STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the matter of the Interest Arbitration	:	
	:	
- Between -		Case Nos.
	:	TIA-2013-008;
NEW YORK CITY TRANSIT AUTHORITY and MaBSTOA		TIA-2013-009;
	:	TIA-2013-010;
		M-2012-368;
"Authority" or "Employer"	:	M-2012-369;
		M-2012-370
- and -	:	
SUBWAY-SURFACE SUPERVISORS ASSOCIATION/TRANSIT SUPERVISORS ORGANIZATION	:	
	:	
"Unions" or "SSSA/TSO"	:	

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NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

APPEARANCES

For the Employer
Richard J. Cairns, Esq., Deputy Director for Labor Relations
Anita Miller, Director, Labor Relations, MTA
Charles Glasgow, Deputy Director, Labor Relations, MTA
David Franceschini, Senior Director, Collective Bargaining, MTA-New York City Transit

For the Union
Josh Ellison, Esq., Attorney
Tony Gammone, President, SSSA
Vincent Modafieri, President, Local 106

BEFORE: HOWARD C. EDELMAN, ESQ., PUBLIC PANEL MEMBER
GARY DELLAVERSON, ESQ., EMPLOYER PANEL MEMBER
BRUCE SIMON, ESQ., EMPLOYEE PANEL MEMBER

BACKGROUND

This matter involves two Unions and two Employers, all part of the MTA family. The New York City Transit Authority ("Authority") and the Subway-Surface Supervisors Association ("SSSA") are parties to a Collective Bargaining Agreement (a/k/a Memorandum of Understanding - "MOU") which expired on January 7, 2010. The Manhattan-Bronx Surface Transit Operating Authority ("MaBSTOA") and the Transit Supervisors Organization, TWU Local 106 ("TSO") are parties to a Collective Bargaining Agreement which expired on June 7, 2010.

Negotiations and mediation sessions were conducted jointly among all four parties. Neither produced successor agreements. Consequently, and pursuant to Section 209.5 of the New York State Civil Service Law ("Taylor Law"), Interest Arbitration proceedings commenced before the undersigned Panel. Hearings were held before us on August 19, 2013; October 24 and 29, 2013; and November 1, 2013. Thereafter the parties submitted written closing arguments. When the Panel received them, the record was closed, though an executive session was held on December 9, 2013.

After carefully reviewing the record and based solely on the evidence adduced at the hearings, the Panel issues the following Opinion and Award.

POSITIONS OF THE PARTIES[1]

THE UNIONS

The Unions contend the pattern established between NYCTA and Local 100 must be applied here. They maintain that for many years the costs of the settlements have been virtually identical. Any disparity, they suggest, is minimal and results either from different dates upon which the Agreements ended or some operational distinctions among the various groups.

As the Unions see it, Local 100 established a pattern which has been replicated via Interest Arbitration Awards involving ATU Locals 726/1056 and MTA Bus and Local 100. Consequently, they argue, in three cases the economic package it seeks has been awarded. They see no reason why a different result is warranted here.

In addition, the Unions urge, there is a close relationship between their members and the employees

[1] We have summarized their positions to expedite these findings.

who received the wage raises noted above. Local 106 and the SSSA supervise the employees covered by the Awards in question, they note. To award supervisors less than the rank and file is demoralizing, they submit. Moreover, if this Panel were to accept the Employers' claims, a number of the titles Locals 106/SSSA represent would earn less than hourly workers. As a result, fewer qualified employees will apply to become supervisors, the Unions insist.[2]

The Unions acknowledge the Employers' contention that two Awards - MTA Bus and Local 252 and MTA and Commanding Officers of the Police Department - imposed lower wage increases than the Local 100 pattern. However, they argue, the Local 252 economic cost finding, when fully analyzed, is comparable to the Local 100 determination. With respect to the Commanding Officers Award, the Unions point out this was a previously unrepresented group. As such, there was no pattern to follow in that case, the Unions urge.

