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CONCILIATION  
TRIBOROUGH BRIDGE & TUNNEL AUTHORITY  
NEW YORK, NY  
AND  
BRIDGE & TUNNEL OFFICERS  
BENEVOLENT ASSOCIATION  
INTEREST ARBITRATION  
OPINION & DECISION  
PERB CASE #T1A 92-041, M 92-253  
ARNOLD M. ZACK, ARBITRATOR  
GARY DELLAVERSON, AUTHORITY ARBITRATOR  
PETER E. LUKAS, BTOBA ARBITRATOR  
DATE OF DECISION: 6/20/95  
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On March 6, 7, 8, 13, 27, 29, 30, 31, April 5, 19 and 20, 1995, we held hearings in New York City to arbitrate the following issues. Laurence Jeffrey Weingard, Esq. represented the Union. Neil H. Abramson represented the Authority. The Board of Arbitration met in Executive Session on June 7, 1995, reaching unanimous agreement on the following Opinion & Decision.

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**ISSUE #1**

Duration - Retroactivity

The Union proposes a 15 month Agreement effective March 19, 1991 through June 18, 1992.

The Authority, in its Demand # 1, proposes a 39.5 month Agreement also effective March 19, 1991, but running through June 30, 1994.

Position of the Union

The Union seeks a 15 month contract to match the duration of the contracts of the Long Island Railroad PBA, the New York City PBA, the New York City Transit Authority PBA, the Uniform Firefighters of NYC and Greater New York, and the NYC Corrections Captains' Association.

Position of the Authority

The Authority argues in favor of a longer contract term to follow the TA-TWU pattern as well as the TBTA-Local 1931 settlement, both of which were in excess of 36 months. The Authority offers a contract duration of 39.4 months ending on June 30, 1994.

Discussion

Irrespective of the appropriate pattern to be followed in these proceedings, we believe it to be wasteful and impractical to confine our award to a 15 month period, particularly since we are now at a point some three years after that 15 month contract would have expired. It is pointless, costly, and burdensome to expect the parties to reactivate negotiations for the period following June 8, 1992 at this late date. The data which would have been available for that subsequent contract negotiations are already available, and have already been introduced into evidence in this proceeding. Accordingly, we conclude that the duration of the contract currently under consideration should run until June 30, 1994 to bring a measure of continuity to the parties' relationship, to avoid the additional cost and delay of having to recreate negotiations for the 1992-1994 period, and to provide a more realistic and more timely basis for opening negotiations for the contract commencing July 1, 1994.

On the issue of retroactivity, we deem it an essential element to encourage good faith bargaining, and to avoid the tension and potential work disruption that might occur at contract termination if it were not in place. In the public sector, in particular, where negotiating and appeal procedures are so time consuming, retroactivity is a means of assuring employees will not be victims of administrative and hearing delays.

Award

The Agreement shall have an effective date of March 19, 1991 and run through June 30, 1994 with compensation paid retroactively as indicated.

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**ISSUE #2 WAGES**

The Union, in Demand #2 and #3, proposes an increase of 4.5% effective March 1991 for the 15 months duration of its proposed contract.

The Authority in its Demand #2, proposes an increase of 2% effective March 19, 1991, 2.5% effective September 1, 1992, and 2% effective April 1, 1993, running until the June 30, 1994 contract duration date.

Position of the Union

The Union contends that Bridge and Tunnel Officers exercise extensive law enforcement their functions in their capacity as peace officers and that the collection of tolls is but one element

of their responsibilities. It notes that they have an overall security function and do first aid and accident investigation, that they have firefighting functions, and that they have the authority to arrest and issue summonses. It notes that their peace officer obligations have gone on for more than 20 years, that last year alone they issued over 11,000 summonses and performed 655 arrests, that they are the first line of defense in the event of fires or arson attempts on their facilities, that they undergo a three week training program in law enforcement, accident investigation, the proper issuance of summonses, the proper methods of effectuating arrests, the proper utilization of hand guns, qualifying with a fire arm, annual refresher training in fire arms, firefighting, and one course every three years in first aid and CPR. It notes that its desk officers are armed, and that Bridge and Tunnel Officers are armed when transporting prisoners, going to police precincts, testifying, etc.

The Union offered the testimony of Professor Larry Hoover, a principal of Systems, Inc. who conducted a survey of compensation among Bridge and Tunnel authorities around the country and concluded that there were no valid comparisons to be made among the agencies examined, since such other authorities employed individuals who were either exclusively in the role of toll taker or individuals who had only law enforcement positions, concluding that the BTO of the TBTA was unique in their combined toll collector/peace officer status. He concluded that the best comparison was of bridge and tunnel officers with other law enforcement roles in the New York metropolitan area, acknowledging that it was not a precise comparison. Hoover noted that it was not unusual in a typical police department to have less than 50% of individuals designated as patrol officers performing a role of generalist police patrol. He stated that he did not examine the amount of time such individuals worked with or without guns. He cited a 21% gap between the average base wage of the surveyed police jurisdictions and that received by Triborough officers, or 12% between Triborough and New York City Transit Police and 14.3% compared to New York City Police. The hourly base wage for comparators shows a 25.7% gap between the TBTA and the means hourly base rate of other agencies, according to Hoover, and a 28% gap in terms of direct compensation, noting that a 4.5% increase would place TBTA officers at 91% of New York City Police salaries.

The Union argues that the TBTA is the cash cow that propels the metropolitan transit area, that the 750 Bridge and Tunnel officers generate annual revenues in excess of \$757,000,000, that that revenue subsidizes Mass Transit to the extent of \$.71 of every revenue dollar collected, and that before its revenue is used to subsidize Mass Transit, the Authority is required to provide a fair contract and fair benefits to its own employees. It notes that the full funding of all of its proposals would amount to less than .6% of the sums that the Authority transfers to the MTA for its proposed contract period, at a time when the Employer has a \$7,400,000 reserve set aside for negotiated settlements, obviating any need to raise tolls on the bridges or tunnels. That amount,

it asserts, would be enough to fund a 4.5% for wage increases, .15% for check in/check out, .44% for uniform allowance, 2.35% for longevity, .27% for increases in leave, 8.06% for 30 minute additional break and 6.32% for full accountability.

