STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration Between AMALGAMATED TRANSIT UNION, LOCALS 1056 & 726 - and - NEW YORK CITY TRANSIT AUTHORITY (PERB Case No. TIA2011-010)	**OPINION AND AWARD**

The Interest Arbitration Panel
George Nicolau, Chairman
Anita Miller, Employer Member
Jeffrey Freund, Union Member

APPEARANCES

For the Unions:
Gladstein, Reif & Meginniss, LLP
By: Beth M. Margolis, Esq.

For the Authority:
Proskauer Rose, LLP
By: Neil H. Abramson, Esq.
Daniel Altchek, Esq.

The Parties are signatories to Collective Bargaining Agreements that expired on January 15, 2009. Following unsuccessful negotiations for successor agreements, an impasse was reached. Thereafter, on November 10, 2011, the Public Employment Relations Board designated the Undersigned as a Public Arbitration Panel to resolve the dispute.

The Panel held hearings on December 7, 2011, January 6, 23 and 24, and February 6 and 8, 2012, at which the Parties were afforded full opportunity to offer evidence and argument and to present, examine and cross-examine witnesses. Following the testimony, counsel filed post-hearing briefs on March 28, 2012, at which point the Record was closed. Thereafter, the Panel met to consider the case.

Our task, as set forth in Article 14, Section 209 (5)(d) of the Civil Service Law, popularly known as the Taylor Law, is to make a "just and reasonable determination of the matters in dispute," taking into consideration, in addition to any other relevant factors, the following:

> (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;
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> (ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;
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> (iii) the impact of the panel's award on the financial ability of the public employer to pay, on the present fares and on the continued provision of services to the public;
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> (iv) changes in the average consumer prices for goods and services, commonly known as the cost of living;
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> (v) the interest and welfare of the public; and
>
> (vi) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits and other working conditions in collective negotiations or impasse panel proceedings.

The Background

ATU Local 1056 represents approximately 1650 Transit Authority ("TA" or "Authority") employees who operate and service buses in Queens and ATU Local 726 represents approximately 1450 workers who operate and maintain the TA's bus system in Staten Island. All the New York City bus systems other than those noted above, as well as the subways, are operated and maintained by approximately 33,000 workers represented by Local 100 of the Transport Workers Union of America. With respect to the aforesaid New York City buses, the employees in the three bargaining units work in the same titles.

The fact that these workers, who perform the same functions for the same employer, are in three bargaining units is grounded in history. There is no need to describe that history in detail. Briefly, what now exists is the result of the City buying up, at different times, what were privately owned bus and subway systems, the employees of which were represented by different unions, followed by the ultimate creation of separate bargaining units as recommended by a fact finding panel in 1954, and the election of each of the aforesaid unions in the three previously described units.[1]

[1] A more detailed history is found in the Reports of the New York City Transit Fact-Finding Committee in May 17, 1954, and November 30, 1957, both of which were provided to the Panel.

At times, the Authority has bargained with all three unions, but most often the Authority has bargained with Local 100 prior to turning to Locals 1056 and 726. In either event, the contractual results for the smaller units have always followed the pattern set by negotiations between the TA and the TWU (UX7-9).[2]

The Contentions in Brief

It is the position of the ATU Locals that this pattern, which has existed for some 65 years, should continue and that the Panel should adopt the Zuccotti Award of August 11, 2009, which had set the terms of the July 16, 2009-January 15, 2012 TA/TWU Contract.[3]

The Authority disagrees. It contends (1) that the Zuccotti Award was flawed and should not be followed; (2) that the economic climate is vastly different today than at the time of the aforesaid Award, and (3) that the TA does not have the financial ability to pay what the ATU Locals unfairly demand without putting its finances and its ability to serve the riding public in danger. In the Authority's view, a more appropriate and realistic pattern to follow is the December 13, 2011 ATU Local 252 Award of the Panel headed by Stanley L. Aiges, which rejected a full application of the Zuccotti Award, and to also give considerable weight to recently negotiated contracts between the State of New York and the Civil Service

2. In one instance, 1982, a PERB Panel, which was convened pursuant to a Special Act of the Legislature jointly requested by the Authority and the three Unions, conducted a single proceeding and awarded identical conditions and three-year contract terms (UX10).

3 That Contract, as noted, expired two months ago and the TWU and the TA are now in negotiations for a new agreement, presumably to be effective as of January 2012. In contrast, the Contracts of the two ATU Locals expired three years ago. Hence, a good portion of this Award, if not all of it, would be retroactive.

Employees Association and the Professional Employees Federation, which together represent some 120,000 state employees.[4]

In response, the Unions contend that the TA does have the resources to match the Zuccotti Award and that neither the Aiges Panel decision nor the CSEA and PEF contracts should be determinative.

In support of their respective positions, the Unions and the Authority filed pre-hearing and post-hearing briefs and offered considerable testimony and a number of exhibits. Before reaching its decision, the Panel fully considered those presentations in light of the Taylor Law's requirements.

The Zuccotti Award

The Zuccotti Panel awarded TWU a three year contract, expiring, as previously stated, on January 15, 2012. Its basic elements were:

- 2% raises on April 16 and October 16, 2009;
- 2% raises on April 16 and October 16, 2010;[5]
- 3% raise on January 16, 2011
- Employee contributions to health insurance capped at 1.5% of wages based on a 40 work week effective August 15, 2009; and
- the creation of a new Station Maintainer Helper position

[4] While the Aiges Award (EX1) gave Local 252 the same 2009 and 2010 increases as those in the Zuccotti Award, it did not grant an increase for the third, 2011-2012, contract year. In August 2011, the CSEA agreed to a five year contract with a three year wage freeze and two increases of 2% thereafter. Later, PEF agreed to a four year contract with a three year freeze followed by a 2% increase.

[5] As detailed later the raises were compounded.