Furthermore, the Unions assert, the MTA has the ability to pay the improvements they seek. Citing the testimony of financial expert Thomas Roth, the Unions

[2] This anomaly already exists in certain titles, according to the Unions.

claim that granting their proposals will impose a negligible burden upon the MTA.

In this context, the Unions allege that MTA finances have improved since the Local 100 and 1056/726 Awards were issued. According to Independent Consultant James Parrott, the MTA financial plan reveals growing economic resources, as evidenced by a projected reserve of $140 million in July 2013 compared to a $48 million reserve projected in February of this year.

In addition to their wage proposals, the Unions make a number of other demands. They ask that, like Local 100, their members' health insurance premium contributions should be decreased from 1.5 per cent of gross wages to 1.5 per cent of base weekly (forty hour) wages.

Given the arguments and data referred to above, the Unions conclude that their proposals are reasonable and consistent with the criteria in the Taylor Law. Accordingly, they ask that the proposals be adopted as presented.

The Employers assert it would be irresponsible to award SSSA and TSO the same increases granted to Local 100. This is so, they stress, because the MTA

financial plan is a "net zero" program. That means, the Employers insist, the overall labor cost must be frozen over the life of the Award. Consequently, it is impossible to achieve savings which would permit the wage package sought by the Unions, according to the Employers.

The Employers acknowledge that the MTA's budgetary outlook has brightened in the last few years. However, Budget Director Douglas Johnson reminds, its financial plan envisions a $100 million deficit in 2017. Moreover, he recalls, this projection is based upon a "net zero" budget. If Unions receive wage increases beyond labor savings, the deficit will balloon to over two billion dollars by 2017, Johnson projects.

In addition, equity demands that the Unions accept no wage increases for much if not all of the term covered by this Award, the Employers argue. They note the following circumstances:

- non-represented employees have not received a wage increase in five years;
- fare increases have been imposed;
- service cuts have been effectuated;
- new taxes have been required.

These and related factors reveal that all constituencies but the Unions have made sacrifices, in the Employers' view.

The Employers acknowledge that a number of Awards have imposed wage increases for the period in dispute. However, they argue, the rationale contained therein is flawed because they were based on the original Zuccotti Award which was premised on incorrect economic assumptions.

Also, the Employers assert that the Local 252 and Commanding Officers Awards do not fall within the pattern sought by the Unions. As to the former, the Employers insist that it specifically rejected the Zuccotti pattern. Concerning the latter, the Employers note the Arbitrator opined that the minimal cost of the Union's proposal is not a relevant factor in reaching a just result. The same conclusion is warranted here, the Employers aver.

Furthermore, the Employers characterize as baseless the Unions' contention that hourlies may not apply for promotions if management's proposals are adopted. Despite the Unions' surveys, hourlies continue to seek supervisory posts, the Employers maintain.

In addition, NYCTA and MaBSTOA assert that many of the MTA units did not receive the same wage increases as Local 100. Thus, they regard the Unions' "pattern" arguments as disingenuous.

Given these factors and the perceived need for operations efficiencies, the Employers submit the following proposals:

TRANSPORT WORKER'S UNION, LOCAL 106
(OPERATING SUPERVISORS UNIT,
COIN RETREIVER UNIT, AND
QUEENS SUPERVISORY UNIT)

1. **Term:**

   Five (5) years or more.

2. **Health Care Contributions:**

   - Reach an agreement with the TSO that reflects employee health care contributions more in line with overall cost sharing trends.
   - Individual coverage: Employee to contribute 10% of premium costs.
   - Family coverage: Employee to contribute 10% plus 25% of the difference between individual and family premium costs.

3. **Five (5) unpaid Vacation days over the first two (2) years of the contract.**

4. **Payment of Overtime only after forty (40) hours of actual work per week.**

5. **Reduce night and weekend differential payments and hours:**

   Amend the Agreement to pay night differential only for hours worked between

10:00 p.m. and 5:59 a.m., 7 (seven) days a week.