The Union asserts that its proposed 4.5% increase is reasonable, that it is slightly less than the 4.6% increase in the CPI, using 1990 as the base year, and that that increase is consistent with the Transit PBA, the NYC PBA, NYC detectives, the Long Island Railroad Police package and others that involved 4.5% increases over a 15 month period.

The Union denies that the Bridge and Tunnel Officers are merely toll collectors and argues that comparability claims to toll collectors in Delaware, Pennsylvania, New Jersey, New York and Massachusetts completely miss the point that the Bridge and Tunnel officers also perform a medley of law enforcement functions, that the MTA pattern is totally inappropriate, and that in any event, it would recoup the alleged pay increases by imposing as substantial list of take backs which will, in effect, cancel out any financial benefit for the employees, offering 1.84% over the course of 39 and a half months, well below the 13.5% increase in the CPI for that period.

It challenges the TBTA's estimated cost of the Union's proposal, noting that the introduction of a new salary schedule for new hires would eliminate the need for any other give backs and would result in a cost below the pattern allegedly accepted by the TWU.

#### Position of the Authority

The Authority contends that it has been an integral part of the Metropolitan Transit Authority regional transportation network since 1967, and that there is common governance of the MTA and its constituent agencies, including the TBTA, for important operational and policy matters including operating budgets. It argues that the MTA's budgetary responsibility for each agency, the requirement of the MTA operating on a "self sustaining basis," and the Board's five year Strategic Business Plan must be recognized as setting the parameters for the labor costs of constituent agencies such as the TBTA. It notes the requirement of TBTA's annual net earnings being transferred to the MTA and the Transit Authority's role must be recognized and reflected in any arbitration award for employees in this bargaining unit.

It notes that the TA-TWU settlements historically have set the pattern for the TBTA-BTOBA settlements, and that since 1980, employees represented by the TWU have received total wage increases of 71%, while the BTOBA during that same period received increases of 71.2%. It cites as precedents the holdings of prior factfinders that both the TBTA and TA are constituent agencies of the MTA, sharing a common Board of Directors, with the TBTA's revenues dedicated to the support of the Mass Transit system operated by the Transit Authority. That relationship was confirmed by Factfinder Arthur T. Jacobs' December 31, 1979 recommendation for a "me too" parity with a wage reopener if the TWU succeeded in negotiations such as a reopener. That parity

was then confirmed by the parties' April 4, 1980 negotiations settlement following Jacobs' Report and Recommendations.

In his June 7, 1982 Factfinding Report and Recommendations, Factfinder Joseph Crowley continued adherence to the TA-TWU pattern for a settlement patterned after a recent TA-TWU settlement in his wage recommendation, which noted, "Historically, there has been a pattern of following the TA-TWU wage settlement." He went so far as to deny the requested "me too" standard because in his round, the TA-TWU wage increase had been made certain by virtue of a TA-TWU interest arbitration award.

In 1985, Factfinder Philip J. Ruffo also recommended a wage settlement which was "to bring the recommended settlement herein within the TA-TWU range for the comparable period." In negotiations for their 1988 Agreement, these parties reached agreement on TBTA settlement with a net cost of 15.92% in line with the net cost settlement of the TWU which was 15.88%.

In the 1991 bargaining, according to the Authority, the TWU agreed in May 1992 to a 38 month contract covering the period from May 1, 1991 through June 30, 1994, with the following increases which were funded in part by a reduction in the TA's pension contribution, resulting in a savings of 2.1% in new money to help fund the wage increases, and with additional savings from TWU concessions in payments to employees injured on duty, reductions in the wage progression pay rates, changes in disciplinary provisions, and an additional two month contract duration beyond 36 months:

May 1, 1991	2%
September 1, 1992	2.5%
May 1, 1993	2%

The net cost of the TA for the period was thus 3.1% according to the TBTA.

The TBTA also notes that other TA bargaining units have since adhered to that pattern. It points out that the TBTA's maintenance employees ratified a contract for the period commencing August 1, 1991 which provided for 2% effective August 1, 1991, 2.5% effective December 1, 1992 and 2% effective August 1, 1993, with introduction of sick leave usage control, and a reduction in TBTA's Injury on Duty Leave differential payments, resulting in a net cost of 3.1%.

The Authority asserts that its offer of 2% effective March 19, 1991, 2.5% effective September 1, 1992, and 2% effective April 1, 1993 conforms to the TA-TWU pattern for the relevant period both in terms of percentage wage increases offered and net cost, and that it would increase check in/check out payments as well as night differentials at those same rates of increase. It argues that the going out cost of the TBTA's wage proposal is well above the 3.1%, that it is more difficult to operate cash savings from any changes since the contract covers a period that has already

passed, and that it has had to propose credits for cost savings such as the new wage progression that would only generate offsets after its proposed contract term has expired.

By contrast, the Authority contends that the BTOBA's proposal for a 4.5% wage increase over its 15 month contract proposal would greatly exceed the TWU pattern, and would be exacerbated by its proposal for check in/check out payments at that 4.5% increase, uniform allowance, longevity pay, sick leave, and terminal pay, resulting in a net cost of 5.5% or 2.48% more than the TWU settlement for that first year. The BTOBA proposal for 30 minutes more in breaks would further increase the deal by 12% while its money counting proposal would increase the settlement by another 24% for a total going out cost of 42.6% for 15 months, which if costed on a 36 month term would become 102.3%.

The Authority further argues for adherence to the TA-TWU pattern because of the worsening financial condition of the MTA agency family due to recent budget cuts, and because of the potential whipsawing effect and overwhelming cost if the long time pattern were abandoned.

Even with adherence to the pattern, the Authority continues, the compensation paid to Bridge and Tunnel officers compares favorably to others in their occupation, citing an average compensation of \$40,331 with an average of \$10,000 in overtime compensation for actually working only six hours per day with generous fringe benefits, compared to those engaged in toll collection operations in other northeast states.

The Authority concludes that since factfinders have repeatedly rejected the BTO claim of comparison with rates and conditions of uniformed forces of the City, and because of the BTOs primary concern with toll collection rather than law enforcement, it argues that there is no relevant countervailing pattern. It notes that the reserves set aside to fund this settlement, while arguably enough for funding the Union's 15 month proposal, was set aside to fund the Authority's 39.5 month proposal.

### Discussion

We recognize that this is the first interest arbitration between these parties. As such, it is of particular importance to both parties in their efforts to confirm the placement of this bargaining unit within the ambit of the pattern of negotiations each side espouses. Clearly, the BTOs do more than merely collect tolls, and equally clearly, though categorized as Peace Officers, and as armed during some of their functions, they do not fulfill the complete range of constant law enforcement functions of regular police officers.

