

STATE OF NEW YORK  
PUBLIC EMPLOYEMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration :

- Between -

: PERB Case No.  
TIA-2010-034;  
: M 2010-155

STATEN ISLAND RAPID TRANSIT OPERATING  
AUTHORITY

:"SIRTOA" or "Employer"

- and -

LOCAL 1440, UNITED TRANSPORTATION UNION,  
AFL-CIO

:"Local 1440" or "Union" :  
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**APPEARANCES**

For the Authority

Neil Abramson, Esq., Labor Counsel  
Dan Altchek, Esq., Labor Counsel  
Charles Glasgow, Deputy Director, Labor Relations MTA  
Owen Swords, Director of Policy Compliance  
David Franceschini, Senior Director, Collective  
Bargaining, NYCTA

For the Union

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James Linsey, Esq., of Counsel  
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Thomas D. Wilson, General Chairman, Local 1440 UTU  
Jaime J. Brownell, Vice-Chairman, Local 1440 (former)

BEFORE: HOWARD C. EDELMAN, ESQ., CHAIRMAN OF THE PANEL  
CHRISTOPHER JOHNSON, ESQ., EMPLOYER PANEL MEMBER  
DELBERT STRUNK, EMPLOYEE PANEL MEMBER

## BACKGROUND

The Staten Island Rapid Transit Operating Authority ("SIRTOA") and Local 1440, United Transportation Union ("Union") are parties to a Collective Bargaining Agreement which expired on December 21, 2006. Extensive negotiation and mediation efforts failed to produce a successor agreement. Consequently, the procedures set forth in Section 209 of the Civil Service Law of the State of New York ("Taylor Law") were invoked and the undersigned Panel was constituted to hear and decide the dispute.

Hearings were held before us on September 14, 2011;<sup>1</sup> October 5, 17, 18, 2011; December 5, 2011; January 8, 2012 and March 16, 2012. Thereafter, the parties submitted post-hearing briefs. Upon their receipt the record was closed.

The Panel met in executive session on May 18, 2012. This Opinion and Award follows.

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<sup>1</sup>A pre-hearing mediation session was held on September 12, 2011. It was not transcribed and it did not result in a settlement.

## POSITIONS OF THE PARTIES<sup>2</sup>

### UNION

The UTU seeks a contract of six years, from January 1, 2007 through December 31, 2012. It notes that "comparability" is a major criterion in determining terms and conditions of employment for the bargaining unit in question.<sup>3</sup> In the Union's view, this factor demands that its employees be compared to the New York City Transit Authority ("NYCTA") employees represented by TWU, Local 100. This is so, it insists, because SIRTOA employees are subject to the same policies and procedures as NYCTA employees; attend the same training sessions as NYCTA employees; and, as the Employer admitted, "appear to be performing similar work (179)."<sup>4</sup> As such, it argues, the only true comparator is Local 100's labor contract with NYCTA.

The Union acknowledges SIRTOA's contention that UTU represented employees at the Long Island Railroad ("LIRR") are the proper comparator in this dispute.

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<sup>2</sup>To expedite these findings, I have summarized the parties' positions.

<sup>3</sup>See Section 209(5)(d)(i)-(vi) of the Taylor Law.

<sup>4</sup>Numbers in parentheses ( ) refer to pages in the transcript unless otherwise indicated.

That contention is misplaced, Local 1440 submits, for the following reasons:

- LIRR employees are paid more than their SIRTOA counterparts, so that if SIRTOA's position is upheld, Local 1440 would receive a windfall result;
- the UTU unit at LIRR has followed the same wage pattern increase as Local 100 for 2007, 2008 and 2009. Union Exhibit 19;
- LIRR wages post-June 2010 will be determined under the Railway Labor Act ("RLA") procedures and not the Taylor Law.