6. **An employee in a picked assignment who is excessively absent may be removed and reassigned to an extra list or utility at Management's discretion for the balance of the pick.**

7. **Holidays:**

Where holidays are the same, they will be observed on the same day as the hourly workforce that employees supervise.

8. **Divisional Proposals:**

A. **Buses:**
Employees will be selected for assignments in the Command Center by resume at Management's sole discretion. The Buses Command Center will be a completely integrated facility, and bargaining unit work may be assigned to non-bargaining unit employees. That is, Command Center assignments will have no delineation of work based upon SSSA/TSO, TA/OA/MTA Bus, location, function, etc. Any employee can be assigned any work, and must demonstrate proficiency within 30 days. Employees assigned to the Buses Command Center will be assigned approximately in the same TA/OA/MTA Bus ratio as the prior three year average.

B. **Department of Security:**

Selected assignment resume jobs will be for a minimum of five (5) years.

C. **Department of the Executive Vice-President**

1. **Division of Supply Logistics:**

   a. Job selection picks shall be conducted on a biennial basis for all Storeroom Supervisors.
   b. Supervisors selecting Field Office assignments may be routinely cross utilized at any location, supervising both TA and OA employees.
   c. System Safety approved work shoes or boots will be provided by the Authority in lieu of the shoe allowance.

NEW YORK CITY TRANSIT AUTHORITY'S PROPOSALS TO THE SUBWAY SURFACE SUPERVISORS ASSOCIATION

1. **Term:**

   Five (years) or more.

2. **Health Care Contributions:**

   - Reach an agreement with the SSSA that reflects employee health care contributions more in line with overall cost sharing trends.
   - Individual coverage: Employee contributes 10% of premium care costs.
   - Family coverage: Employee contributes 10% plus 25% of the difference between individual and family premium costs.

3. **Five (5) unpaid Vacation days over the first two (2) years of the contract.**

4. **Payment of Overtime only after forty (40) hours of actual work per week.**

5. **Reduce night and weekend differential payments and hours:**

Amend the Agreement to pay night differential only for hours worked between 10:00 p.m. and 5:49 a.m., 7 (seven) days a week.

6. **Picks/Preferences:**

- To the extent that restrictions currently apply regarding the designation of pre-bid and resume assignments, the Departments will have the ability to designate additional positions as resume or pre-bid jobs. Resume jobs will be designated as such if special skills, an appropriate educations background, or a proficiency in particularized matters are required. The Department will consult with the Union prior to designating any additional resume jobs.
- An employee in a picked assignment who is excessively absent may be removed and reassigned to an extra list or utility assignment at Management's discretion for the balance of the pick.

7. **Holidays:**

Where holidays are the same, they will be observed on the same day as the hourly workforce that employees supervise.

8. **Divisional Proposals:**

A. **Department of Subways:**

1. **Maintenance of Way:**

The Authority shall have the right to establish a four (4) day work week in Track Construction. Overtime to be paid only after forty (40) hours of actual work per week.

B. **Department of Buses:**

Employees will be selected for assignments

in the Command Center by resume at Management's sole discretion. The Buses Command Center will be a completely integrated facility, and bargaining unit work may be assigned to non-bargaining unit employees. That is, Command Center assignments will have no delineation of work based upon SSSA/TSO, TA/OA/MTA Bus, location, function, etc. Any employee can be assigned to any work, and must demonstrate proficiency within 30 days. Employees assigned to the Buses Command Center will be assigned approximately in the same TA/OA/MTA Bus ratio as the prior three year average.

C. Department of Security:

The Department of Security plans to fold the Security Operations Center (SOC) into the Security Command Center (SCC), and to close the SOC. In the event this occurs, TPPS's will not be assigned to work in the SCC and bargaining unit work may be assigned to non-bargaining unit employees.