In determining the appropriate pattern to follow in this first interest arbitration, we are not functioning in a vacuum. As in any interest arbitration, we are guided by the factors that are normally and customarily considered in determining wages, hours, fringe benefits and other conditions. Prime among those factors is the prior practice of the parties in resolving such issues.

Here, we have a long record of impasse panel proceedings followed by negotiated agreements and in their most recent experience, settlement reached directly between the parties without the need to invoke the impasse procedure. That record cannot be ignored. It is one which has been consistently followed for the last 15 years. Throughout that period, the Union has consistently argued before a series of neutrals for conformity to patterns outside the Transit Authority, and particularly, for adherence to the police pattern. It seeks here to compare its position to the patterns of police officers, city titles and commuter rail on various elements of the compensation package. But each time that issue has been considered by a neutral Factfinder, the result has been adherence to the Transit Authority with no evidence of recommendation of adherence to any other alleged wage pattern. And after each such Factfinding, the parties have voluntarily reached agreement that closely followed the Transit Authority pattern much closer than any other pattern. That tandem relationship was voluntarily embraced without the urging of any neutral panel in the parties' last negotiations, where the Union acquiesced to the TA pattern and in effect, acknowledged the primacy of that pattern, even after an outside city consultant had identified the BTOs as police officers rather than peace officers.

There is no need to chronicle the long tradition of such pattern adherence. It is amply spelled out in the TBTA argument. It cannot be ignored. We cannot, after years of the parties' voluntary adherence to that pattern, particularly in this binding proceeding, impose upon them a declaration that that mutually accepted pattern was wrong and should not have been followed. Nor, have we any evidence of change in duties since the parties' last settlement to support a conclusion that abandonment of the TA pattern in favor of embracing some other pattern is now more appropriate.

The conclusion is inescapable that despite their Peace Officer status, compensation for the Bridge and Tunnel Officers should continue to follow the pattern established by settlements between the Transit Authority and the TWU, which in the period since 1980, has resulted in voluntary settlements between the BTOBA and TBTA of 71.2% compared to increases of 71% in settlements between the TA and the TWU.

A note should be added on the claim that additional funding should be provided because of police duties and health hazards of the job.

Despite its assertions that the BTOS operate in greater similarity to police officers than to traditional toll collectors, the evidence shows that they are armed only while providing special functions which do not appear to even occupy the majority of the BTOs or the majority of their work time.

Indeed, the uncontradicted evidence shows that members of this bargaining unit devote less than 1% of their total work time engaged in law enforcement activities, that 84% of the BTOs made no asserts in 1994, that 55% issued no summons last year, and that only 10% of the BTOs issued 81% of the summons. Its survey asserting comparability to police officers compared

compensation but did not compare job duties or the comparable time spent in performing various functions of the BTO job classification compared to those of police officers, whose salaries were examined. If there is to be recognition of other added peace functions, it would appear that that recognition must have been introduced into the rates at about the time peace officer status was attained in 1974, resulting perhaps in the shorter work time performed for shift, since the evidence of pattern settlements over the subsequent settlements made no separate arrangement for the police duties, conforming instead to the TA pattern increases.

The evidence further shows that although there had been a period when pollution and exhaust did impose unusual health hazards for BTOs increases attention to ventilation and air quality has resulted in substantial air quality improvement so that, even by the testimony of the Union's own witness, carbon monoxide levels were extraordinarily low, that there was no association between the risk of coronary heart disease and the current level of exposure to carbon monoxide, that there was no difference in risk between tunnel and bridge officers, and that no such risk was assignable to long term employees who'd worked before the air quality improvements. Thus, we are unable to conclude that the BTOs position is becoming more risky when the studies show to the contrary since the last Agreement was reached. No departure from the pattern is warranted on that score.

It should be emphasized that embracing a pattern for a particular unit as here assumes that the funding therefore will be provided. This is true whether the funds have already been set aside or whether arrangements must be made to secure the resources to implement the findings that adherence to a pattern triggers certain financial obligations. Thus, the pattern governs and determines the need for funds, and not the reverse. The availability of funds does not determine the pattern.

In this case, the evidence shows that the Authority has indeed reserved \$7,400,000. That amount could be used to fund the Union's 15 month proposal, but adherence to the TA-TWU pattern dictates that the funding be applied to meet that pattern.

Accordingly, we find the appropriate compensation award to be retroactive increases of 2% effective March 19, 1991. 2.5% effective September 1, 1992, and 2% effective April 1, 1993, with the contract to remain in effect until June 30, 1994.

#### Award

Salary levels shall be increased retroactively as follows:

2% effective March 19, 1991  
2.5% effective September 1, 1992  
2% effective April 1, 1993

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**ISSUE #3 CHECK IN/CHECK OUT**

The Union, in its Demand #4, proposes check in/check out be increased by 4.5% for the year 1991 and shall be paid on the first Tuesday of December each year.

The Authority proposes check in/check out be increased by wage increase percentages.

Position of the Union

The Union asserts that the 16 minutes per tour of pre and post tour duties should be paid for at the same percentage as pay increases since they relate to on the job duties, that the practice since 1978 has been to compensate employees at the regular rate for such work, and that it should be continued at the 4.5% increase it is seeking for the wage increase.

Position of the Authority

The Authority also proposes that the amount of check in/check out payment should conform to the awarded wage increase.

Discussion

The parties agree that the check in/check out should be at the same rate as the awarded wage increase.

Therefore, the check in/check out compensation should be at the above awarded rates for those periods, rather than at 4.5% for the 15 months as requested by the Union.

Award

Check in/check out shall be increased by the rate of increase in the wage rate in effect for the period.

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#### **ISSUE #4 UNIFORM ALLOWANCE**

In its Demand #5A, the Union proposes a uniform allowance of \$1000 for 1991 and \$1200 for 1992 payable on the first Tuesday of January each year, and prorated for those with less than one year's service.

The Authority opposes the proposal.

##### Position of the Union

The Union points out that the BTOs wear virtually the same uniform as New York City Police, Transit Authority Police, Suffolk County Police and others, but argues that because of consistent exposure to a far more polluted and dirty environment their uniforms undergo significantly greater wear and tear and require far more frequent cleaning.

