PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration

Between

METROPOLITAN SUBURBAN BUS AUTHORITY,

"Company"

-and-

TRANSPORT WORKERS UNION,

"Union"

Docket #TIA 2010-035
M 2010-182

BEFORE THE INTEREST ARBITRATION PANEL

Stanley L. Aiges, Chairman
Charles Glasgow, Employer Member
Richard O'Hara, Union Member

APPEARANCES

For the Employer:

PROSKAUER ROSE, LLP
Neil Abramson, Esq.
Daniel Altchek, Esq.

For the Union:

COLLERAN, O'HARA & MILLS, LLP
Edward J. Groarke, Esq.
Michael D. Bosso, Esq.

BACKGROUND

The parties here are signatories to a collective bargaining agreement which expired on April 15, 2009. Negotiations for a successor agreement were unsuccessful. An impasse was reached.

On March 10, 2011, the Public Employment Relations Board ("PERB") designated a Public Arbitration Panel to resolve the dispute.*

Between April 1, 2011 and October 21, 2011, the Panel met (either in executive session or jointly with the parties) on six occasions: April 1, May 12, September 19, September 27, October 13 and October 21, 2011.

On November 7, 2011 the Panel issued an Interim Award which dealt exclusively with the arbitrability of six of the Employer's revised proposals. We ruled that four were not arbitrable, but that two (Nos. 1 and 7) were arbitrable.

Following the issuance of our Interim Award, the parties asked that we issue a Final Award as expeditiously as possible. The urgency is rooted in the fact MSBA will cease operations on December 31, 2011. (Its corporate parent, the Metropolitan Transportation Authority ("MTA") has terminated the Lease and Operating Agreement pursuant to which MSBA has operated Nassau County's bus service since 1973.) As a result, effective January 1, 2012, MSBA will no

* Originally, B. Fernandez was designated as the Public Employer Panel Member. When he retired, C. Glasgow replaced him.

longer employ the 700-odd operating and maintenance employees of Long Island Bus represented by Local 252, T.W.U. (the "Union").

We are willing to grant the parties' request for an expedited award. To do so, we will forego the traditional recitation of the parties' respective arguments in support of their proposals. But before proceeding to the merits, certain comments are appropriate.

To begin with, it is important to note that the Panel's duties are governed by the Taylor Law. Section 209 thereof establishes criteria which we must follow to help up us fashion a "just and reasonable" ruling. They are:

a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) education qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

Further, Section 209(5)(d) of the Taylor Law requires us also to consider "the impact of [our] award on the financial ability of [MSBA] to pay, on the present fares and on the continued provision of services to the public."

Second, any award we render must take into consideration the impact of the award issued (the "Zuccoti Award") in the interest arbitration between the MTA and Local 100, T.W.U. Local 100 is, of course, the largest union with which the MTA deals. And it cannot be denied that settlements or awards between Local 100 and the MTA have had an important historical impact upon settlements/awards reached with the MTA's other unions, including Local 252. For want of a better term, Local 100's deals have effectively established a basis for all future settlements.

Local 252's basic call here is for us to adopt that approach.

The MTA, on the other hand, flatly rejects that approach. For it would ignore the "staggering financial challenges" it has confronted in recent years. It stresses that its revenues have declined steeply as a result of the financial crisis and the broad economic slowdown. It has had to respond to a series of fiscal challenges which necessitated layoffs, service reductions, fare and toll increases and a sustained cost-cutting program. To survive, it must eliminate nearly $4 billion in expenses from a $12 billion operating budget by 2015. It can do so only by controlling labor costs, which comprise two-thirds of its operating budget.

Organized labor, it asserts, must do its part to help right the financial ship. Non-represented labor has endured three consecutive years of wage freezes. Taxpayers have faced new taxes and fees. The riding public has had increased fees. It is simply equitable to ask organized labor to shoulder some of the burden.

For these reasons, the MTA proposes that our award hold base wage levels constant for its duration, and that relief from costly and counter-productive work rules be granted.

There is, to be sure, some merit to each side's position here. Our job is to weigh those positions and to reach a result which is fair and equitable.

After considerable reflection, we have decided that the following AWARD best represents a "just and reasonable" result:

1. TERM

We award a term of three years, covering the period April 16, 2009 to April 15, 2012.

2. WAGES

Effective April 16, 2009:	2%
Effective October 16, 2009:	2%
Effective April 16, 2010:	2%
Effective October 16, 2010:	2%

All wage increases shall be added to applicable wage progressions. The 2010 total wage increase shall be compounded on the wage rate in effect on February 1, 2010. Further, they apply to all employees on the MSBS payroll at the time they go into effect. That is, they are to be applied retroactively to then active employees.

We note that the Zuccotti award granted a third year increase of 3 percent. We believe it would be inappropriate to do so. For it is obvious that 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. Hence, we do not believe a third year increase would now be justified.

3. ALL OTHER OPEN ISSUES

We reject each of the parties' remaining open issues.