The Contract Term and Wage Proposals of the Parties

The Unions:	**The Authority**
1. Term of Agreement:	
Three years, ending 1/15/12	Five years

2 Wages

Effective April 16, 2009	2%	Effective April 16, 2009	2%
Effective October 16, 2009	2%	Effective October 16, 2009	2%
Effective April 16, 2010	2%	Effective April 16, 2010	2%
Effective October 16, 2010	2%	Effective October 16, 2011	2%
Effective January 16, 2011	3%	Effective April 16, 2011	Zero
		Effective April 16 2012	Zero
		Effective April 16, 2013	Zero

The Union asks that the 2009 2% increases be calculated on the rate in effect at the end of 2008 and that the remaining three increases each be calculated on the rate in effect as of October 16, 2009. The Authority states that all wage increases shall be added to applicable wage progressions; that the 2010 total wage increase shall be compounded on the wage rate in effect on February 2, 2010, and that any additional wage increases must be funded by productivity/work rule changes.[6]

Health Benefits and Sick Leave Provisions

The Union also asks for a reduction in employee health benefit contributions by an adoption of the 1.5% Health Benefit cap of the Zuccotti Award and, like Zuccotti, a Sick Leave benefit that would add 12 days to the Sick Leave Bank of each employee who has been with the Authority for at least a year, while the Authority proposes that employees contribute 15% of the their health care coverage and that employees with

[6] The Authority's position at impasse, August 3, 2011, was a five year contract with no wage increases unless funded by productivity/work rule changes. On the second day of hearing, January 23, 2012, its proposal was amended to provide for wage increases of 4% for the first two years of a five year contract, with any additional increases to be funded by productivity/work rule changes (EX3)

family coverage contribute 25% of the incremental cost over individual coverage. Additionally, the Authority seeks to eliminate the "70/30" Sick Leave list and to gain the right to discipline employees solely for remaining on the Sick Leave Control List. [7]

Other Authority Proposals

Two Authority proposals common to both locals by which the Authority seeks cost savings is a reduction in vacations for new hires and reduced new hire cleaner progression rates. Additional proposals common to both locals are the elimination of the Maintenance Department's 7-day penalty as specified in Section 3.2.8 of the respective contracts; a requirement that Maintenance Helper Bs use all tools used by Maintainers whenever assisting Maintainers; the elimination of pay for swing time in the Transportation Department; the use of part-time employees, known as Limited Assignment Bus Operators (LABOs), and the adoption of transfer procedures set forth in the TWU contract. Additionally, the Authority seeks major changes in the Discipline and Grievance Procedures, including the replacement of current arbitrators and the replacement of the present system of binding arbitration with the procedures of Section 75 of the Civil Service Law, pursuant to which Administrative Judges would make recommendations that the Authority could accept or reject. A complete list of the Authority's proposals is in EX

[7] The previous contracts of the three units had a 1.5% contribution with an escalator clause, which had raised the contribution to 1.5307%. The Zuccotti Award restored the 1.5% cap for the TWU; the ATU's Locals ask for the same reduction.

2nd 3, while the Union's proposals, including those mentioned above, are in UX3.[8]

The Testimony

In support of their position that the Zuccotti Award should be followed, the Unions presented the testimony of Local 1056 President Deneek Miller, Local 1056 Vice President Mark Henry, Local 726 President Angelo Tanzi, and Thomas Roth, President of The Labor Bureau, Inc.

The presidents of both locals testified that the classifications in TWU and the ATU locals are the same; that all are hired off the same Civil Service List; that a successful applicant is hired into any one of the three units based on the Authority's needs; that they undergo the same training; that upper management is the same for the three bargaining units; that bargaining unit members and management periodically transfer into other units; that some of the classifications have common picks; that employees in the three divisions often interact, and that during layoffs, remaining employees may find themselves in different units (TR. 77-82, Miller; 102-107, Tanzi).[9] They also testified that the Authority has always completed bargaining with Local 100 before

[8] The Authority also asked for the right to require an employee to serve an attendance suspension rather than having it served on paper, but, as Franceschini conceded, nothing in the ATU Agreements prevents the Authority from requiring that those suspensions be served (Tr.235-236).

[9] The classifications include Bus Operator, Maintainer, Maintainer's Helper B, Cleaner, Light Maintainer, Railroad Stock Worker, Stock Handlers and Helpers, and a few other common titles.

commencing bargaining over economic terms with ATU (Tr. 83-84, Miller; 107-108, Tanzi), Tanzi and Vice President Henry adding that Authority Senior Vice President Judith Pierce specifically said in this round that ATU economic bargaining would not start until the Authority knew how the Local 100 arbitration came out (Tr. 98-100, Henry; 110-112, Tanzi).[10]

Union witness Roth also testified as to the historic correlation between the TWU bargaining and contracts and the bargaining and contracts of the ATU's, noting that from 1946, the wage rates had been the same and that in the many years since there was never a time that Locals 726 and 1056 hadn't received their increase on the same date as Local 100 (Tr. 19-26, UX7). Referring to this, not as pattern bargaining, but parity bargaining, i.e., where the wage levels of employees of the same employer performing the same work in the same classifications become identical, Roth, citing the history of transit bargaining in major cities such as Boston, Chicago and Washington, D.C., testified that this was not uncommon in this industry (Tr. 25-28). Also in evidence through Roth's testimony is UX10, a series of extracts from Authority bargaining notes in eleven bargaining rounds between 1961 and 1980, in which the Authority priced the wage demands of the three unions as a single cost item, an indication, according to Roth, that it was fully aware that subsequent wage levels had to be the same (Tr.31-42). Further to that point and the

10.Tanzi said that the locals were hoping to start bargaining before completion of judicial review of the Zuccotti Award because the TWU employees had received the first two raises in their contract, the Authority only appealing the 3% raise and the health benefit cap. As a consequence, his members were working alongside TWU members who were earning more than they were. Nevertheless. the Authority insisted it would not begin until it knew what its TWU costs were (Tr.109-112).

Authority's asserted recognition and importance of pattern bargaining, the ATU Locals introduced UX16-19, Authority statements to that effect in previous proceedings.[11]

The Authority did not challenge the testimony of Roth or the three Union officials as to the history and nature of bargaining. It did, however, dispute Roth's testimony as to the pricing of the ATU proposals. In that regard, Roth testified that the total three year economic cost of applying the Zuccotti Award to the Local 1056 and 726 employees would be $47.5 million, which includes $1.7 million in health benefit cost, and that the going-out cost of the three-year agreement would be $28.4 million. (Tr. 61, UX12).[12] Roth stated that he created this static model using the head counts in UX11, the average rates by general classification group, the pay hours associated with those classifications, and the variable benefit expenses (Tr. 57-63). According to Roth, this $47.5 million cost of the three-year retroactive contract, which would be payable in a single year, is .3476% of the MTA February 2011 budget, with the going out cost less than .2% of the total operating budget (Tr.63-66, UX13).