It asserts that the present uniform allowance of \$816 per year is inadequate to accomplish both replacement needs and cleaning costs which have increased significantly since that rate was set in January 1990. The comparable services provide significantly greater sums for both replacement and cleaning, provide each employee with an initial full uniform and in many cases, and utilize a quartermaster system to replace uniforms without actual cost to the employee.

##### Position of the Authority

The Authority contends that the Union's proposed increase in uniform allowance constitutes an increase of 22.5% for 1991, and 47% for 1992 over the present allowance.

##### Discussion

The evidence shows that there has been no increase in the funds allocated for cleaning and replacement of uniforms since 1990. Clearly cleaning costs have increased during the past five years, while the allowance has remained constant. If the wage increase awarded in this decision had been commensurate with the increases in the cost of living there would be no particular justification for any additional allocation for cleaning costs. But since the proposed wage package for the full term is less than the cost of living increase for that same period, we believe a special adjustment should be made to compensate for increased cleaning costs. Accordingly, we would raise the allowance from \$816 to \$900 for the contract term.

We believe this adjustment does provide adequate recognition of the responsibilities borne by BTOs to keep themselves properly and cleanly attired in their required uniforms.

Award

The Uniform allowance shall be increased to \$900 per year, effective July 1, 1991.

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**ISSUE #5 LONGEVITY PAY**

The Union, in its Demand #6, proposes an increase in the longevity allowance to \$1000 after five years, \$2000 after ten years, \$3000 after 15 years, and \$4000 after 20 years. It would pay lump sum bonuses of \$1800 (16-20 years of service), \$2300 (21-25 years of service) and \$2800 (26 years through last day of service).

The Authority opposes the increases.

Position of the Union

The Union notes that while longevity payments are considered as a part of the employees' regular compensation for pension purposes, they are excluded from that rate for overtime, shift differential and check in/check out purposes, and notes that for Tier I employees, the proposed increases are expressly excluded from a member's compensation for any purpose, including pension. It would also eliminate any increase in longevity upon completion of 25 years of service.

It seeks to have all members treated alike with their longevity payments considered as part of their regular rate of compensation for pension purposes without regard to the individual's Tier, rectifying an inequity which had been imposed on 96 officers who were denied pensionable longevity. Its proposal would bring employees up to the levels of longevity paid to the Long Island Police Force, but keep the BTOs \$1000 behind members of the New York City and TA Police forces at each level of payment.

Position of the Authority

The Authority contends that the Union's proposal would increase the cost of the longevity allowance by 150% for each category, and for those with 16 or more years of service, would increase the cost by an average of more than 60%, and for the first time, make that lump sum pensionable.

It argues that the Union's proposal has a going out cost of 2.35% and adds to the cash shortfall of the proposed contract.

The Authority argues that it would increase the longevity for Tier I members and for the first time, make that element of their compensation pensionable, despite the fact that they were given

a higher longevity pay as a quid pro quo for the Union's Agreement that their longevity pay would not be pensionable.

It contends that Tier I BTOs already obtain certifiably inflated pension entitlements with little relation to their base salaries, a situation that should not be exacerbated by granting the Union's proposal.

Discussion

The need for securing adequate funding to offset some of the Authority's take back demands does not permit us to grant the Union's full proposal on this issue. Additionally, it is clear that the parties had an understanding at the time of the Tier creations that Tier I employees would not have their longevity pay pensionable. Accordingly, in the light of the cost entailed in this proposal, it must be restricted to a \$100 increase in longevity for each step in the last year of the proposed contract.

Award

The Union's proposal for longevity improvements is restricted to a \$100 increase in longevity for each step in the last year of the proposed contract.

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**ISSUE #6 SICK LEAVE TERMINAL PAY**

The Union's Demand #10 proposes to pay all Bridge and Tunnel Officers on separation, the unused sick leave in one lump sum at the then current rate of pay.

The Authority opposes the proposal.

Position of the Union

The Union contends that its proposal constitutes an incentive to reduce the number of tours taken off by officers due to illness. It would permit BTOs to accumulate unused sick leave which would then be paid back in a lump sum at their then current rate when they retire. This, it continues, is a more realistic inducement to restrain sick leave usage than the current maximum accumulation of 120 days with pay for only half of what is accumulated. It argues that the proposal would reduce time off for less significant illnesses because of the prospect of full recovery and that each day of accrued sick leave would save the Authority money by eliminating the need for replacements particularly those for whom it might have to pay time and one half. It argues further

that the payment would bring the TBTA closer to the retirement practices in other police bargaining units. It notes that the proposal costs virtually nothing since it is offset by the cost of replacements at overtime rates.

Position of the Authority

The Authority points out that the proposal would double the present sick leave and terminal leave, would remove the 60 day cap, require it be paid on any separation and not just retirement s at present, and would also make terminal leave payment pensionable for the first time.

The Authority contends that the Union's proposal would substantially alter the existing unused sick leave disbursement procedure by increasing double the lump sum payment from 50% to 100%, and eliminate the 60 day, would make the lump sum payment pensionable for the first time, and would make sick leave disbursement payable on any separation from service. It urges it be rejected. It notes that a comparable proposal was raised in 1985 and rejected in the Ruffo Report.

Discussion

This proposal would entail substantial extra cost by its expansion in eligibility and increase in cost, and impact on pension payments. In the light of the need to control costs to adequately offset the cost of those take backs which are being denied, and the fact that this same issue was raised and rejected in Ruffo's 1985 Factfinding Report, and thereafter dropped by the Union in its Settlement Agreement, we must deny the Union's proposal.

Award

The Union's Sick Leave Terminal Pay proposal is denied

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**ISSUE #7 ADDITIONAL 30 MINUTE BREAK TIME**

In the Union's Demand #22, it proposes an additional 30 minute relief period, adding 10 minutes to the existing 50 minute meal period and to each of the existing 20 minute relief periods.

The TBTA rejects the proposal.

Position of the Union

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The Union points out that nearly 30% of the work force, clerks, wrecker drivers, and those assigned to Tunnel duty, currently receive one hour meal and a total of one hour duty free relief time. It would extend those lunch and relief periods to the remainder of the work force. It argues that there are no facilities provided by the Employer to serve on-site meals, that there is currently inadequate time to secure funds, traverse the toll plaza or tunnel under the plaza, get appropriate clothing from the locker rooms and then travel two blocks to seven miles to the nearest meal facility. In relief periods, the foregoing procedure leaves employees approximately five minutes for a relief time in the relief area. It asserts that no additional manpower is required for its proposal, since the TBTA is planning attrition of 30 positions in 1995, since there are already unfilled positions, and since it could close down lanes during non-rush hours.