D. Department of the Executive Vice President

1. Division of Supply Logistics

a. Job selection picks shall be conducted on a biennial basis for all Maintenance Supervisors.

b. Supervisors selecting Field Office assignments may be routinely cross utilized at any location, supervising both TA and OA employees, to the extent not currently permitted.

c. The Lincoln's Birthday Holiday shall be eliminated and replaced by the day after Thanksgiving.

d. Modify Section 3.3(B)1 such that System Safety approved work shoes

or boots will be provided by the Authority in lieu of the shoe allowance ($50).

DISCUSSION AND FINDINGS

The Taylor Law sets forth the criteria to be applied in reaching a determination over the terms and conditions of employment to be awarded in this case. These criteria are:

(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;

(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;

(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;

(iv) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(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.

Section 209.5 of the CSL

These criteria need not necessarily be given equal weight. Some are entitled to greater consideration than others. Indeed, different disputes may require emphasis on different criteria. Each case must be analyzed on its own.

The first criterion is commonly referred to as the "comparator" one. It requires an analysis of the comparison of terms and conditions of employment of the employees involved in this proceeding with the terms and conditions of "other employees performing similar services or under similar working conditions and other employees generally in public and private employment…in comparable communities."

What are the comparators most relevant here? There is no doubt that they are the men and women whom SSSA and TSO supervise. They work side by side for the same agencies within the MTA. Their goals are the same - to service the commuting public within New York City. Other than the obvious - SSSA and TSO have supervisory authority over members of Local 100 - there simply is no basis to distinguish the groups.

Moreover, these groups have not been treated differently in the past. Union Exhibit 16 (Tab 9) demonstrates this pattern as follows:

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NEW YORK CITY TRANSIT WAGE HISTORIES:

1985 – Present

TWU – LOCAL 100 TOP BUS OPERATOR				SSSA - SUBWAY-SURFACE SUPERVISOR				TWU – LOCAL 106 – MTA TRANSIT SUPERVISORS			
Contract Term/Date of Settlement or Award	Effective Date	Percent Increase	Contract Percent Increase	Contract Term/Date of Signing	Effective Date	Percent Increase	Contract Percent Increase	Contract Term/Date of Ratification	Effective Date	Percent Increase	Contract Percent Increase
4/1/1985- 3/31/1988 June 1985	04/01/85 04/01/86 04/01/87	5.0% 6.0% 6.0%	18.0%	6/1/1985- 3/31/1988 February 6, 1985	06/01/85 06/01/86 06/01/87	5.0% 6.0% 6.0%	18.0%	6/1/1985- 5/31/1988 February 25, 1987	06/01/85 06/01/86 06/01/87 05/31/88	5.0% 5.0% 6.0% 0.9%	17.9%
4/1/1988- 4/30/1991 April 29, 1988	04/01/88 06/01/89 05/01/90	6.0% 5.0% 5.4%	17.3%	4/1/1988- 4/30/1991 May 30, 1989	04/01/88 06/01/89 05/01/90	6.0% 5.0% 6.0%	18.0%	6/1/1988- 6/30/1991 November 14, 1990	06/01/88 08/01/89 07/01/90	6.0% 5.0% 6.0%	18.0%
5/1/1991- 6/30/1994 May 14, 1992	05/01/91 09/01/92 05/01/93	2.0% 2.5% 2.0%	6.6%	5/1/1991- 9/30/1994 August 31, 1993	05/1/91 09/01/92 05/01/93	2.0% 2.5% 2.0%	6.6%	7/1/1991- 4/30/1998 July 11, 1995	07/01/91 11/01/92 07/01/93	2.0% 2.5% 2.0%	
7/1/1994- 9/18/1996* August 1994	07/01/94 08/01/95 09/01/96	4.0% 3.2% 3.2%	10.8%	10/1/1994- 2/21/1998	10/01/94 11/01/95 12/01/96	4.0% 3.2% 3.2%	10.8%		12/01/94 01/01/96 02/01/97 01/01/97	4.0% 3.2% 3.2% $175	18/1%
9/18/1996- 12/15/1999 Bonus 12/97 of 2%	Nov 1998	3.75%	3.75%	2/21/1998- 10/31/2003 1/ Bonus in 1998 of 2% July 2000	03/01/99 08/01/00 08/01/01 08/01/02	3.75% 5.0% 3.0% 4.0%	16.7%	5/1/1998 Bonus in 1998 of 2% July 19, 2000	05/01/99	3.75%	
12/16/1999- 12/15/2002 December 15, 1999	12/15/99 12/15/00 12/15/01	5.0% 3.0% 4.0%	12.5%						11/01/00 11/01/01 11/01/02	5.0% 3.0% 4.0%	16.7%
12/16/2002- 12/15/2005 Bonus 7/03 of $1000	12/16/02 12/16/03 12/16/04	0.0% 3.0% 3.0%	6.1%	11/12003- 10/31/2006 2/ Bonus 2004 of $1000 July 15. 2004	July 2004 11/01/04 11/01/05	$800 3.0% 3.0%	6.1%	2/1/2004- 4/18/2007 Bonus 2004 of $1000 4/ January 25, 2007	02/01/05 02/01/06 Feb 2007	3.0% 3.0% $800	6.1%