As previously stated, the Authority insists that the Zuccotti Award is flawed; that it was based on incorrect projections made by both sides; that the Panel has a duty to examine that Award and will find, once it does,

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[11] Roth noted, in referring to the other unions on the TA property and those under the Metropolitan Transit Authority's umbrella ((UX11), that none had the singularity of classifications as did Local 100 and Locals 1056 and 726 and do not have the parity relationship he had described (Tr.49-56).

12 Since the Parties are in agreement regarding the first two years of wage increases, the $47.6 million cost overstates the 2009-2012 difference in their proposals. The actual cost difference is $9.4 million.

that it should play no part in its determination. The Authority also argues that this proceeding is not about what happened in the past or who follows whom, but about serving the public interest. That interest, in the Authority's view, is best served by the five-year agreement it proposes, an agreement with the first two years of the Zuccotti Award, followed by three zeros thereafter, and a series of work rule and contract changes that will allow the Authority and the MTA to balance its budget, as it must do yearly, and continue to serve the public without fare increases and service reductions beyond those already planned.

In support of its position, the Authority offered the testimony of Senior Direct of Labor Relations David Franceschini, Aaron Stern, the Director of the Authority's Office of Management & Budget, Douglas Johnson, the MTA's Budget Director, and Patrick McCoy, the MTA's Director of Finance.

Senior Director Franceschini's testimony was essentially limited to the proposals the Authority had made, as amended January 23, 2012, (Tr. 148-214, EX2-3). With respect to the wage proposal, he stated that the intention was to pattern the first three years (January 15, 2009-January 15, 2012) after the Aiges Award, which replaced the third year 3% increase of the Zuccotti Award with a zero, followed by two additional zero-increase contract years (Tr. 217-218). Apart from the increase in health benefit contributions (Tr. Tr. 175-180), other matters of importance were the heightened ability to increase control over absenteeism by eliminating the 70/30 sick leave list and permitting the discipline of employees remaining on the control list (Tr.162-177, 216-217, EX4 & 5); the need for

reduced progression rates for new hire cleaners (Tr. 160-161) as well as a reduced new hire vacation schedule (Tr.183-185), which would create savings over time, and changes that could bring immediate savings, such as the elimination of swing time (Tr.196-200), the elimination of the weekend shift differential (Tr.185-186), a change in the calculation of overtime pay (Tr.187-188), the elimination of an overtime payment if a schedule is changed with less than seven days notice (Tr.196-197), various changes in the Maintenance Department (Tr. 189-196), and the use of part-time Bus Operators (Tr. 201-202). These Limited Assignment Bus Operators would be paid a hourly rate of 80% of a full duty Operator's wage progression scale, but would not have an hourly or weekly guarantee, or family health care coverage. Additionally, there would be no limit as to their use (Tr. 289-297, Stern).

Director Franceschini acknowledged that most of the Authority's proposals were departures from the present TWU 2009-2012 contract and mirrored demands it was making in the current TWU negotiations for a new agreement (Tr. 223-246; cf. UX21 and EX2 & 3).

Director Stern presented a cost analysis of the Authority's proposals, basing the new hire proposals on various assumptions and the part-time Bus Operator proposals on the assumption that their use would be approximately 10% of the Bus Operator work force. His estimated savings of this demand on a going out basis, assuming that 10% use, for Local 1056 was $3.219 million or 2.55% and for Local 726 $1.917 million or 1.71 % (Tr. 281, EX6). He acknowledged that except for the elimination of

the 3% increase in the 2011-2012 contract year, none of the Authority's other proposals would have an impact, economic or otherwise, before the assumed 2012-2014 contract years (Tr. 282).

MTA Budget Director Johnson explained the need for the Authority's proposals and the impact of failing to grant them, doing so by discussing the various slides on EX7. He began by describing the normal budget cycle, which usually ends in December when the MTA Board votes on the final budget as proposed in November. However, he said, there have been times, including the past year, when significant events between November and December required that changes be made. The events last year included the State's reduction in the Payroll Mobility Tax ("PMT") as well as other dedicated taxes received by the MTA. When such events throw the proposed budget out of balance, the only way to balance the budget, which it must do under State law, is to take funds out of the capital program or not do something else it planned to do (Tr.307-313, Johnson).

Citing the 2008-2009 fiscal crisis and the reduced revenues since then, Johnson further testified that the five year contract with its three years of zeros was crucial and that even then the MTA's financial future, with its labor costs at 58% of the budget, was still at risk. Among those risks, he said, were lower tax revenues due to the possibility of a double dip recession, non-recurring replacement of lost PMT revenue, as well as volatility risks due to weather, energy cost and the like (Tr. 341-344,EX7, Sl.15). Director Johnson additionally testified that the MTA, as shown on EX7, Slide 13, had taken a number of extraordinary steps to reduce

expenses. Nevertheless, if the three zeros are not obtained from its entire represented labor force, operating results could be $147 million in the red in 2013, stretching to over $500 million the next two years (Tr. 336-344,EX7, Sl.16). He also testified that traditional funding sources to close such a gap are simply not available, in that there was no prospect of additional revenue from the State, and that those service cuts that are defensible have already been implemented and significant fare and toll increases have already been planned (Tr. 344-346, EX7, Sl.17).

Johnson further testified that the Zuccotti Award was seriously flawed and that it should not be followed. First, he said, both sides in that proceeding were off the mark in their projections, Local 100 asserting that the Authority was underestimating its 2009-2010 revenue by $600 million while the TWU was actually overestimating it by $1.8 billion. There were, in Director Johnson's opinion, other errors in that Award, including the Panel's determination that the general reserve could be used to fund the Award, when a reserve is intended for emergencies, inappropriately stating that the MTA could use the "one shot" stimulus money that was intended for job creation or that the Award could be funded through deferral of the capital program, when doing that would obviously compromise the infrastructure of the MTA, and, finally, that the Award could be funded without having an impact on service, though service subsequently had to be reduced (Tr. 326-335, EX7, Sl. 11 & 12).

Rather than asking the Panel to follow an Award reached in error, Johnson contended that the ATU Locals should serve the public interest as did the CSEA and the PEF in their zero wage contracts with the State.

ATU witness Roth testified in rebuttal that there was no real relationship between the CSEA and the ATU locals. It is not just the classifications that differ, so do the historical wage increases. Since 1978, there have only been four years in thirty-three where the general wage increases of the CSEA and ATU Locals 1056 and 726 have been the same. In contrast, the wage increases of Local 100 and these ATU Locals have always been a perfect match (Tr.591-594, UX41). Beyond this, Roth said that the suggestion that everyone took a wage freeze as a result of the new CSEA Agreement is not accurate. The CSEA pay structure is a step and grade system providing for increases every year from the hiring rate to the job rate, a process that takes eight years. There is also a downstate adjustment for those working in that area. Moreover, there are lump sum longevity payments for those employees with five or ten years of service. These step increases, the downstate adjustments, as well as longevity lump sums, continue to apply through each year of the new CSEA Agreement, resulting, in each instance, in the cost equivalent of general wage increases (Tr. 584-591, UX39 & 40).