#### Position of the Authority

The Employer contends that the BTOs already have the lowest net working time of any employees in their toll collecting occupational grouping, working six net four hours on 256 scheduled days with the second longest meal period, the longest break time, and the shortest number of hours worked per day of any of the facilities surveyed, that they have received since 1976 an extra "air" relief, which air quality studies now show are unnecessary, and that the Union's demand would entail an enormous unjustifiable expense requiring the hiring of 82 new permanent BTOs to provide the requested reliefs while maintaining existing levels of service. This, it continues, would add 12% points to the cost of the new contract.

#### Discussion

This demand must be denied. The evidence shows that BTOs currently work the shortest tour period of comparable employees, that the current break durations are the result of voluntary agreement, that there is no evidence that conditions have changed since they were negotiated to justify their extension, that the reduced levels of pollution do not justify the claim for additional time, that the cost of introducing this benefit would be excessive through the requirement of providing additional support personnel to man facilities during the additional time, and that the alternative of closing lanes to permit the additional time would be likewise disruptive to the smoothest flow of traffic. Accordingly we find the proposal lacks merit.

#### Award

The Unions claim for 30 minutes additional break time is denied.

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**ISSUE #8 ACCOUNTABILITY**

The Union's Demand #24 proposes that all officers have collected funds fully accounted for at the end of each tour.

The Authority objects to the proposal.

Position of the Union

The Union contends that employees responsible for thousands of dollars in toll collections per day are entitled to tabulate their collections before depositing them and being held accountable for any shortages in their account, which may be claimed by the Employer. It argues that the present system prohibits employees from tallying their funds prior to depositing them in a bag at the facility, that they never have a chance to compare the funds collected with the computer and treadle counts for their shift, that shortage notifications take months before the employee is given only the opportunity on their own time and pay to explain what might have happened, and that they are often required to pay up the difference in shortages. It seeks permission to permit officers to count their funds at the end of each tour, or that they be given a receipt for the funds collected and deposited. It argues that Port Authority collectors are given such a receipt and that the technology is in place for the same to be done at the TBTA. Additionally, it challenges the premise that BTOs are responsible for the shortages, noting the fact that equipment malfunctions, that other employees have access to funds after leaving the PTO's possession, and that the time is long overdue for rectification of this problem.

The Union asserts that there is no need for building new facilities, that the funds can be counted in the back of the toll lane, that the count could be completed in 30 minutes and not in one hour, for a reduction in half of overtime required, and that cost could further be reduced by the cost of using temps.

Position of the Authority

The Authority argues that the need for speed, accuracy, and security in accounting precludes the possibility of officers counting all collected funds, that counting bills of \$5 and higher denominations rather than singles, coins, tokens, prepaid tickets, and non-revenue tickets is all that is possible, that the present limited counting takes 5-10 minutes for which employees are compensated, and that once all funds (counted and not counted) are placed in a sealed revenue bag, there is no further accounting responsibility. Verification, thereafter, takes place at a central location with use of specialized equipment and security staff under video surveillance. It argues

that the decentralization proposed by the Union is not feasible, that it would take more than an hour to count all these items by hand and verify with vehicle axle count, that there is no room or facility for such extended activity at the toll booths, that it would entail the hiring of extra security personnel during extended post tour tabulations, that it might entail closing some toll lanes, and would require new security and video surveillance equipment, all resulting in a 24% point addition to labor costs alone, with an additional capital expenditure of 1.6%.

Discussion

The procedure for accounting for funds within the control of the BTOs is not perfect. Other than the right to tabulate the large denomination bills the counting rests within the discretion of employees designated by management. Although very minor discrepancies are overlooked there is always a risk of employees being held responsible for greater errors. The negotiated fund of \$5000 against which discrepancies can be charged was established when tolls were half what they are now. In addition the collection of tolls at the Verrazanno Bridge exceeds the current allowable offset. Accordingly we believe it appropriate to retain the current individual daily offset, but to increase the current annual \$5000 group offset to \$15000 which should protect most of employees from the requirement of pay backs for tally discrepancies.

Additionally, for those employees who challenge the tallies, and who are now required to come to the TBTA headquarters to review the data, we propose that those who are exonerated in their charges be reimbursed for the time taken in such procedure.

Award

The group annual offset allowance for toll collection discrepancies shall be raised from \$5000 to \$15000. Employees who successfully challenge charges of shortages shall be reimburse for time taken in meeting with management to correct the errors.

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**ISSUE #9 WAGE PROGRESSION**

In its Demand #3, the TBTA proposes to change the annual wage progression of 70%, 75%, 85%, 100% over three years to 70%, 75%, 80%, 85%, 90%, and 100% after five years.

The Union objects to the change in progression.

Position of the Authority

The Authority contends that the change in wage progression is necessary to help offset the cost of its wage proposal so that it is more in sync with those of the comparators, and that it is not something particularly desirable but rather only a funding mechanism.

Position of the Union

The Union contends that the current progression is appropriate, that the TBTA's proposal would cost a new hire 5% after the second year, 15% after the third year, and 10% after the fourth year, that it would constitute a give back of 1.20%, and that it is totally unreasonable and unnecessary.

Discussion

This cost saving proposal has merit and is granted. It will provide the TBTA access to substantial future savings by extending the period of wage escalation for future employees. The addition of the two additional steps may result in some long term discrepancy in earnings compared to the present structure, but since eventually all employees will be on that track, the disparity will ultimately dissolve.

Award

The employer proposal for increasing the number of steps in the wage progression is granted.

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**ISSUE #10 OVERTIME EQUALIZATION**

In its Demands #4 and #5, the TBTA seeks to distribute overtime equally among all BTOs and to eliminate confining its access to only the most senior employees.

The Union objects to the proposed take back.

Position of the Authority

The TBTA contends that the present distribution of overtime by seniority is both costly and inequitable. It notes that officers with 20 or more years of service increase their base salary by 53% through overtime earnings to build up their pension entitlement, while those with 10 years or

less enjoy no more than a 5% increase. It cites salaries of officers retiring from 1992-94, running from \$94,096 to \$113,271, close to double their base salaries.

