 4.2 hours, which, although not supported by the evidence, was not rebutted by the Employer; this would give a rate of \$21.64 per hour.

District Comparables (continued)

Another complicating factor is that in this District, in addition to the actual time between departing for and returning from a route, another hour is allowed each day for the tasks required to be performed before and after each run, which time may vary from day to day. It is not known if a similar factor exists in the CG Districts or how it is figured into the stated hourly rates. The inability to calculate an hourly rate that actually applies to all the District's drivers, together with the uncertainty about what can appropriately be considered an hourly rate in the other CG Districts, undermines the usefulness of the Employer's route rate comparison.

*Conclusion Re: Comparables*

It is concluded that the appropriate comparison for route rates must be between the daily rate rather than the hourly rate and the only reliable data came from the Union's CG, which shows that the drivers in this District were the highest paid in 2014-15 and will continue to be the highest paid with a 2% increase for 2015-16. The Union's CG shows that this District pays the highest hourly rate for the preschool route and falls in the middle regarding the hourly rate for special activity trips, while the Employer's CG shows it ranks 4th of 17 and 3rd of 6 for special activity trips. The Employer did not provide comparative rates for the preschool route.

*INTERESTS & WELFARE OF PUBLIC, ABILITY TO FINANCE, EFFECT ON SERVICES*

Neither party is claiming that the resolution of the wage issue will affect the normal standard of services. The Employer acknowledges its ability to finance the Union's 3% increase but points out that reductions would have to be made in other areas of the budget. In any event, the interests and welfare of the public will not be negatively affected.

*TAX LEVY & APPROPRIATING FUNDS*

The Employer asserts that this factor is not applicable in this situation, where it is the State rather than the District that levies taxes.

**CONCLUSION RE: WAGE ITEM**

Given that the wage rates for this BU will continue to rank at the top of the Union's CG, the Employer's position of a 2% increase is the more reasonable one for this impasse item.

## **BIDDING ITEM**

### *PAST CBA & BARGAINING*

The 2014 bargaining resulted in CBA provisions that:

- 1) Keep regular route drivers in the same route year to year until a driver vacates a position; then it is posted for bidding by seniority at midyear or the beginning of the following year if it is to be permanently filled.
- 2) Keep the drivers of the other daily routes, *i.e.* preschool and after school, in the same route year to year until a driver vacates a position; then it is posted for bidding by seniority.

On 6/18/14 the parties entered into a Tentative Agreement (TA). One of the handwritten items stated: *"After School Shuttle (as T.A. and not in contract) will be bid on a seniority basis for 2014-15 and thereafter yearly."* The words "when vacant" were crossed out and the word "yearly" was inserted. At the beginning of the arbitration hearing the Union was operating under the assumption that it had already accomplished the annual posting of the after-school route and was concerned with revising the bidding provisions for only the preschool routes. In the course of the hearing the Employer took the position that it had never made an enforceable commitment to annually post the after-school route and that it was an issue to be included in this impasse item. As it happened, the after-school route was vacant for both the 2014-15 and 2015-16 school years and was awarded to the most senior bidder; the District claimed that it happened because of the vacancy; the Union thought that it happened pursuant to the TA. At the Arbitrator's urging, the Union people caucused to consider its position regarding the effect of the TA and then stipulated that both the preschool routes and the after-school shuttle were to be considered in deciding this item.

A Union witness testified that: it was dissatisfaction with the way these other daily routes were assigned that led to the drivers organizing for collective bargaining; and in the first round of negotiations it tried to get what it is seeking now - the preschool and after-school routes must be posted annually for bidding by seniority. The District presented a detailed history of the evolution of the midday routes for preschool and special education students over the years, showing the changes in equipment and personnel, constantly seeking to reduce transportation costs. It explained that when one driver had to be eliminated the selection was made based on seniority. When another driver vacated a route, the vehicles were revised so as to provide the service with only two drivers; these same two drivers continue driving the noon routes currently. The history also explains when and why the after-school route wage was changed from a set rate for a set number of days to an hourly rate and the problems with filling the position that preceded the June 2014 TA.