Roth also took issue with the Authority's contention that the Aiges Award, in denying Local 252 the third year 3%, was really a departure from the Zuccotti Award. Since the first 2% increase awarded by the Aiges Panel began at the effective date of the Contract in contrast to the Zuccotti

Award's three-month lag and since the cost to the MTA of the Local 252 Award was extinguished when that operation was taken over by Nassau County before the end of the contract term, Roth said there is only a 1% difference in the comparative value of the Aiges Award as applied to the ATU Locals than the application to them of the Zuccotti Award (Tr. 595-605, 622-627; UX42).[13]

The MTA's claimed inability to pay for the Zuccotti Award as well as its professed need for a three-zero five year contract was questioned by ATU witness Dr. James Parrott, Deputy Director and Chief Economist of the Fiscal Policy Institute. He began by tracing the difference in the MTA's proposed budgets from November 2009 to December 2011 (Tr. 438-450; UX26A-26H). He noted that, in UX26A, the MTA, anticipating that the Zuccotti Award, if not overturned, would cost approximately $90 million in 2010, $200 million in 2011 and 250 million in 2012 above the amounts already planned for, decided to put another $85 million into its 2010 reserve. He further noted that until July 2011, every approved financial plan contained enough funds to pay for the Zuccotti Award, not for just TWU, but for all unions that often followed the Local 100 pattern. Even in July 2010, when a net zero initiative was first proposed for the two years

[13] Senior Director Franceschini maintains that Roth's analysis was incomplete in that it only evaluated wages and that if it had taken the rollback in the health escalator clause and the Station Maintainer Helper into account, the cash difference would have been .52% higher (Tr. 644-645). He also testified that if the analysis had been done on a rate evaluation and going-out basis rather than a one-time cash evaluation, the Aiges Award difference, rather than being 1%, would have been 3.12% less considering wages only and 3.69% if the other elements were taken into consideration (Tr. 646-651, EX12)

following the period covered by the Zuccotti Award, that Plan's base line assumed "a TWU pattern settlement for represented employee of Bridge and Tunnel, MTA police, LI Bus, MTA Bus and the remaining NYCT represented employees not covered by the TWU contract" (Tr. 445, UX26C, p.25). Then, in July 2011, the MTA, citing the CSEA and PEF contracts as evidence of a changed "labor environment," added a third zero, the first to replace the budgeted 2011-2012 3% increase, then allocating that saving to the general reserve (UX26F).

As to the MTA's ability to pay wages equivalent to the Zuccotti Award, Dr. Parrott agreed with the calculations of witness Roth in UX12, showing that the cost of applying the 3% increase to the two ATU locals would be $7.6 million for the wage increase and $1.7 million for the health insurance component, making a total of $9.4 million. He also agreed that the total cost, if the increase was applied to other locals that typically followed the TWU pattern, would be $17 million, resulting in a total wage cost exposure of $26.4 million (Tr. 493-495).

While acknowledging that the MTA had to balance its budget each year, Dr. Parrott contended that there was already sufficient money in the budget to meet this increased cost. First, he said, there is $100 million in the general reserve for 2012 (Tr. 496).[14] Second, there are potential savings on its debt service. In the past three years, he said, the MTA has saved an average of $100 million a year, the difference between its 4%

[14] That Reserve was subsequently increased to $130 million (Tr. 720, Johnson).

interest rate cost and what it actually paid, with its cost in 2012 and 2013, inasmuch as the Federal Reserve intends to keep interest rates low, $50 million less than projected each year (Tr. (496-501, UX33-35).[15] Dr. Parrott also maintained that, if needed, the MTA could borrow from the operating revenues budgeted for capital projects (Tr. 503), and, as the State Comptroller has already suggested (UX33), that the GASB Fund, which is not mandated and is funded on a pay-as -you-go basis, could be directed to other purposes (Tr. 502-504).[16] He further maintained that there were savings to be had if the interest rate swap agreements the Authority had made with financial institutions were re-negotiated. It is now paying $115 million a year on those agreements, which would be much less, if those agreements were re-done. Since the MTA has successfully re-negotiated agreements with its vendors, Parrott said there is no reason, particularly since banks are presently vulnerable to criticism, why these agreements can't be re-done with those organizations (Tr.471-478).

Dr. Parrott also disputed the Authority's view on the outlook for the economy. Though EX7, Slide 15, foresaw a double dip recession as a major risk, Dr. Parrott pointed out that the State's 2012-2013 Executive Budget (UX29) disagreed, saying that there was "virtually no chance" of that occurring. Dr. Parrott further maintained that the Authority's suggestion

[15] Parrott's analysis of the MTA's savings due to over-estimating debt service in 2009, 2010 and 2011 was $70 million, $133 million and $94 million, an average saving of $99 million (Tr. 500-502, UX35).

[16] The reference is to GASB 45, a reporting requirement regarding Other Post Employment Benefits (OPEB), i.e. health and welfare benefits for present and future retirees.

that there was no prospect of additional tax revenue misses the mark. He noted that real estate taxes, which had dropped considerably in 2007, rose by 54% between 2009 and 2010 (Tr. 461, 536-537) He also noted that the Legislature passed tax reform that increased income taxes for 2012 and 2013 and that the Governor had assured that the loss of PMT revenue would be offset through the general fund. Beyond this, Dr. Parrott indicated that there would be additional revenue from the legislative permission allowing the City to increase the number of taxi medallions it can sell and the new ability of livery cars to accept street hails in Northern Manhattan and the outer boroughs (Tr. 482-487, UX30).[17]

In responding to Dr. Parrott's testimony regarding interest rate swap agreements, Patrick McCoy, the MTA's Director of Finance, testified that any thought of re-negotiating such agreements was a "complete fantasy"; that the banks would not consider foregoing their profit, but they would want the full amount due, and that the MTA could not possibly embarrass them into doing otherwise (Tr. 663-674). While acknowledging that the City and the State and some not-for-profit institutions have terminated or re-negotiated swap agreements, Director McCoy, though not knowing the terms of those transactions, said he had no plans to do the same or to use any leverage the MTA might have, adding that it would be "bad business practices" to think of suggesting that the Authority would not place new