It notes that Local 1931, since its 1975 contract, has had equal overtime distributions, and that a cap on overtime distribution is found in the TA-TWU contract.

#### Position of the Union

The Union contends that the Authority's proposal undercuts the entire concept of benefit access being based on seniority, that senior employees should have preference because of their experience and greater know-how, and that any change would be disruptive of long established practice. This would be the only area where seniority is ignored, and would be a deliberate affront to senior employees, discriminating against them solely because of their years of service. It argues that the proposal would be virtually impossible to implement because of four differences, that it would permit management to play favoritism in overtime assignments, and that the net impact of its proposal would be less than .3%. It argues that overtime costs for the Authority account for only .018% of its revenue.

#### Discussion

The current arrangement for allocating overtime work on the basis of seniority has resulted in an internal inequity, as all overtime accrues to the few most senior employees. A readjustment of the overtime distribution system to allow for equalization of overtime among all bargaining unit members, would alleviate that inequity by providing all employees equal access to overtime and would bring this unit into conformity with the prevailing practice among other units. The manner in which this is to be implemented in the context of the variable work shifts and hours should be worked out between the parties equalizing the overtime among the same classification of employees as currently involved and with the comparable restrictions on the use of temporary employees.

#### Award

The Authority's proposal for equalization of overtime is granted. The parties shall negotiate the procedures for its implementation among the same employees and with comparable treatment of temporary employees as at present. This Board will retain jurisdiction of this issue for 90 days from the date of the Award in the event that the parties are unable to resolve this issue.

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## ISSUE #11 HEALTH COST CONTAINMENT

The TBTA Demands #6 through #9 call for institution of employee contributions of \$5.56 and \$16.82 via bi-weekly payroll deductions, institution of a \$300 initial deductible per year, and increase in the Major Medical deductible to \$100 per person and \$200 per family, a change to 75% of reasonable and customary and elimination of the GHI.

The Union objects to the changes.

### Position of the Authority

The Authority contends that its proposed changes are essential to address the alarming increase in its health care costs, which have increased at a rate far higher than the inflation rate in other sectors of the economy, rising 80.5% to 86.2% in cost in the last six years. It argues that employees at other MTA properties have had to share in the rising costs, noting that in July 1993, Local 1655 agreed to a pre-admission and concurrent review program and conversion from HIP basic to HIP/HMO and to consolidation of GHI into major medical coverage, and that the recent settlement with Local 1931 provides similar cost control measures. It notes that the BTOBA has failed to share in any such cost containment, and because of the economic pressures facing the TBTA must do so now. It contends that its proposals will bring BTOs' health care costs in line with those of other bargaining units, and non-represented employees on the property.

### Position of the Union

The Union contends that the Authority's proposals would result in increased payments of \$437.32 per year for lesser benefits, and also raise deductibles from \$50 to \$100 per person for a total of \$200, and introduce a \$300 hospital deduction where none existed previously, and reduce major medical reimbursement from 80% to 75% per annum. It notes that TWU and PBA employees do not have money deducted from their pay checks. It argues that at an estimated cost of 6.64%, these health benefit demands would virtually wipe out nearly half of any wage increase otherwise provided. It notes the fact that TBTA enjoyed a substantial reduction in its health coverage costs in 1993 with refunds of \$1.1 million dollars.

### Discussion

Under the present system, the BTOs have the option of selecting individual or family coverage under GHI or HIP basic with the employer fully paying the premiums. Under GHI they receive \$21 reimbursement for going to a physician plus major medical benefits for the remainder

of their bill beyond \$21 covered by major medical benefits. They have the option of participating in HIP centers for major medical benefits, but with the option of going outside the HIP HMO and a \$250 deductible to utilize the major medical benefit at 80% of the cost. They have no employee premium, no managed care hospitalization, no participating physician program, they can go outside their HMO and their \$50 deductible has been in place since the 1970s.

We believe it is time for substantial cost containment, to bring employees in this unit into a range of comparison with the TA/TWU package and the Local 1655 Agreement signed on July 13, 1993, including the following health cost containment measures:

Blue Cross-Blue Shield team care program with pre-admission and concurrence hospitalization review, elimination of major medical coverage for HIP participants and med team participants, conversion from HIP basic to HIP/ HMO, consolidation of GHI benefits into the Travelers major medical coverage to reduce administrative costs and surrender of the major medical overlay on the HMO benefits.

In the light of the increased financial burden that might emanate from these adjustments we do not approve the employers proposed biweekly employee contributions of \$5.56 and \$16.82 for individual and family coverages.

Award

We reject the Employer's request for employee bi-weekly contributions of \$5.56 and \$16.82 for individual and family coverage. We grant the Employer's proposal for the same cost containment as was previously agreed to by Local 1655 in its July 13, 1993 Agreement.

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**ISSUE #12 VACATIONS, HOLIDAYS AND LEAVE**

TBTA Demand #10 proposes a reduction in vacations for new hires by eight days at each level of vacation entitlement. Demands #11 and #12 call for 12 holidays' pay in cash in December provided the employee is in pay station for a minimum of 15 days during the month in which the holiday is earned, as well as elimination of Art XIII, Sec 2 BCD of the parties' Agreement. Demand #13 calls for days off without pay if adjacent to an unauthorized absence, and Demand #14 grants personal business days to a maximum of seven only when an extra man is available in the schedule or a non-permanent replacement can be secured.

The Union objects to all the foregoing changes.

### Position of the Authority

The TBTA contends that the foregoing proposals have merit and should be awarded, that they help to conserve authority financial resources which can be used to fund its proposal, that they eliminate a number of inequities, and will help to control the unbridled use of days off for unauthorized purposes.

### Position of the Union

The Union contends that the vacation reduction proposal would reduce vacation levels up to eight years from 23 to 15, for nine to fifteen years from 25 to 17, and for 16 or more years from 27 to 19 days. Newly hired BTOs would thus be required to work 1600 additional hours or 200 additional tours during their careers to be able to retire at the completion of 25 years of service. This penalty, it continues, is imposed despite the overwhelming evidence of their having to work in an extraordinarily polluted environment and subject to numerous diseases, stress, illnesses, and other dangerous conditions.