The Union argues that because there are only three daily routes in addition to the regular routes there are not enough to provide all ten drivers with an opportunity to have one and so out of fairness they should be assigned by seniority bidding to reward long-term employees. The Union asserts that this item is not raised because of any issue with the incumbents, at least two of whom would retain the positions out of seniority. The Union also argued that these three routes should be treated similarly to the regular routes, which is puzzling because the existing CBA provides that both regular routes and these other daily routes are posted for bidding by seniority only when vacant.

Bidding Item (continued)

The District argues that:

- In the 2014-15 negotiations the parties agreed to post both regular and other daily routes for bidding only when vacant.
- Both parties were aware of the importance of bargaining language relating to route assignments and bidding into the first contract as it tends to remain the same absent mutual agreement to change it.
- Absent a showing of great unfairness and overwhelming comparability, the Union should not be able to achieve through arbitration what it could not achieve through bargaining, which would undercut the bargaining process.
- It is beneficial to keep drivers in the same routes from year to year to allow them to become knowledgeable about the route and to develop a relationship with the students and families on the route, which can contribute to better bus discipline and safer transportation.
- This same rationale applies to other daily routes as well as to regular routes, perhaps even more so to routes serving special-need and/or preschool children as they are younger and have a greater need for continuity.
- This bidding issue affects the District's ability to manage its operation in the interest of the best quality of service.
- Its position is most fair to the incumbent drivers who should not be treated differently on these routes than they are on regular routes.

*COMPARABILITY*

The Union did not offer any comparables on this item.

The Employer asserts that only approximately 85 of 338 CSDs in Iowa have BUs that include bus drivers, and it is safe to assume that Districts without organized BUs do not bid routes or at least not yearly. Regarding the five BUs represented by this Union statewide, routes are bid only when they become vacant; the District is unaware of any other BU that bids routes on a yearly basis, including five BUs represented by other unions.

*INTERESTS & WELFARE OF PUBLIC, ABILITY TO FINANCE, EFFECT ON SERVICES*

Both parties agree that it is beneficial to the students and their families to have the same driver on the regular route from year to year. The Union argues that this benefit does not carry over to the preschool route because: the majority of those children ride it for only two years; and they do it only once a day, riding on the regular route bus in one direction. Neither party has presented any evidence or method of measuring the benefit to the public or the effect on services. There is no effect on the ability to finance.

*TAX LEVY & APPROPRIATING FUNDS*

This factor is not affected by this item.

**CONCLUSION RE: BIDDING ITEM**

Given that: the parties have previously agreed that both regular and other daily routes would be posted for bidding only when vacant; the Union has not shown any persuasive reason why this procedure should be changed for the other daily routes; and no other District in the state is known to bid annually on bus routes, it is concluded that the District's position on this impasse item is the more reasonable one.

**AWARD**

1. Regarding the wage item, the final offer of the District is awarded: the wage rates in Appendix C shall be increased by 2% for the 2015-16 year.
2. Regarding the bidding item, the final offer of the District is awarded: the current language of Article VII: SENIORITY/VACANCIES shall be retained as is.

August 24, 2015



Charlotte Neigh, Arbitrator

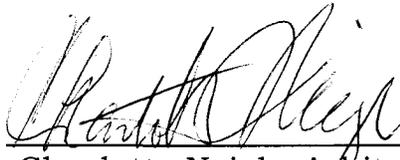
CERTIFICATE OF SERVICE

I certify that on the 24th day of August, 2015, I served the foregoing Award of Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Michael E. Amash, Esq.  
Blake & Uhlig, P.A.  
753 State Ave. - #475  
Kansas City, Kansas 66101

Rick Engel, Esq.  
6969 University Ave.  
Des Moines, Iowa 50311

I further certify that on the 24th day of August, 2015 I will submit this Award for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12<sup>th</sup> Street, Suite 1B, Des Moines, IA 50319.



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Charlotte Neigh, Arbitrator

(Print Name)