[17] The legislation regarding taxi medallions and livery cars, which was approved in late December 2011, is the subject of an ADA lawsuit, Noel v. TLC, regarding wheelchair access. Though the United States District Court enjoined the law's implementation, that order has been stayed pending appeal.

bonds with a bank unless it agreed to re-negotiate existing agreements (Tr. 670-671, 690-700).[18]

The final rebuttal witness was Douglas Johnson, the MTA's Budget Director. He testified that it was not prudent to use part of the $130 million general reserve for the wage increase the ATU Locals were seeking; that the reserve, which gives the MTA an operating margin of under 1% in 2012, is used for emergencies, such as hurricanes, blizzards, and other unforeseen events, and if not used, is carried over to assist in funding the next year (Tr.719-722). As for using funds from the capital budget, Director Johnson said that the MTA had been doing that every year; that a loan of $500 million has been outstanding since 2002, and, in view of its auditor's criticism, the MTA had decided to do that no longer and to pay back $100 million a year for five years until the full amount of the loan is paid (Tr. 713-715, EX14). With respect to the GASB Fund, Director Johnson testified that if the MTA continues to fund OPEB benefits on a pay-as-you-go basis, this liability, which now stands at $13 billion, will keep growing and growing. To forestall that, the MTA intends to set up an irrevocable trust, as some jurisdictions have done (EX15), which would

[18] Director McCoy conceded that the MTA was paying significantly more in interest under the agreements it had entered into in 2004 and 2005—some $116 million in 2011 and 2012—than it would be paying under present day interest rates and that it would continue such payments until the bonds matured in 2030 (Tr. 683-686). However, he also testified that it was unfair to criticize any interest rate swap agreement in hindsight; the only proper comparison is the variable rate and fixed rate at the time of the transaction. When asked if the MTA could have negotiated opportunities to adjust the rates, Director McCoy said that would have increased its cost; that this was not the typical way such transactions were done, and that it chose not to do so (Tr. 675-679).

allow a more favorable rate of return that will lower its outstanding liability and ultimately reduce costs. (Tr. 715-719).

Discussion and Analysis

As can be seen, the Parties' proposals differ in great degree. The Unions, stressing the previously described history, contend that the term of the Contract should be three years, as were the TWU, Local 100 Contract under the Zuccotti Award and the TWU, Local 252 Contract under the Aiges Award, and that the economic terms should be that previously awarded to TWU Local 100. The Authority, on the other hand, advocates a sharp departure from the past, both as to contract length and economic terms. With respect to wages and health benefits, it rejects the Zuccotti Award and champions the Aiges Award. However, it does not support the three-year term of the Aiges Award. Instead, it insists on a five year Contract, a contract extending two years beyond the present contract of TWU Local 100. What's more, it asks that the Panel, in addition to rejecting any increase in the third year of that contract's five year term, must also award no increases in years four and five. The Authority maintains that all this, as well as significant work rule changes, is absolutely essential if it is to fulfill its responsibility to the riding public.

The ATU Locals maintain that the Panel should summarily reject the Authority's attempt to convert the small membership of its Locals into pattern setters in the hope of wresting work rule changes and zero-wage years from TWU 100. If the Authority wants work rule changes from what

exist in the TWU and ATU contracts and if it wants a reduction in future increases, it should turn to its bargaining with TWU Local 100, as it has always done, rather than seeking, in this proceeding, to deprive the ATU Locals of the wages and economic terms that TWU Local 100 has already attained.

As stated at the outset, the Panel's responsibility is to make a "just and reasonable determination" regarding these contrasting claims and resultant proposals. In doing so, we must take into account the aforementioned criteria of the Taylor Law. The first of that statute's criteria is a:

> (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

As the ATU has pointed out, its Local 1056 and 726 members are not performing work "similar" to that being performed by the Authority's TWU 100's bus employees; it is identical work. It is not only identical; in the past, it has been work with the same "wages, hours, fringe benefits, conditions and characteristics of employment." That identity not only places these ATU members in exactly the same category as those of TWU, it also differentiates them from other MTA units. Those units, though often following TWU settlements, are not the same in classification, title, or characteristics of employment. As shown in EX8 and UX11, they include clerical and technical employees, accountants

and Claim Examiners (Civil Service Technical Guild, District Council 37, Organization of Staff Analysts, CWA Local 1180), law enforcement officers (UFLEO and PBA), medical personnel (Doctors Council), railroad workers on LIRR, Metro North and the Staten Island Railway, bridge and tunnel employees (BTOBA and AFSCME Local 1931) and supervisory personnel. Thus, it can hardly be disputed that ATU Locals 1056 and 726 stand alone as mirror images of their counterpart, TWU Local 100. The Panel cannot fail to recognize this distinctive form of comparability. Neither can it fail to recognize what presently exists as and between these three units. For the last three years, employees in TWU Local 100 have benefited from the August 11, 2009, Zuccotti Award, while their fellow unionists in ATU Locals 1056 and 726, have received no increases since 2008 and have paid increasingly higher costs for their health insurance. The effect of this disparity on the morale and motivation of those affected cannot be minimized.

All of these factors require that the Panel give considerable weight to the aforesaid comparability principle. They also bear on its consideration of the second factor, that of overall compensation and benefits, which would become the same if the ATU proposals are adopted, and would continue to differ under the Authority's submission.

While the Authority concedes that significant weight should be given to the matter of comparability in the ordinary course, it argues that no weight should be given to it here because comparability rests solely on the Zuccotti Award, which, in the Authority's view, is flawed

and should not be followed. The Authority argues that the flaw lies in (1) the fact that the Award gave no rationale for awarding a 3% increase in the third year of the contract or the elimination of the health benefit escalator clause and (2) that, as asserted above, the Zuccotti Panel failed to correctly analyze the critical financial issues before it in 2009. Beyond this, the Authority says, the Award did not realistically identify any funding sources to pay for the cost of the Award. What this Panel should do instead, at least as to the 3% increase, but not the contract term, is to follow the Aiges Award or go even further and adopt the rationale of the CSEA and PEF agreements.