It is true that in some cases the wage increases cited above for SSSA and TSO are not identical to those garnered by Local 100. However, the discrepancies, where they occur, are slight, often .1 or .2 per cent. Also, the prior Awards or labor contracts for these groups expired at different times. Thus, wages raises were often implemented on different dates. Nonetheless, there is no doubt pattern settlements existed among the units with Local 100, the largest Union usually settling first or having its terms and conditions of employment resolved first. Clearly, then, the "comparator" criterion of the Taylor Law supports the Unions' position, not the Employers'.

Other evidence warrants imposing the Local 100 pattern upon the SSSA and TSO. Pattern bargaining generally makes for sound labor relations. It prevents leapfrogging, whereby a unit settling later achieves more than one settling earlier, which then produces results exceeding the other's in the next round of bargaining, and so on. Such a process promotes instability in the workplace. It places demands upon Unions to constantly do better than their comparators. While it is unlikely smaller groups will

exceed the pattern of wage improvements larger groups receive, the entire process is thrown out of kilter when long-standing patterns cease to exist.

The Panel recognizes that patterns are not immutable. Otherwise there would be little need for unions within the MTA family to bargain at all once Local 100's terms and conditions of employment had been resolved, either via a contract settlement or an Interest Arbitration Award. Different bargaining units may have different needs. The passage of time, particularly insofar as economic conditions change, may demand that a slavish adherence to an existing pattern which ignores other significant developments, is unwise.

However, those factors do not exist in this dispute, We find. There is no doubt that MTA's finances have improved since the Local 100 Award was rendered. At that time the general economy, as well as New York's, was still in the throes of a deep recession. While parties can differ as to the health of the New York City economy today, all agree that it is better than it was when the Local 100 Award was issued. Indeed, the MTA itself recognizes this trend. It has not in recent years made service reductions

driven by budget considerations. To the contrary, it has restored a number of cuts. It projects higher revenue from fee increases. Employer Exhibit 3, p. 1. What this means, of course, is that there is no change in circumstances, insofar as this record reveals, which would justify a reduction of the pattern set by the Local 100 - NYCTA Award.

The Employers argued vigorously that the Zuccotti finding is entitled to little or no weight because it is wrong on the facts and its economic projections. This argument would carry greater weight were it not for the Nicolau Award which replicated Zuccotti's.[3] That Award imposed terms and conditions of employment for two groups of Bus Operators represented by Locals 726 and 1056, both of whom drive buses for the NYCTA in Staten Island and Queens, respectively. Thus, even if, as the Employer suggested, the Award succeeding the NYCTA-Local 100 finding relied upon flawed assumptions, all three are entitled to great weight here. Taken together, the Zuccotti and Nicolau determinations have established a pattern which, pursuant to Criterion (i) of Section 209.5(d) should be replicated in the instant dispute, the Panel finds.

[3] Zuccotti I and II granted the same terms and conditions.