SIRTOA's claim that the LIRR pattern is appropriate also is belied by its proposal that the Panel award a wage package of 3.0 per cent, 3.0 per cent and 1.67 per cent for 2007, 2008 and 2009 respectively, which is substantially less than the LIRR increases of 4 per cent, 3.5 per cent and 3 per cent for the same period, the Union observes. Thus, it concludes, the Employer's own proposal is inconsistent with its rationale in this context. Consequently, Local 1440 asserts, a Collective Bargaining Agreement which coincides with the termination date in the NYCTA-Local 100 Award issued by Arbitrator John Zuccotti and which contains the

same wage increases in that Award, in addition to a "me too" provision for 2012, is warranted, as follows:

Duration - January 1, 2007 - December 31, 2012

2007 - 4 per cent

2008 - 3.5 per cent

2009 - 3 per cent

2010 - two increases of 2 per cent

2011 - 3 per cent

2012 "me too" provision equal to any wage increase Local 100 receives.

Other evidence warrants this result, according to the Union. It contends that its overall compensation is substantially less than Local 100 wages at NYCTA. For example, it argues, though wages between Local 1440 members and Local 100 members are similar, the latter receive more vacation days and greater night and weekend differential payments.

Furthermore, the Union insists, SIRTOA clearly has the ability to pay the increases it seeks. Citing a recent Award by Arbitrator George Nicolau, it observes that ability to pay depends not on budgeted amounts but on "ability." NYCTA and ATU, Locals 1056 & 726, PERB Case No. TIA 2011-010, at 24-25. The Union costs its proposal in the instant dispute at \$3.865 million or an increase of .01 per cent of MTA expenditures which it describes as "imperceptible (613)."

Similarly, it argues, the proposed cost would have a de minimus effect on MTA's labor ratio. Union Exhibit 43. Hence, it reasons, there is no doubt SIRTOA and MTA have the ability to fund the proposed wage and benefit package.

The Local 100-NYCTA increases should be implemented here for other reasons, the Union submits. It contends that when a pattern has been established by the largest employee union within the jurisdiction (Local 100 in the MTA), it becomes the single, most important factor to which wages, conditions and benefits should be compared. County of Suffolk and Suffolk County Superior Officer's Association IA-2007-025. Also, it alleges, for the past two decades wage increases in its unit have mirrored those negotiated or imposed on Local 100 and NYCTA.<sup>5</sup>

In addition to its duration and wage proposals, the Union seeks other contractual improvements, as follows:

#### **Grievance/Arbitration**

The Union submits the current procedure is unwieldy and deprives its members of the efficient

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<sup>5</sup> See Union chart on page 18 of its brief, with only the 1997-98 raises different between the two groups.

administration of their claims. It suggests that, in some cases, a discharged employee could wait months or years for his/her case to proceed to Arbitration. Thus, it asks the Panel to award the process detailed in the NYCTA-Local 100 labor contract.

#### Vacation

Local 1440 seeks the same vacation benefit as that enjoyed by Local 100 members. It also asks that the distinction between those of its members hired before 1988-89 and those hired after be eliminated so that all receive the pre-1988 allotment (39-40).

#### Sick Leaves

The Union submits that substantial improvements in sick leave benefits are warranted. It notes that its members receive five sick days per year plus a bank of days based on years of service, while TWU members are granted twelve sick days per year. Such inequity must be redressed, the Union avers.

Also, it asks that the current Absence Control Policy ("ACP") be revamped to replicate the one in effect at NYCTA. This change is necessary because the existing ACP punishes employees for events which are beyond their control and leaves too much discretion in

the hands of management, thereby promoting favoritism, according to Local 1440.

#### Universal Passes

Many of its members live outside Staten Island, the Union observes, and their transportation expenses exceed \$1,200 per year. Yet, it notes, their transit passes do not allow them free access to the NYCTA system, including Staten Island buses. Thus, it asks for the same benefit as a Local 100 employee, who can take a bus on Staten Island to the ferry and then to the subway, all via the transit pass. Similar access for its members is fair, Local 1440 contends.

#### Release Time

The Union asserts that the current release time procedure for Union officials is grossly inadequate. While acknowledging that some release time is given, it argues its representatives cannot initiate investigations without receiving SIRTOA clearance (52-53). It also suggests its representatives have been warned about taking too much time off to conduct Union business and that it must pay for all the time taken. In light of these perceived impediments, Local 1440 asks for the equivalent of two full time release positions.

### Wage Progression

The Union contends that the current five year progression to top rate is excessive. It seeks a reduction to three years.

### Night and Weekend Differential Pay

Noting that Local 100 receives night and weekend differential pay of some six per cent or more, the Union argues that the absence of any differential for its members is grossly unfair. Thus, it asks for a differential identical to that granted Local 100 members.