Even assuming that this Panel should ignore the New York State courts' refusal to overturn the Zuccotti Award and that it has the duty to examine that Award anew, our reading of the Award differs from that of the Authority. As to rationale, the Zuccotti Panel, in its discussion of comparability and other normally considered factors prior to granting staggered increases of 2%, rather than one-time annual increases of 4%, in the first two years and 3% in the third year, specifically noted and described the increases granted by the City to four different bargaining units comprising more than 140,000 employees, which increases were 4% compounded in each of the contracts (UX2, pp.11-12, 17-19). It also provided a rationale for awarding, on a prospective rather than a retroactive basis, the cap in heath benefit contributions by comparing such contributions to those of City employees as well as other MTA employees and specifically rejecting certain TWU proposals in order to

provide savings that could be applied to that portion of its Award (UX2, pp.21-22). The Authority's flawed analysis argument goes to the Award's asserted reliance on erroneous revenue projections put forth by both sides, but particularly those cited by the TWU. While those projections were discussed in some detail, a close reading of the Award illustrates that the Zuccotti Panel did not rely on them. Rather, it assumed a deficit, but also assumed an ability to pay if the Authority used other resources available to it (UX2, PP.14-16).[19]

Thus, it is this Panel's judgment, assuming an ability to pay, that there is no basis for ignoring the Zuccotti Award. There is also no basis, given this Record, for following the Aiges Award or tying the ATU Locals to the CSEA and PEF contracts. For a number of reasons, neither qualifies as the new pattern the Authority suggests.

First, as was previously pointed out, the unit affected by the Aiges Award, unlike the ATU Locals, is not the mirror image of TWU Local 100. Moreover, the 700 individuals in that unit, as the Award itself points out, became employees of an entity other than the MTA less than three weeks after the Award's issuance, thus shortening the MTA's obligation. Beyond these factors, little significance need be accorded to that Panel's refusal to award the third year 3% increase or its unspecified reason for not granting the health benefit cap or its four sentence supposed rejection of the Zuccotti Award. The reason, despite these seeming differences, is that the cost of the Aiges Award is virtually

[19] Two of those three resources, the General Reserve and deferral of capital projects, as well as others, were also raised in this proceeding and are discussed in the ability to pay section that follows.

the same as the Zuccotti Award. As set forth above, ATU witness Roth testified that the cash value of the Aiges Award was 99% of the Zuccotti Award. As also noted above, Authority witness Franceschini said the difference between the two was actually higher, .52% higher. Though he also testified that if the analysis had been done on a rate evaluation rather than a cash basis, the difference would be somewhat greater, his testimony regarding that point was in some measure clouded because he could not say just what time period or time periods were used for various elements of that analysis (Tr. 657-658). Moreover, he agreed, because of the change in ownership, that the going out rate he discussed had no affect on the MTA's finances (Tr. 656). For all these reasons, the Panel does not agree that the economic terms of the Aiges Award should be adopted.

The Authority, in asking the Panel to provide the ATU Locals with a five year, three-zero contract, concedes the lack of historical similarity between their workforces and contracts and those of the CSEA and PEF. Its argument is that the MTA is an instrumentality of the State; that the State, its "largest funding partner," convinced the CSEA and the PEF to accede to wage freezes, and that this, accordingly, is now the time for the ATU Locals, following the sacrifice already made by customers, taxpayers, and non-represented employees, to make a similar sacrifice

in order to protect the long-term financial health of the MTA.[20] This must be done, according to the MTA, because it lacks the ability to go further.

Before discussing that contention, a word about another standard of the Taylor Law; the cost of living. While changes in the cost of living are always considered in proceedings of this kind, little weight need be accorded that factor here. While the increases awarded by the Zuccotti Panel exceeded the rise in cost of living (UX1,p.16) as would 4%, 4%, and zero (EX15, P.11), neither party dwelled on the CPI to any great degree. Moreover, neither of them sought to tie their proposals to the CPI or suggest it be a key component of the Panel's conclusions. Additionally, the CPI is not intended as a ceiling, it is one of many aids in determining the appropriateness of proposals.

This brings us to the ability to pay and the interest and welfare of the public, or as the Taylor Law puts those standards:

> (iii) the impact of the panel's award on the financial ability of the public employer to pay, on the present fares and on the continued provision of services to the public;..
>
> (v) the interest and welfare of the public;...

These factors, of course, are significant. Citing them as the definitive factors, the Authority not only contends it is unable to pay the 2011-2012 3% increase; it also insists that it must have a two-year

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20The reference to its "largest funding partner" is from the July 2011 Financial Plan (UX26F), in which the MTA, citing the "economic realities" of the region and the tentative CSEA and PEF agreements, decided to "modify its labor strategy," abandoning the assumption that "employees of certain unions, that have historically followed the TWU wage growth pattern, would receive the three-year TWU pattern followed by two years of zeros," and replacing it with a three-year, zero-growth pattern.

extension of any contract and that no increases be permitted in either of those years. The Panel fully appreciates the present economic climate and the uncertainty ahead. As everyone knows, economists and others are not of a single mind as to the economy's health or the pace and sustainability of its recovery. Beyond that, forecasts may change. As a consequence, it has given great consideration to this factor. Even so, that consideration must also be undertaken in light of the other factors, which are also of importance.

The context in which any analysis should begin is the cost of the Zuccotti Award as applied to Locals 1056 and 726. That cost, in the Panel's judgment, should be based on a 2009-2012 Contract, as was the TWU 100 contract awarded by the Zuccotti Panel. We reach this conclusion based on the previously detailed, long standing parity bargaining relationship between those organizations. While the Authority urges that the Panel overturn that relationship and approve Local 1056 and 726 contracts that go two years beyond the present TWU Local 100 contract, we are not persuaded of the need or desirability of such a consequential change. Awarding a three year agreement would continue the aforesaid, unparalleled relationship while allowing the Authority to continue to press for post-January, 2012, zero wage initiatives and appropriate work rule changes at a range of bargaining tables, even, if the three comparable unions agree, at a joint bargaining table as it has done in the past.

This contract length ruling should not be misunderstood. The Panel is well aware of the need for fiscal restraint in the years ahead and a close and serious examination of unnecessary practices that could be eliminated or changed to increase productivity even further. It is also aware that the Parties need to address what appears to be excessive sick leave. However, it is the Panel's opinion, given the unique circumstances in the proceeding before us, that these matters are best left to the Parties in face-to-face negotiations for successor agreements, negotiations that need not be postponed to the extent they were here, so such judgments could be made by those most affected.