The Employers cited two Awards which, it contended, did not follow the patterns cited above. To some extent, this is so. In Long Island Bus and Local 252, Arbitrator Stanley Aiges applied the pattern for the first two years of this Award but chose not to grant the third year 3 per cent increase because:

> the MTA has significant financial problems today - problems which were either not weighed by the Zuccotti panel or not given (in our view) adequate consideration. Employer Exhibit 1.

However, the Aiges finding did not order a third year with no increase. It simply did not order a third year, period. While some of the rationale for doing so was reflected in Arbitrator Aiges' comments about the Zuccotti Award, of greater significance, in our view, is the unique circumstances of the Metropolitan Suburban Bus Authority when the Award was issued. As Arbitrator Aiges noted, MSBA's Operating-Agreement with Nassau County was terminated on December 31, 2011. As of the next day NICE, operated by a private company, Veolia, took over. Thus, it would have been unusual and unwarranted for an Award to transcend two groups of employees, one public and one private, especially since the latter has no

connection to the MTA. As such, the Aiges finding offers little support to the Employers in this dispute, the Panel is convinced.

Similarly unpersuasive is the conclusion reached in the Award rendered between the MTA P.D. and its Commanding Officers Association. In that case no prior pattern existed for this was the first set of collective negotiations in which the parties had engaged. Thus, a key component in the instant dispute was absent in that finding. Given this analysis, We conclude that Criterion (i) fully supports the imposition of the Local 100 panel finding with adjustments based upon different contract beginning and ending dates.

Criteria (iii) and (v) require an analysis of the "interests and welfare of the public and the financial ability of the public employer to pay." These criteria, too, support the position advanced by the Unions, the Panel is convinced.

There is no doubt the MTA has the ability to fund the wage increase contained in the Zuccotti Award. As the Unions' fiscal expert Thomas Roth noted, the first two years' wages have already been budgeted. While he conceded they have not been "funded," it is clear that

the MTA anticipated it would have to pay the first and second year salary increases as set by the Zuccotti Award.

Also, there is the gross cost of the Unions' proposals to consider. According to Roth, that figure is no more than .10 per cent of the labor cost. Union Exhibit 1, Tab 8. The Employers did not seriously challenge this estimate. Clearly, then, this cost will have virtually no impact on MTA's bottom line and thus, will not affect fares nor service.

The Employers raised several economic arguments in support of its contention that the Zuccotti numbers should not apply here. They suggested that less important than the overall cost of the Award the Panel renders, is a commitment to a "net zero" package; i.e., a settlement which offsets any wage or benefits increase by productivity improvements or other givebacks of equal economic value. They also emphasized the concept of "shared sacrifice," suggesting that the public suffered via fare hikes and reduced services and non-represented employees suffered via a lack of a raise in the last five years and a reduced headcount in the managerial ranks.

These arguments, though tenable, are not persuasive and are outweighed by several factors. Chief among them is that all of the economic package We are imposing is retroactive. We are making no statement as to what the cost of a prospective package should be. Rather, We decide only that the great majority of MTA represented employees already received these increases. Whether bargaining or awards for the next round should produce the "net zero" result the Employers seek here is not for us to determine. As to the past increases, that "train has already left the station," and the net zero concept should not be applied to a small minority of employees, We conclude.

Other Taylor Law factors lead to this conclusion. The "welfare and interests of the public" is advanced not by having supervisors receive less, substantially less than their subordinates. While employees' morale is difficult to quantify, it is very likely the morale of those in the SSSA and TSO would suffer were the Employers' position adopted.

The Employers suggested that despite claims to the contrary, it is able to fill vacant supervisory slots. This may well be so. However, there is no doubt those who are promoted expect to receive the

same raises as Local 100. Were this not so, the chances would increase that promotional jobs would become harder to fill, We are convinced.