The Union claims that employees in similar units throughout the metropolitan area enjoy a much more generous leave and vacation policy, citing the benefits enjoyed by Transit Authority Police, the New York City Police, Long Island Railroad and Transit Authority Police. It asserts that the TBTA's proposed tampering with vacations for new hires would radically change the vacation structure for the unit and others which have been generally comparable.

The Union challenges Authority demand #12, seeking to eliminate Art XIII, Sec 2B, C, D and the right of BTOs to either elect cash payments in lieu of time off or be paid their daily rate of pay. Further, it would, with the elimination of Sec 2C, prevent officers absent for illness or injury on duty from earning their paid holidays. The elimination of Sec 2D would further curtail the right of BTOs to obtain time in lieu of a paid holiday as a matter of right when extra BTOs are available from the extra overtime list. It would further encourage the wholesale use of non-unit temporary employees who lack the full skills and experience of BTOs. It would eliminate the right of a BTO to take off a holiday.

In TBTA Demand #13, an employee out on an unauthorized absence would be barred from being paid any compensation for either or both RDOs immediately preceding or following their day off.

Finally, in TBTA Demand #14, the Union argues that the Authority would virtually eliminate personal business days since using them would depend on securing a replacement. Such discretion would, it continues, be in the hands of the Authority, who could deny the leave if only because it would require the use of overtime.

It cites the Authority as the only comparable agency in the metropolitan area which fails to provide any personal leave, and notes that the seven personal business days in question are deducted from vacation time and cannot be banked.

Discussion

The Employer has the burden of proving the need for changes in the existing contract provision entitlements. In the case of the authority demands under consideration, there is no persuasive evidence of inequity or exploitation of existing levels of benefits by employees. The Employer has failed to meet its burden of proof in presenting these issues. They are denied.

Award

The Authority's proposals in the area of vacations, holidays, and leaves are denied.

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**ISSUE #13 SCHEDULING**

In Demand 15, the TBTA proposes to reduce each BTO from 109 to 104 Regular Days Off per years.

The Union objects to the proposal.

Position of the Authority

The Authority contends that the proposal is set forth to save money and to thus keep in the funding of its proposed wage package.

Position of the Union

The Union contends that the proposal has an adverse financial and health impact on employees, that it would increase a BTOs' exposure to noxious pollutants, chemicals, and injuries and would require BTOs to work 125 additional tours or 1000 additional hours or nearly one half additional years over the course of their 25 year careers, prior to being able to retire.

Discussion

As noted above, the TBTA bears the burden of proving the need for the contract alteration here proposed. The prospect of merely saving money constitutes insufficiently persuasive evidence to support such an increase in the employee's time at work. The proposal is denied.

Award

The Employer's proposal to reduce the number of regular days off per year is denied.

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**ISSUE #14 STARTING TIME FLEXIBILITY**

The Authority seeks in Demand #16 to eliminate contractually mandated tour starting times and make changes in shift scheduling.

The Union objects to the change.

Position of the Authority

The Authority contends that its proposal would allow greater flexibility in setting tour starting times permitting it to improve customer service by matching manpower to shifting commuting patterns, reducing customer waiting times, and providing BTOs with greater flexibility in choosing working hours.

Position of the Union

The Union contends that the Authority currently schedules work shifts to begin at 6 AM, 7 AM, 8 AM, 9 AM, 2 PM, 3 PM, 4 PM, 5 PM and 11 PM without mandatory overtime, that it can move employees among those starting times, that establishment of more than nine starting times would be unreasonable, and that the present arrangement has been in effect for 13 years following a 1982 Factfinding report.

Discussion

The evidence shows that the employer and union have been able to develop adaptations from the fixed contract starting times, and that such adaptations have provided a good deal of flexibility to meet the demands of the traveling public. To permit the total freedom in starting time as the employer proposes would run contrary to the traditional consideration of shift schedules and working hours being a matter of traditional contract negotiation, particularly since the present arrangement has been in effect since 1982. There is no credible evidence of any substantial change in conditions since the last contract was negotiated, to support the change the Authority here demands. Accordingly its demand is rejected.

Award

The Authority's proposal for starting time flexibility is denied.

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**ISSUE #15 SICK LEAVE CONTROL & COUNSELING**

The TBTA Demands #18 through #21 would introduce new sick leave usage procedures reducing sick leave from 12 to six days per year, permitting unrestricted home telephone calls, requiring call ins two hours prior to the start of a shift with failure to call in resulting in loss of pay for such scheduled tour, requiring proof of unfitness for work for any absence, employers right to dock pay of absent employees who are found fit to work, and introducing counseling and potential discipline for those with continuing sick leave problems. It would also deny sick leave to any employee unfit for work on account of accident/disability incurred while working for any other employer.

The Union objects to the change.

Position of the Authority

The Authority contends that the average sick days used per BTO unit employee is 15.20 per year compared to 11.87 in the maintenance unit, and 11.34 in the TA/TWU unit, that the proposed procedure would bring this Bargaining Unit into conformity with the sick leave verification and counseling procedure ratified by the February 2, 1995 Memorandum of Understanding between Local 1931 and the TBTA and consistent with the terms of the agreement between the NYCTA and TWU Local 100. It asserts that employees who are truly sick will not be affected, and that the change would impact only on those abusing the present system.

The Authority cites the need to restore some of its original rule making power to protect against employees who are abusing the sick leave system. It cites the lower levels of absenteeism among maintenance employees.

Position of the Union

The Union contends that the TBTA employees already have less sick leave access than other MTA units, that Local 1931, Local 1655, and SOBA all receive 12 days, that the reduction to six days per year and the requirement of proof of inability to work places stringent burdens on the officer, including potential denial of pay for subsequent tours of duty. It notes that the proposal permits unlimited telephone checks on employees' presence at home, and the potential of

subjecting employees to disciplinary action for minor instances of sick leave utilization. It notes that the risks of exposure to pollution, tuberculosis and hepatitis demonstrate the officers susceptibility to an extraordinary potential for illness.

### Discussion

At the outset, we endorse the objective of controlling sick leave abuse, but are not willing to endorse changes which will impact adversely on those who are genuinely ill, and utilizing the rights of sick leave provided under the Agreement. We reject the Employer's Demand # 18 which would reduce sick leave from 12 to 6 days.