### Martin Luther King, Jr. Day

Citing this day as a federal holiday and a paid day off at NYCTA and LIRR, the Union asserts its members should receive it as well.

### Special Rates of Allowance

Local 1440 notes that employees are sometimes subject to "posting," i.e., training new crew members. It seeks two hours' pay for each hour its members are engaged in this activity.

### Injury on Duty

The Union notes that i-o-d<sup>6</sup> pay does not begin at the time the injury occurred. This inequity can be addressed by permitting employees to use accrued sick or vacation leave during such absences, it urges. Union Exhibit 24.

### Payment for Physical Examinations

Local 1440 observes that a Medical Assessment Center ("MAC") is open on Staten Island to administer exams to NYCTA employees before or after work. Since those individuals receive three and one-half hours' pay when they appear at the MAC, Local 1440 seeks this payment for its members, as well.

### Retirement

Consistent with its request for parity, the Union seeks the same 25/55 pension plan which NYCTA employees enjoy.<sup>7</sup>

### Restricted Duty

Local 1440 seeks a provision permitting employees to work in a light duty capacity if ailments/injuries prevent them from performing their regular

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<sup>6</sup> Injury-on-duty pay is the differential between Workers' Compensation pay and an employee's regular wages.

<sup>7</sup> Currently, SIRTOA employees are under a 30/55 plan; i.e., 30 years of service and 55 years of age to be eligible to retire with full benefits.

assignments. In its view, such a proposal would not violate the "scope" provision of any other Union on the property.

**Additional Vacation Allowance ("AVA" Days)<sup>8</sup>**

Local 100 employees receive anywhere from six to ten AVA days per year, the Union observes, while its members receive only three per year. It asks that this allotment be increased to six and that employees with fifty per cent or more sick days in their bank be permitted to add two AVA days, up to a maximum of ten.

For these reasons, the Union contends that the above referenced proposals are fair and reasonable. Accordingly, it asks that they be adopted as presented.

**SIRTOA' S PROPOSALS**

Initially, the Employer contends that the Panel is precluded from adopting an Award in excess of 41.5 months. This is so, it stresses, because it has filed an Improper Practice charge with PERB contending that the Union's proposal for a six year Award violates the Taylor Law. It insists that the Panel may not impose a six year Award when a charge is pending.

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<sup>8</sup>An "AVA" day is added to an employee's accrued vacation time if he/she works on a holiday.

Moreover, SIRTOA argues, a 41.5 month Award is consistent with the relevant pattern. It insists that traditionally settlements on the property have mirrored the LIRR pattern and, it observes, the other two SIRTOA unions settled for 41.5 month agreements, beginning January 1 2007. Consequently, it concludes, the bargaining history requires the imposition of an Award of 41.5 months.

As to wages, SIRTOA contends that the Union's demands are egregious on their face and that they far exceed the LIRR pattern. It notes the Union's request for wages of 4.0 per cent, 3.5 per cent and 3.0 per cent, effective January 1, 2007, January 1, 2008 and January 1, 2009, respectively. While conceding that these increases mirror those granted on the LIRR, substantial economic concessions there reduced the value of those settlements to 10.07 per cent or below, the Employer points out. Yet, SIRTOA observes, Local 1440 has not agreed to any economic givebacks here.

In addition, the Employer argues, the Union's request for wage increases beyond June 15, 2010, in conformance with the Zuccotti Award, is misplaced. This is so, it alleges, not only because no SIRTOA or LIRR settlement has been reached beyond that date, but

because the Zuccotti Award is fundamentally flawed. That Award, it alleges, was "poorly reasoned...based on an assessment of the MTA's ability to pay that was completely at odds with reality..."<sup>9</sup> As such, SIRTOA asks the Panel to completely reject the findings contained therein.

As noted above, SIRTOA acknowledges that the 2007-10 net cost at the LIRR was 10.07 per cent. However, it submits, that figure is unreasonably high now and should not be awarded by this Panel. This is so, the Employer stresses, due to a decline in MTA revenue or increase in costs detailed as follows:

- a decline in the real estate tax receipts dedicated to the MTA revenue;
- lower revenues for State taxes;
- lower ridership resulting in decreased fare and toll revenues;
- reduced rates of return on pension fund investments.