WE SO AWARD.

* * *

Stanley L. Aiges, Chairman

Richard O'Hara, Union Member
Concur in part
Dissent* in part

Charles Glasgow, Employer Member
Concur In part
Dissent* In part

DATED: December 13, 2011

*See attached.

Richard L. O'Hara, Esq. Concurring in Part and Dissenting in Part

I concur with that portion of the Decision and Award that grants Transport Workers Union Local 252, AFL-CIO ("Local 252") wage increases for the period April 15, 2009 through April 14, 2011 which follow the pattern set by the Zuccotti Award issued on August 11, 2009 in the matter of the interest arbitration between TWU Local 100 and the New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, and MTA Bus Company. However, I must respectfully dissent with that portion of the Award that fails to apply the pattern wage increases set by the Zuccotti Award in the Local 100 arbitration to the current dispute involving Local 252 for the period commencing on April 15, 2011.

I fully recognize and appreciate the unique circumstances surrounding this particular interest arbitration at this point in time. Come January 1, 2012, the MTA is scheduled to no longer operate Long Island Bus and the Metropolitan Suburban Transit Authority and, thus, no longer employ the members of Local 252 due the fact that Nassau County has selected a private operator, Veolia Transportation, Inc., to take control over the system. However, these unique circumstances should not detract from the overwhelming and unrebutted evidence presented at the hearing that TWU Local 252 has followed the pattern set by Local 100 for at least the last twenty-five (25) years. Additionally, in my opinion, the evidence demonstrates that the MTA does have the ability to pay for the full wages and health care reduction sought by Local 252. As such, it is my ruling that Local 252 should be awarded a 3% wage increase for the period from April 15, 2011 through December 31, 2011 as well as a reduction in medical contributions from 1.5% of gross pay with an escalator provision to 1.5% of base pay with no escalator, which is what the pattern dictates. For these reasons I must respectfully dissent in part.

Dated: December 13, 2011

RICHARD L. O'HARA

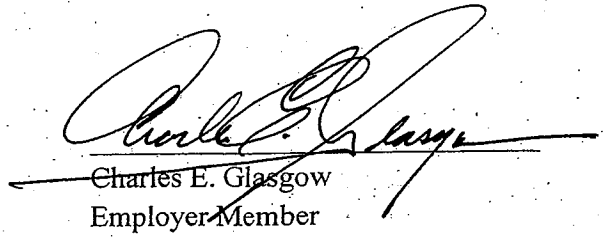
Opinion of the Employer Panel Member Concurring in Part and Dissenting in Part

I concur with that portion of the Opinion and Award acknowledging this Panel's obligation under Section 209(5)(d) of the Taylor Law to consider "the impact of [our] 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." Based on the evidence presented, I further concur with this Panel's exercise of that obligation in rejecting the Zuccotti panel's analysis in the interest arbitration between Transport Workers Union (TWU), Local 100 and the New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, and the Metropolitan Transportation Authority (MTA) Bus Company granting a third year wage increase of three percent. This Panel appropriately granted no wage increase during the third year of the Award. However, with regard to the wage increases granted TWU, Local 252 during the first two years of this Award, I must respectfully dissent. While I do not believe the amounts to be warranted, my dissent lies more with the fact that such increases were granted without providing the employer any relief from "costly and counter-productive work rules."

It is my opinion that the Award should have addressed and granted the employer's proposals to limit overtime pay to hours worked in excess of forty (40) hours a week and to require that employees on paid leave be compensated only for base hourly wages and not for any differentials or premiums normally earned for being at work. Both proposals are far from unreasonable and, if granted, would have provided a fair counterbalance to a significant increase in employee wages, if not in the form of direct monetary gain to the Metropolitan Suburban Bus Authority, at least in establishing the MTA's need to discuss wage increases and work rule inefficiencies in the same breath.

As I believe both parties to this arbitration would acknowledge, bargaining does not occur in a vacuum. Agreements affect one another, sometimes reinforcing principals, other times forming patterns. So, too, do awards such as this affect the expectations of the parties in contract negotiations yet unresolved. It was proven in these proceedings that the MTA's ability to pay wage increases has significantly diminished, both over the period covered by this Award and beyond. It was also unquestionably shown that the MTA has responsibly and aggressively addressed ongoing revenue shortfalls by reducing headcount and service levels, renegotiating vendor contracts, scaling back or eliminating programs and projects, and imposing three years of wage freezes on all management and non-represented employees. Finally, it was demonstrated that, despite these efforts, the MTA still faces economic crisis. Under such conditions, there should be no expectation on the part of any bargaining unit that they would be exempt from bearing a fair share of the MTA's economic burden. Granting two years of wage increases to TWU Local 252 represented employees, without modification of the generous work rules referred to above, only furthers the notion that those rules are sacrosanct—not to be discussed regardless of the employer's financial condition or how far out of sync those rules are with the rules and pay practices applicable to the average working individual.

Dated: December 13, 2011



Charles E. Glasgow
Employer Member