Continuing with the analysis, Union witness Roth, as set forth above, testified that the total three year (2009-2012) economic cost of applying the Zuccotti Award to the Local 1056 and 726 employees would be $47.5 million and that the going-out cost of the three-year agreement would be $28.4 million. He also testified that the $47.5 million cost of the three-year retroactive contract, which would be payable in a single year, was .3476% of the MTA February 2011 budget, with the going out cost less than .2% its total operating budget. Inasmuch as the Authority had agreed to the staggered 2009 and 2010 2% increases in its amended January 2012 proposal, the additional cost of the 3% increase the Authority opposes, according to both Roth and Parrot, would be $7.6 million for the wage increase and $1.7 million for the health insurance component, for a total of $9.4 million.

The question is, does the Authority have the ability to pay for that increase? The answer does not turn on whether that amount is presently budgeted, though it had been prior to last July. Neither does it depend on the Authority's desire. The operative word in the aforesaid standard is not *desire*; it is *ability*. Upon a full review, it is the Panel's judgment that the Authority does have the ability to pay for the increase. Though it is evident from this Record that it would rather not, it is also our judgment that paying the increase, thus removing the inequity that presently exists, would be in the public interest.

The Unions' presentation identified a number of sources from which that amount could be obtained. Dr. Parrott testified that funds could be moved from the 2012 General Reserve or borrowed from the capital budget. The Panel acknowledges and appreciates Director Johnson's testimony that the General Reserve is set aside for weather emergencies and other unforeseen events. The Panel also understands, however, that the one-time 3% third-year cost is $9.4 million and the Reserve is $130 million. Dr. Johnson also testified that the Authority had been borrowing from the capital budget for years and desired to begin to repay an outstanding $500 million loan at the rate of $100 million a year over the course of the next five years. The same comparison applies.

Dr. Parrott further suggested that the Authority was saving a considerable sum on its debt service and was projected to continue those savings in the future. Those debt service savings, the details of which

have already been set forth, are more than sufficient to pay for the increase at issue.

Dr. Parrott also suggested that monies in the GASB Fund could be used for this one-time purpose. In his rebuttal, Director Johnson said, in essence, that the MTA would rather set up an irrevocable trust in which it could place its approximately $60 million annual contribution (Tr. 504) so it could lower its outstanding OPEB liability and ultimately reduce costs. While this new objective is laudable and fiscally prudent, its full implementation must be viewed, at this stage, not only with respect to the third contract-year wage increase and cap on health insurance contribution cost of $9.4 million as contrasted with the 2011 Fund balance of $400 to $500 million (Tr. 735-736), but also in light of the fact that it has borrowed from the Fund in the past (UX33) and the fact that the State finds no need for a GASB Fund (Tr.509, Parrott) and that the City has been using its Fund for other purposes, including the filling of budget gaps, and intends to completely draw the Fund down by 2014 (UX36).

In addition to suggesting the use of debt service savings already achieved and presently projected, the other debt service source suggested by Dr. Parrott was that of the existing, as well as future, interest rate swap agreements, the re-negotiation or recasting of which, might result, in his estimation, in noteworthy savings over the course of time. Such re-negotiations may not be successful, but it is more than difficult to

understand why the Authority is of the opinion that it should not even try.[21]

While using some of these sources may be more difficult than others, the fact is that sources to pay the increase do exist. Taking that into consideration, as well as the comparability between these Locals and TWU 100 that has existed for more than half a century and the fact that the state of the economy and its prospects are quite different than they were in 2009, it is the Panel's judgment, having evaluated the presentations and proposals pursuant to the criteria and standards of Article 14, Section 209.5 (d) of the Civil Service Law, that adopting the proposals of ATU Locals 1056 and 726, as set forth in the following Award, is a "just and reasonable determination of the matters in dispute."

Our dissenting colleague disagrees, saying that the majority's view ignores realities. Respectfully, what the dissent overlooks is that this is a retroactive Award, one that terminated last January. All during the period of its Contract term, the employees represented by Locals 726 and 1056, who were performing the same work as those in TWU Local 100, were denied the wages and benefits those in TWU 100 had already received. The Authority asked the Panel to disregard that inequity. It not only asked that

21. There are savings beyond those set forth above. The Authority is unable to implement the Station Maintainer Helper position under the TWU Contract, but once it is able to do so, savings will occur there. Also, as the latest MTA Plan shows, savings are expected in Paratransit. Finally, there is every expectation that additional revenue will be available due to the taxi medallion and livery car legislation.

those in the ATU Locals be paid less than their TWU counterparts; it asked that they receive no increases for the next two years even though TWU, the historical leader in negotiating with the Authority, has yet to conclude an agreement incorporating that period.

Given the fact that the difference between the ATUs' and the Authority's proposals for the third year of the contract is $9.4 million and the cost of a possible extension of the third year wage portion of the Award to other unions is an additional $10 million, which together amount to approximately .15% of the Authority's budget, the majority of the Panel is of the opinion that a ruling to this effect, coupled with a ruling that preserves the historical pattern, is well within the Authority's ability to pay and is in no manner the cause of, or in any way related to past service reductions or past or future fare increases alluded to in the dissent, all of which were in place well before this Award was issued. Rather, in the present circumstances, such an Award gives full effect to the interest and welfare of the public and to the employees to whom the Award applies.

AWARD

1.The term of the Agreement shall be three years, January 15, 2009-January 15, 2012

2. Wage Increases.

2% effective April 16, 2009

2% effective October 16, 2009

2% effective April 16, 2010

2% effective October 16, 2010

3% effective January 16, 2011

The 2009 2% increases are each to be calculated on the rate in effect at the end of 2008. The remaining three increases are each to be calculated on the rate in effect as of October 16, 2009.
All retroactive wage increases are to be paid no later than sixty (60) days following the date of this Award.

3. Reduction of Employee Health Benefit Contribution

Effective August 11, 2009, the employee health contribution shall be 1.5% of wages, measured as a maximum of 40 hours per week times the base hourly rate.

4. Sick Leave Benefit

On each May 1, beginning with the sick leave year that commences May 1, 2011, all employees who have been in the employ of the Authorities for at least one year, including all employees on unpaid status, shall have twelve (12) days added to their sick leave banks. On each succeeding April 30th, the sick leave allotment for the year ending that day shall be reduced by one day for each month in the preceding twelve (12) months that the employee was on unpaid leave status for the majority of the month, but no reduction may result in a negative sick leave balance.

5. Surviving Spouse Benefits

The three-year entitlement to health benefits for surviving spouses of employees who suffer accidental death in the line of duty shall be continued during the Contract. These shall include the surviving spouses already covered. The line of duty death benefit ($100,000) shall be maintained during the Contract.