Finally, with respect to wages, neither Criteria (ii), (iv) nor (vi) warrants awarding anything but the Zuccotti figures. Element (ii) relates to other benefits received by employees and there is no evidence the overall compensation for SSSA/TSO members is so large as to warrant a different conclusion. Nor does the low inflation rate (iv) mandate increases which are less than the pattern. In times of low inflation, raises often exceed the CPI's while the reverse is often true in times of high inflation. Finally, with respect to the Taylor Law criteria, criterion (vi), to the extent it relates to other impasse panel proceedings, supports the Union's position, not the Employers'. Accordingly, and for these reasons, the Panel finds that our Award should provide for the following wage increases and length:

SSSA

Award Term: January 8, 2010 - January 7, 2013
Wages to be increased as follows:

Effective April 8, 2010 - 2 per cent
Effective October 8, 2010 - 2 per cent
Effective April 8, 2011 - 2 per cent

Effective October 8, 2011 - 2 per cent
Effective January 8, 2012 - 3 per cent

Local 106/TSO

Award Term: June 8, 2010 - June 7, 2013
Wages to be increased as follows:

Effective September 8, 2010 - 2 per cent
Effective March 8, 2011 - 2 per cent
Effective September 8, 2011 - 2 per cent
Effective March 8, 2012 - 2 per cent
Effective June 8, 2012 - 3 per cent

Finally, the Panel notes the Employers' contention that even if We adopted the three year wage pattern sought by the Unions We should add two additional years with no increase for that period. We recognize that this finding would comport with the MTA's zero labor growth principle, at least for 2013 and 2014. However, such a finding places the SSSA and TSO at the forefront of establishing patterns to which no other Union has been a party. Most significant, Local 100, which represents the great majority of MTA represented workers, has not settled for this time frame. Historically, it is Local 100 that has set the wage pattern, not smaller Unions and certainly not the Unions whose members supervise Local 100 employees. Thus, and without making any finding as to the merits of no raises for 2013 and 2014, We reject the Employers' request for a five year Award.

Health Insurance

The Panel acknowledges the increasing trend for public employees to pay a portion of their health insurance premiums. It is also difficult to assess the impact of the Affordable Health Care Act upon health insurance rates. However, the Panel is constrained, for the reasons set forth above, to award the pattern with respect to this issue as well. The Zuccotti and Nicolau Awards scaled back contribution rates from 1.5 per cent of gross wages to 1.5 per cent of base (forty hours per week) wages.

Because of the promotional system from hourly to management, this reduction is restricted to those employees who became members of the bargaining unit after ratification of the parties' previous Collective Bargaining Agreements. Also, consistent with the time frame when this reduction took effect for Local 100 members, the reduction in SSSA and TSO/Local 106 health insurance premium contributions shall become effective, retroactive to August 8, 2010 for the SSSA and January 8, 2011 for Local 106.

Unpaid Vacation Days

The Panel notes that this proposal was incorporated into labor agreements between the State

of New York and the Public Employees Federation and Civil Service Employees Association. It is true that to award this proposal here would save the MTA money. However, it must be viewed in light of the overall economic package We have granted. To grant this demand of the Employers would mean that the Award would fall short of the pattern received by the other Unions referred to above. Consequently, this proposal must be rejected.

Overtime Premium Pay and Night and Weekend Differential

It is difficult to estimate the exact cost savings of the Employer's proposals since overtime costs may vary from year to year. Nonetheless, some savings would no doubt be achieved were the Panel to grant these demands of the Employers. However, they must be rejected, We find. Were they awarded, it would create a substantial inequity between the rank and file and their supervisors. Employees working side by side would receive unequal differentials in percentage terms. Thus, while the proposals are tenable, they must be rejected.

Department of Buses Command Center Integration

This proposal raises a number of issues. On one hand, it makes operational sense for Dispatchers to handle all incoming calls, regardless from which depot they emanate. After all, there is no evidence the nature of the calls varies from site to site.

On the other hand, the impact of such a modification upon Dispatchers is not clear. Despite the Employer's pledge to assign Dispatchers in the same ratio as existed for the last three years, it is not clear to what extent jobs might be lost or modified were the Panel to grant this proposal. Also, if the changes were made, there certainly would be an impact on how many jobs could be bid.