While it was able to produce a balanced budget for 2010 despite the factors cited above, the MTA insists that its financial outlook has worsened since then. In support of this contention it cites the Zuccotti Award which provided for wage and benefit increases

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<sup>9</sup> See pre-hearing statement, p.5.

which exceeded budgeted amounts for 2009-11; reduction in State aid in late 2009 of 143 million dollars; and other declines in revenue cited above.

In light of these circumstances, SIRTOA, which is the most heavily subsidized of the MTA agencies, submits the following wage proposal:

Effective January 1, 2007 - 3 per cent

Effective January 1, 2008 - 3 per cent

Effective January 1, 2009 - 1.67 per cent

#### **Health Related Benefits**

In addition, SIRTOA contends it needs significant cost reduction in various benefits now granted Local 1440. It suggests that the current medical and other health benefit plans are costly and should be replaced by the plan in effect for NYCTA employees ("TWU/ATU Plan"). In the Employer's view, this modification would have little, if any impact on the quality of care or out-of-pocket expenses affecting Union members. Similarly, it asserts, moving future retirees to the TWU/ATU plan would produce real savings without any material change in the level of benefits provided. Consequently, it asks the Panel to award these changes.

### Sick and Vacation Leave

The Employer asks that both benefits be based on the eight hour day rather than on run pay or the actual number of hours worked in the prior year. It notes this proposal has been made to all bargaining units with open contracts and insists it is a reasonable cost savings measure.

Also, as to sick leave, SIRTOA argues that all employees, and not just new hires, should not be allowed any sick days during their first year of employment. In addition, seeking to curtail excessive sick leave use, it asks that all employees with fewer than ten sick days in their bank be denied payment for the first sick day in the subsequent year.

For these and related reasons, SIRTOA characterizes its proposals as fair and in keeping with its worsening economic condition since settlements were made at the LIRR and with other Unions on this property. It also asks the Panel to reject Local 1440's demands as far too costly and unrelated to the relevant pattern of settlements. Consequently, SIRTOA concludes, its demands should be adopted and the Union's denied.

## DISCUSSION AND FINDINGS

Initially, it is worthwhile to discuss the MTA framework and SIRTOA's place within it. The MTA is an umbrella public benefit corporation. Agencies within its ambit include NYCTA, MTA Bus, LIRR, Metro-North, TBTA and SIRTOA.<sup>10</sup>

Until 1988, labor relations at SIRTOA, which provides commuter rail service on Staten Island, was governed under the Railway Labor Act ("RLA"). At that time, this Agency was placed under the Taylor Law. Of the other agencies, LIRR and Metro-North fall within the RLA while the others are Taylor Law entities.

Since 1988, Local 1440, the largest of the SIRTOA unions, has represented its operating and maintenance employees in a single bargaining unit. Two smaller unions, TCU and ATDA, represent the remaining employees (except for non-bargaining unit individuals) on this property.

An analysis of the relevant data and the background cited above must begin with mention of the statutory criteria upon which the Panel's

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<sup>10</sup> Prior to on or about December 31, 2011, MSBA, serving bus passengers on Long Island and in Queens, was an additional agency within the MTA family.

determination is based. They are contained in Section 209(5)(d) of the Taylor Law, as follows:

- (i) comparison of 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.

With these factors in mind we turn to the facts of this case.

These criteria are not necessarily listed in rank order of importance. However, it is undisputed that Criterion (i) is a key factor. It requires the Panel to compare terms and conditions of employment of the public employees involved (Local 1440's members) with that of other "employees performing similar work and other employees generally in public or private employment in New York City or comparable communities." This provision is often referred to as the "pattern" clause. Thus, the Panel must determine what pattern of settlements deserves the greatest weight when analyzing this language.

The Panel has reviewed this language carefully in light of the voluminous data and arguments presented. Based upon that review the majority finds that, while there is some overlap of patterns, the LIRR and SIRTOA settlements take precedence over the NYCTA one(s). This is so for a number of reasons.

First, there is no doubt that historically LIRR contracts have mirrored the settlements at SIRTOA. For example, the Local 1440 contract for the period December 15, 2002 through December 31, 2006 provided the same lump sum payment and general wage increases as did the UTU-LIRR settlements for a comparable

period; i.e., one which began on January 1, 2003 instead of December 15, 2002. Union Exhibit 14.