Likewise, we reject the requirement of proof of illness to excuse every absence. One must recognize that employees do become ill during the course of their work year. The problem is to curb abusers. Thus, we propose that the Employer have the right to require proof of illness from employees who are absent more than three occasions during the course of a year. We also propose that the Employer have the right to require such proof when an employee is absent for more than three days. Extending to the Employer the option of invoking such certification permits discretion in the case of those believed to be legitimately absent for illness, while providing the right to bear down more diligently on those believed to be abusing the system. Both strictures are necessary to curtail abuse which could result from employees taking multiple short term absences of three or less days, or from taking a few absences of extended duration.

We recognize the limitations of the current single phone call authorization, and would extend the Employer's right to make two calls, imposing on the abuser the risk of getting caught if absent during a second call. Other proposed changes are rejected.

### Award

The current sick leave provisions shall be changed to permit the employer to require proof of illness on absences of more than three days duration and in cases of more than three absences during the course of a rolling year. The employer shall have the right to make two telephone calls to the homes of absent employees. All other employer proposed contract changes in this area are rejected.

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**ISSUE #16 INJURY ON DUTY LEAVE DIFFERENTIAL PAY**

The Authority in its Demands #22 and #23 proposes a 150 day cap on differential pay to equal with workers compensation an amount after taxes equal to after tax wages for a 40 hour work week. It would also reduce the differential payment by 30% after the 150th day. At the hearing it changed its position on the 150 limit, reverting to the present one year, and would then impose the proposed cap.

The Union objects to the changes.

Position of the Authority

The Authority asserts that at present, BTOs on Injury on Duty Leave receive their full gross pay for the first year of leave, but pay income tax on only the difference between regular salary and the workers compensation entitlement, resulting in a higher net earnings after taxes than those in active service, and that this creates an economic incentive to remain on IOD and justifies the imposition of the proposed cap.

The Authority further asserts that it's proposal to decrease the differential by 30% after 150 days instead of after the first year would further reduce the incentive to remain on IOD unnecessarily by limiting the circumstances when the differential would be paid, including those who were injured for violating a TBTA policy or rule or who refused to take prescribed medication. It cites as its model the comparable language in the TWU contract, and the fact that the limit on the IOD differential has been agreed to by ATU Locals 726 and 1056 and many other bargaining units in the area.

Position of the Union

The Union contends that the Authority's proposal would make the first seven days of an injury on duty chargeable to sick leave, transmute non-taxable current workers compensation payments into payments on which they would have to pay taxes in contravention of the IRS Code 26U8C 104(a) (1), and would leave to the unbridled Authority's discretion, a series of unreasonable and restrictive conditions on access to such benefits, and which could not exceed 150 days. The Authority's proposal, it notes, would risk loss of present rights to accrue two vacation days per month, sick leave (one day per month), one paid holidays per month, longevity payments and check in/check out payments if officers were transferred to short term disability prior to 150 days or to long term disability at the conclusion of 150 days. This, it continues, would cost officers over \$6000.

The Union also objects to the change in definition of an injury from "all accidents or injuries... under all circumstances" to "accidental injuries sustained in the course of employment."

The Union argues that taking the first seven days of the IOD must come from an officers' sick leave, and if he has none, he would not be paid that one week salary.

Discussion

The anomaly of employees out on extended leave for injury receiving more income than those who continue to work should be corrected. It is not only unfair to those who continue to work, it is costly, and it creates a misguided inducement to stay out on leave rather than to return to active employment. Such benefits should be restricted to sustaining an accidental injury while engaged in the performance of the employee's assigned duty. Accordingly, we rule that after an employee is out for an injury on duty, the differential pay shall be sufficient to comprise together with any entitlement to workers compensation an amount after taxes equal to his/her after tax wages for a forty hour work week. After one year, that amount shall be reduced by 30%.

Award

The Employer's proposal for compensation for employees incapacitated as a result of accidental injury sustained in the performance of an employees assigned duty is granted at a rate equal to the employee's after tax wages for a forty hour work week is granted, with the amount being reduced by 30% after one year.

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**ISSUE #17 LONG TERM DISABILITY PAY**

The TBTA under Demand #24 proposes that BTOs on long term disability be barred from working and receiving long term disability payments after 24 months.

The Union objects to the change.

Position of the Authority

The Authority contends that the right to engage in outside work while receiving LTD results in an extraordinarily high rate of its usage - 22.17 days per BTO in 1994, that it destroys the incentive to return to work since they continue to receive up to 70% of their salary, and that its proposal should be granted.

### Position of the Union

The Union contends that the Authority seeks unchecked discretion to terminate all benefits during LTD even though the individual is incapable of performing Bridge and Tunnel duties, and that the Demand should be denied.

### Discussion

The Authority contends that it needs a two year cap on employees receiving long term disability, claiming that some recipients are exploiting the system to continue receiving such benefits until they reach age 65.

We believe a two year limitation is arbitrary and unfair to employees who may be legitimately unable to return to work within that period, but might be able to return shortly thereafter.

The present agreement, we feel provides the employer with sufficient protection against employees whom it believes are exploiting their long term disability benefits. As we read Article XIII, Sec 3 D 2., it authorizes the Authority-selected physician to determine upon medical examination when an employee's injury requires absence from the job. Similarly, under Art XIII, Sec 3E, "...the Authority's doctor and the employees doctor will consult where the employees doctor indicates that a directive to return to work is premature. The Authority's doctor's determination shall be final. The Authority's doctor shall be a specialist in the medical area involved." We believe such language should also cover instances of employees out on long term disability, as well as the IOD or illness cited in XIII Sec 3E.

### Award

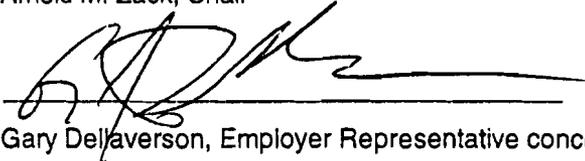
We believe the current authority of the Employer's specialist physician to make final determination as to an employee's ability to return to work is appropriate to resolve questions of return to work from long term disability.

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Retention of Jurisdiction

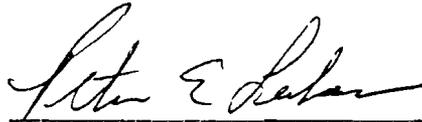
In the light of the unresolved status of Union demands 62A and 64 which are currently before PERB, I am retaining jurisdiction in the event that those matters are remanded to arbitration for resolution.



Arnold M. Zack, Chair



Gary Dellaverson, Employer Representative concurring



Peter E. Lukas, Union Representative concurring