In light of these factors, the Panel finds it prudent to remand this issue to the parties for further negotiations. If the matter has not been resolved within six months of the date of this Award, the Panel shall, upon application by any party, render a decision on this issue.

In sum, the Panel finds that the Award reflects the Taylor Law criteria set forth above. It is consistent with decades of bargaining among transit unions and agencies within the MTA family.

Accordingly, it is to be implemented as indicated herein. It is so ordered.

AWARD

1. **Term**

This Award shall encompass the following periods:

NYCTA-SSSA: January 8, 2010-January 7, 2013

MaBSTOA-TSO, Local 106: June 8, 2010-June 7, 2013

2. **Wages**

A. Wages for the SSSA shall be increased as follows:

Two per cent, effective April 8, 2010
Two per cent, effective October 8, 2010
Two per cent, effective April 8, 2011
Two per cent, effective October 8, 2011
Three per cent, effective January 8, 2012

Raises due on April 8, 2010 and October 8, 2010 shall be based on the rates in effect in 2009. All other raises shall be based on the rates in effect on October 8, 2010.

B. Wages for Local 106, TSO shall be increased as follows:

Two per cent, effective September 8, 2010
Two per cent, effective March 8, 2011
Two per cent, effective September 8, 2011
Two per cent, effective March 8, 2012
Three per cent, effective June 8, 2012

Raises due September 8, 2010 and March 8, 2011 shall be based on the rates in effect on September 7, 2010. All other raises shall be based on the rates in effect on March 8, 2011.

3. **Health Insurance**

Health Insurance premium contributions shall be capped at 1.5 per cent of wages computed at forty hours per week x employees' base hourly rate for those employees who became members

of the bargaining units after ratification of the parties' previous collective bargaining agreements.

a. For the SSSA the cap shall be applied retroactive to August 8, 2010.
b. For the TSO, Local 106, the cap shall be applied retroactive to January 8, 2011.

4. **Department of Buses - Command Center Integration and Related Issues**

Effective upon the signing of this Award, the parties shall have six months to conclude negotiations on this issue. If they cannot agree upon a resolution by that date, the Panel shall, upon application by any party, render a determination on this matter.

5. All other proposals of the parties, whether or not addressed herein, are rejected.

DATED: 12/21/13

Howard C Edelman
HOWARD C. EDELMAN, ESQ.,
ARBITRATOR

STATE OF NEW YORK)
) s.:
COUNTY OF NASSAU)

I, Howard C. Edelman, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

DATED: 12/21/13

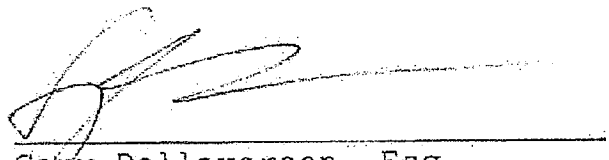
Howard C. Edelman
HOWARD, C. EDELMAN, ESQ.,
ARBITRATOR

NYCTA and MaBSTOA
and
SSSA/TSO, Local 106

Concur _____

Dissent X

12/21/2013
DATE



Gary Dellaverson, Esq.
Public Employer Panel Member

I must respectfully dissent from the Opinion and Award of my colleagues. Like them, I firmly hold a traditional view regarding the importance of maintaining pattern bargaining in a complex multi union environment. Unlike them, however, I recognize that the impact of the Great Recession on the MTA's customers and stakeholders in terms of much higher fares, tolls, taxes and fees demands recognition from this panel. To hold up pattern bargaining as an impenetrable shield renders meaningless the other statutory criteria under the Taylor Law.

To suggest that the 'interests and welfare of the public' are served by exempting the MTA's unionized workforce from the sacrifices and burdens borne by everyone else in the New York region in the name of 'morale' is simply wrong.

NYCTA and MaBSTOA
and
SSSA/TSO, Local 106

Concur X

Dissent _____

12-21-13 Bruce Simon
DATE Bruce Simon, Esq.,
Public Employee Panel Member