The 2007-10 settlements at the LIRR also mirrored the SIRTOA contracts for the same period; i.e., a net cost of 10.07 per cent over 41.5 months. Thus, the record conclusively establishes that the pattern on the LIRR and SIRTOA is the proper basis for increases and length of contract terms here.

The Union raised, essentially, two arguments in support of its claim that the NYCTA pattern should be followed. It noted that increases for 2007-10 at the NYCTA are the same as what it seeks here. It is also suggested that SIRTOA, like NYCTA, is an agency within the MTA umbrella and that its members perform the same types of work as do the members of Local 100 and are subject in many cases to similar rules of conduct.

This argument has facial appeal. After all, it is reasonable to ask why a SIRTOA train conductor, say, should not receive the same increases and be subject to the same length of contract as his/her Local 100 counterpart. However, the relevant labor relations history demands otherwise. In essence, there are two rounds of bargaining here. The first is the 2007-10

round. In that one the pattern has been set. It is a net cost of 10.07 per cent.<sup>11</sup>

However, beyond 2010, no pattern has been established. Though the Zuccotti Award decreed wages and benefit improvements extending to the end of 2011, that and the recently issued Nicolau Award covered only NYCTA employees. No LIRR contract, via settlement nor Award, exists beyond June 15, 2010.

In this context the ATCU and ADTA settlements are instructive. They, in large measure, replicated the LIRR settlements for the 2007-10 period. Though smaller than Local 1440, their conformance to a prior pattern is compelling evidence that it should not be broken here.

Nor does the fact that SIRTOA is subject to the Taylor Law, while the LIRR falls under the RLA, compel a different conclusion. This distinction has existed since 1988. Yet, Local 1440 and the other SIRTOA unions have not matched Local 100's wages since then. Indeed to the extent increases for Local 1440 were the same as for Local 100, all three (Local 1440, Local

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<sup>11</sup> Whether the pattern should be lowered, as SIRTOA demanded, is discussed below.

100 and the LIRR UTU) Unions' percentage increases were similar or even identical.

What this all means is that the relevant pattern is twofold: the increases and contract length provided at the LIRR and on the property itself. Accordingly, and consistent with Criterion (i) of Section 209.5(d), this Award shall cover the period January 1, 2007 - June 15, 2010 and shall result in a net cost of 10.07 per cent over this period.

The Panel notes SIRTOA's claim that a 10.07 per cent Award is too generous because it does not reflect the downturn in the economy generally, and its financial condition specifically since 2007 when the LIRR settlements were reached.

We do not agree with this contention. This, too, is so for a number of reasons.

First, as Union witness Tom Roth testified, even if the entire Local 1440 package were adopted, MTA's expenses would increase by approximately .01 per cent (613). Even allowing for some differences in calculation, there is no doubt the Employer has the ability to pay the 10.07 per cent economic package we are granting Local 1440.

Furthermore, we agree with the finding in the recently issued Award covering terms and conditions of employment for ATU Locals 726 and 1056. In that case (TIA-2011-10), Arbitrator George Nicolau opined that the Authority's ability to pay "does not turn on whether that amount is presently budgeted...[nor on] the Authority's desire." at pp. 24-25. Indeed, there is little doubt the MTA budgeted its proposed settlement package, rendering even smaller the monies necessary to achieve an overall 10.07 per cent package.

SIRTOA argued strenuously that the pattern established in 2007 should not hold because its fiscal condition has deteriorated since then. While the latter assertion is valid, it does not afford a basis for lowering the pattern.

In 2010, well after the recession hit and well after the MTA knew its revenue stream was declining, it settled with TCU and ADTA on the SIRTOA property. Though the settlements were less than 10.07 per cent,<sup>12</sup> these reductions resulted from options the Unions selected which others had not, or options which cost more in these bargaining units than others. Thus, for example, the TCU settlement yielded less than a 10.07

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<sup>12</sup> TCU's netted out at 9.05 per cent; ADTA at 8.83 per cent.

per cent package because, in large part, the change in health plans in that unit resulted in greater savings than in others (253-55; Employer Exhibits 7, 8). Consequently, the 10.07 per cent pattern was applied over relatively poor times as well as good ones. It did not decline as the economic climate worsened.