6. Safety

A. The Authorities will provide to the Unions immediate notification of accidents and of serious exposure reports received by the Office of System Safety (OSS) that relate to bargaining unit members.

B. Safety bulletins, advisories and policy statements that relate to bargaining unit members, from all departments of the Authority, will be sent to the Union immediately upon issuance.

C. Any Union Representative released for safety related work will not incur a loss of pay.

D. The Safety Resolution Form procedure (2002 MOU, Attachment F) shall be continued.

7. Wellness

The Parties shall establish a jointly administered Wellness Program.

8. Titles For Which Vacancies Are Chronically Difficult to Fill

A. MTA NYCT may increase the hourly rate up to $4.00 per hour for titles with chronic vacancies that MTA NYTC have been chronically difficult to fill.

B. Any such increases shall be irrevocable.

9. All Departments shall allow employees to bank up to 10 AVA days. All employees my replenish their banks as days are used. The third paragraph of Section 2.5 (C) is hereby deleted and of no force and effect.

10. Employees may elect to bank overtime hours in lieu of receiving overtime pay (OTO). Such time shall correspond to the overtime earned. This bank of overtime hours may be accrued up to a maximum of 9 days/72 hours. Use of such banked time as paid time off shall be within AVA personal day quotas. Utilization of such banked time beyond established quotas must be approved by Management. Time not utilized by December 31 of each year will be paid in cash during the subsequent January. In schedule-driven Departments, OTO shall be used in increments of whole days only.

11. All Divisions and Responsibility Centers shall furnish the Union-designated representative with reports of overtime distribution by employee not less than monthly. Where such reports are currently furnished more frequently, they will continue to be furnished at such frequency.

12. In Supply Logistics, in the re-selection of assignments within a location that occurs when a vacancy arises between picks, a full realignment of those in the location shall be permitted.

13. Women's Employment in Non-Traditional Job Committee

A. The Authority and the Union agree to establish a joint labor-management Women's Employment in Non-Traditional Jobs Committee with the objective of establishing programs to address the under-representation of women in non-traditional roles.

B. No later than sixty days after the issuance of this Award, the Parties will convene the Committee to develop strategies to prepare, recruit, train and retain women in non-traditional roles.

C. The Committee will begin to identify the issues and concerns women face obtaining and working in non-traditional jobs, including, but not limited to, working conditions, facilities, job retention, security, and access to training for promotion and advancement.

D. Within one year of the effective date of this Award, the Authority will implement a pilot program based on the recommendations of the Committee and establish metrics to measure the program's outcomes and track its progress.

E. Where the point of report for a female employee has a locker room or restroom for male employees, but does not have a locker room or restroom for female employees, the female employee shall be entitled, without loss of pay, to report to the nearest reporting facility with a women's restroom or locker room.

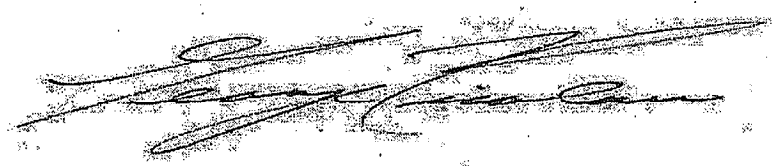
14. Fund Payments

The Fund payments currently required under the Collective Bargaining Agreements will be reduced by an amount equal in value to the savings resulting from the creation of the Station Maintainer Helper position in the TWU Local 100 Contract. The value will be pro-rated by the size of

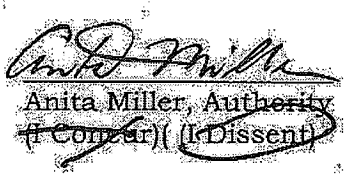
the ATU bargaining units in relation to the TWU Local 100 bargaining unit and by the period of time during this Collective Bargaining unit that said position was in effect.

The Panel will retain jurisdiction to resolve any disputes as to the meaning, interpretation or application of this Award. Any Party may invoke this jurisdiction upon written notice to the Panel members

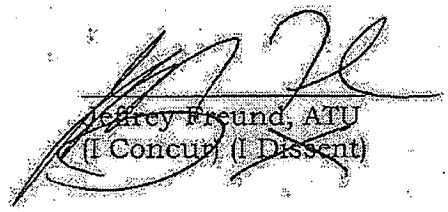
Dated: May 12, 2012



George Nicolau, Chair



Anita Miller, Authority
(I Concur)(I Dissent)



Jeffrey Freund, ATU
(I Concur) (I Dissent)

I must respectfully dissent from the Opinion and Award of this Panel. Unfortunately, this Award is just the latest example of an overly-academic application of Taylor Law interest arbitration standards that is wholly divorced from the harsh economic realities facing the public – realities that I believe the law was designed to address and that this Panel was obligated to consider.

While some represented employees receive pay raises that outstrip the increase in cost of living, the riding public has endured fare increases that well exceed this index. Moreover, the public's burden has been compounded by an increase in taxes that support the MTA concurrent with severe reductions in service implemented in 2010. As a result, riders have paid much more at the fare-box for diminished service while this Award will grant represented workers salary increases that nearly double inflation over the same time period. Inasmuch as this Award provides no productivity increases to offset even a portion of those raises and, incongruously, actually reduces existing health care contributions, it will undoubtedly inspire cynicism amongst both taxpayers and the riding public.

I do not dispute the value of precedent and comparability. In this context, it cannot be ignored. I also appreciate the similarity in employment conditions between ATU Local 726 and 1050 employees and those represented by TWU Local 100 who are already enjoying the benefits of the earlier Zuccotti decision. While these factors may weigh in favor of an Award that delivers the economic value of Zuccotti to these employees, I cannot ignore the economic hardships facing the MTA's ridership and local taxpayers during the identical time period.

The statute that guides our deliberations mandates we consider the "interests and well-being of the public" as well as the traditional comparability and ability to pay criteria in reaching a "just and reasonable determination." Thus, the real challenge before this panel was to craft an Award that managed to harmonize these deeply conflicting criteria.

Regrettably, this Award falls well short of achieving this result. It casts a blind eye towards the catastrophic impacts that this devastating recession has imposed on the public. There is no balance in this Award between the expectations of the represented employees and the interests of the public. All of the undisputed intervening economic realities have been rendered essentially irrelevant in the minds of the majority. It simply is unfair to the public, which has already suffered through unprecedented service reductions and which is facing another fare increase in 2013.

I cannot agree with the Award or the Opinion which supports it and so I must, therefore, dissent.

Anita L. Miller
Employer Member