Nor does the 10.07 per cent package represent a dangerous precedent which ensures large settlements in the future. As detailed above, this is a "catch up" package, not a trend setting one. No other Union will be able to say that Local 1440 exceeded any pattern and thereby created a "leap frog" effect for others. To the contrary, Local 1440 will get what all the others received, no more and no less.

The Nicolau Award deserves mention in another context. It noted that it is a retroactive finding which terminated in 2010. It opined that to deprive Local 726 and 1056 the wages and benefits already received by Local 100 would be inequitable (at p. 32).

The same is true here. While we disagree with the Union that the primary comparators in the instant dispute should be Local 100, to grant Local 1440 less than the LIRR unions or the other SIRT OA ones would

also be highly inequitable, given the historical relationship among these groups.

SIRTOA also pointed to settlements between the State of New York and the Civil Service Employees Association and the Public Employee Federation as justifying its proposed wage and benefit package. While those agreements have some relevance,<sup>13</sup> they are entitled to substantially less weight than the comparators noted above; i.e., LIRR and SIRTOA contracts covering the identical period at issue here.

What all this means is that the Taylor Law criteria mandate an Award whose cost impact is 10.07 per cent over 41.5 months. This finding is in keeping with the patterns analyzed above and, therefore, comports with Criterion (i) of Section 209.5(d). It also reflects, as noted below, non-wage modifications including insurance, pension and other benefits pursuant to Criterion (ii). Additionally, and despite the difficult economic circumstances the MTA faces, circumstances which are more extenuating than they were, this Award will have a de minimus effect on the financial ability of the public employer to pay, as

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<sup>13</sup> See Taylor Law criterion 209.5(d)(1) which refers to a comparison of "other employees generally in public or private employment in New York City."

well as on present fares and service to the public since it will cost substantially less than .01 per cent of the MTA's budget (Criterion iii). Consequently, it also is consistent with the interest and welfare of the public (Criterion v).

It is true that this economic package exceeds the increases in the Consumer Price Index for the relevant period (Criterion iv). However, this criterion, though relevant, pales in light of the overwhelming evidence cited above, which supports the 10.07 per cent package. Finally, with respect to the Taylor Law criteria, this finding, as explained more fully below, takes into account the other factors cited in Criterion vi. Accordingly, the Panel concludes, our decision is in full compliance with the standards set forth in the Taylor Law.

We have determined that the economic cost of the Award should be 10.07 per cent over 41.5 months. We now address the components of that finding.

The single most important element, of course, is wages. It is the largest cost item to the employer and of greatest significance to the employees.

It requires little analysis to conclude that the wages should mirror the pattern already analyzed.

This is so for the reasons set forth above. Any other result would render meaningless the "pattern" arguments advanced by the parties and accepted by the Panel. Thus, we find, wages should be increased as follows:

Effective January 1, 2007 - 4.0 per cent

Effective January 1, 2008 - 3.5 per cent

Effective January 1, 2009 - 3.0 per cent

The compounded cost of this proposal is 10.87 per cent. That figure was advanced by SIRTOA and unchallenged by the Union. Indeed, it could not since in prior settlements the same cost was ascribed to the same package.

#### Night/Weekend Differential

This is another fringe benefit of economic value to which Union members are entitled. Currently, Local 1440 receives no night or weekend differential. Local 100 members do. While exact parity between the two is neither required nor necessarily desirable in all respects, it would be highly inequitable to deny any differential to this bargaining unit while Local 100 retains one that varies from six to ten per cent.

The Employer costed out the Union's proposed differential at 2.03 percent. Employer Exhibit 21. That reflects the Union's six per cent demand. Implementing a 4.5 per cent figure requires that the cost be reduced by 25 per cent or to 1.51 per cent. The amounts due shall be expressed in flat dollars and, though applied after the general wage increases have been implemented, will not be subject to any future wage increases unless the parties agree otherwise. Accordingly, effective September 15, 2012, night/weekend differential shall be implemented as follows:

There shall be a night differential paid for hours worked beginning 6 p.m. one day and ending 5:59 a.m. the next succeeding day, except that on weekends, the differential shall be paid for all hours worked between 6 p.m. Friday and 5:59 a.m. on Monday morning.

The night differential rate shall be a flat rate for each title covered by the collective bargaining agreement. The night differential rate shall be set at 4.5 % of the hourly rate of pay in effect as of June 14, 2010 and shall not be subject to future general wage increases. For the purpose of determining night differential rates, each title and

each step within the wage progression for that title shall have a designated night differential rate.

### Pensions

After reviewing the record, the Panel concludes that while Local 1440's overall demand must be rejected, some pension plan modification is warranted. We note that the Pension Plan for Local 100 differs, to some extent, for the one in effect for Local 1440. Pension parity makes sense, we are convinced, and the cost for doing so is a relatively modest one, .13 per cent. Thus, we shall direct that the modifications listed in the Award be implemented effective September 15, 2012.

### Union Release Time

The Panel is persuaded that some contractually mandated release time for the conduct of Union business is warranted. While we are not persuaded SIRTOA has been unreasonable in granting such requests on a case-by-case basis, we find that a set number of days off to conduct labor-management business lends regularity to the process.

On the other hand, Local 1440's request for two full release positions is highly disproportionate to the size of its unit when compared to release time

given other Unions. In our view, 120 days per year is a reasonable amount of release time necessary to engage in Union affairs. In addition, the release time must be sought reasonably in advance and may not interfere with SIRTOA's operations.

Furthermore, we find that the time shall be designated as labor-management time. This is so since the purpose for the time is to allow Union officials to discuss and explore matters of labor relations concern on the property. Accordingly, this proposal, as modified, is to be implemented on September 15, 2012.

The cost of this finding is .44 per cent, we calculate. It falls within the 10.07 per cent overall impact, as indicated below.

#### Sick Leave

The Panel is persuaded that some redress is due the Union. Currently Local 1440 members receive five sick days per year plus days in the "bank," based on length of service. By contrast, Local 100 members receive twelve days per year.

Increasing the numbers of days to twelve, as requested by Local 1440 is excessive, in our view. Nor can it expect to match the difference in sick days

between the two Unions in one round of bargaining, since the disparity has been twenty years or more in the making. Consequently, we shall direct that, effective September 15, 2012, the sick leave allowance be increased from the current five days to seven on an annual basis, at a cost to the package of .58 per cent.<sup>14</sup>

#### Martin Luther King, Jr. Day

This day is celebrated nationally, as it should be. However, we do not find a basis for adding it as a holiday to the complement currently enjoyed. Thus, we shall direct that beginning in 2013, Martin Luther King, Jr. Day shall be added as a holiday in substitution of Good Friday.

#### Grievance/Arbitration

The current system is unwieldy. Though some delays in the processing of grievances may be inevitable, a more streamlined system helps both parties. Memories are fresher when claims are handled expeditiously. Settlements are more easily obtainable if, say, a discharged employee is out of work for a few weeks rather than a few months. Nor does a

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<sup>14</sup>The cost of moving from five to twelve is 2.05 per cent (359-60). Hence the cost of moving to seven days is two-sevenths of that amount, or .58 per cent.

shortened procedure impair the operations of the Employer, we are convinced. Indeed, it may reduce liability in certain cases. Consequently, and consistent with similar grievance procedures in other MTA Collective Bargaining Agreements, we shall direct the grievance and arbitration procedure is to be amended as indicated in the Award, set forth below.

### Health, Dental and Vision

Substantial testimony and evidence was received on this issue. While the Union maintained that the Local 100 plan was inferior to the current one (NYSHIP), that assertion is largely rebutted by a comparison of the two. Employer Exhibits 29, 20, 31. For example, co-pays under the Local 100 plan are lower than under NYSHIP (458-9). Also, at age 65, Medicare eligible retirees do not lose TWU coverage; it merely becomes secondary to Medicare. NYSHIP coverage, however, ends at Medicare, subject to a \$200 family reimbursement under Med-Gap (464-65).

This is not to suggest that Local 100's plan is better than NYSHIP's in all respects. For example, it is possible, based on participation levels by health care professionals, that some employees would have to change dentists under SIRTOA's proposal (495-96).

Also, while the language is inconclusive, the NYSHIP plan appears to afford more days of hospital coverage than Local 100's.<sup>15</sup>

Indeed, no two plans are identical. However, we are convinced, the two at issue here are comparable so as to justify adopting the Employer's proposal and effectuating a substantial cost savings; i.e., 3.02 per cent.

Finally, on this issue, a reasonable period of time is needed to implement the changeover between plans. Thus, while other elements of this Award are to be implemented thirty days after it has been issued, this determination shall take effect on January 1, 2013.

#### **First Day of Sick Leave Unpaid**

After reviewing the parties' arguments, the Panel finds that this proposal of the Employer's should be granted. It creates a dual incentive for employees not to use sick leave. First, it applies only to those with less than ten days in their bank, thus encouraging employees generally to come to work regularly. It also encourages employees on a day-by-

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<sup>15</sup> NYSHIP covers 365 days; Local 100's covers 120 days unless medical necessity for more days is demonstrated.

day basis to try to get to work since they know the first day of usage will be unpaid. The savings produced by this proposal is .19 per cent.

#### **Paid Leave Based on Eight Hours**

We agree with SIRTOA that an employee on leave should be paid only for a regular day's work. Obviously, he/she is not working overtime on these occasions and should not receive extra compensation, we are convinced. As such, this proposal is to be implemented at a cost savings of .25 per cent.

#### **Extended Probationary Period**

It is true that other units have a probationary period equal to what SIRTOA has proposed. However, we find nothing in the record to suggest that new employees cannot be properly evaluated during the current time span. It is rejected.

#### **Uniforms**

It might be a good idea that employees in this unit, like others, wear uniforms. However, we believe that maintaining them imposes an economic burden on employees which exceeds the cost of keeping street clothes clean. In light of other economic givebacks imposed upon Local 1440, we find it inappropriate to award this proposal.

### Absence Control Policy

This proposal of the Union's must be rejected. The record reveals that the current policy is the result of changes negotiated with the Union in 2006 (427-28). We find nothing in the record since then which would justify additional modifications. This is an area best left to the bargaining table and not Interest Arbitration, we are convinced.

### Universal Pass

Currently, Local 1440 employees receive free passes on the SIRTOA system. That is consistent with the overall MTA policy whereby workers may travel without cost on the transportation system of the agency that employs them (273). Thus, while some members surely live in the other four New York City boroughs or even in areas covered by Metro North or the LIRR, we do not find a sufficient basis for treating this Union better than others within the MTA family.

### Wage Progression

Reducing the number of years for reaching top step has a significant cost impact. The Union's proposal would cost 2.15 per cent (Employer Exhibit 21). Even a four step progression would cost over 1 per cent.

In light of the other economic improvements awarded and in recognition of the fact that employees will eventually reach top step anyway, this proposal must be rejected, the Panel finds.

#### **Injury-on-Duty**

It is true that Local 1440 members receive differential pay some eight days after their counterparts at Local 100. However, we are not persuaded this difference should be adopted now. Thus, the Union's proposal is rejected.

#### **Payment for Physical Examinations**

The record does not yield sufficient evidence to grant this proposal of the Union's. We are not persuaded that employees are substantially disadvantaged as compared to Local 100 employees when called to attend fitness for duty examinations. Thus, this demand is not awarded.

#### **Restricted Duty**

The record does not support the Union's proposal. Creating light duty positions for restricted duty employees clearly impacts the Employer's operations. To the extent that cleaning and related positions exist, they are generally performed by outside contractors. Therefore, we conclude, granting the

Union's demand creates an unreasonable burden upon the Employer.

#### AVA Days

The current cap of three AVA days is reasonable and we find no basis to increase it. Thus, this proposal of the Union's is rejected.

#### Jurisdiction Retention

It is possible that disputes may arise concerning the implementation of this Award. To expedite their resolution, the Panel shall retain jurisdiction for six months; i.e., until March 15, 2013 to resolve such issues.

In sum, the Panel concludes that our findings are reflective of the appropriate pattern; i.e., a 41.5 month Award whose net cost is 10.07 per cent, as has been negotiated by the Unions on the properties most comparable to Local 1440. Exceeding this finding via a longer Award and additional cost destroys this pattern.

On the other hand, an Award less than 10.07 per cent is equally violative of the pattern as indicated above, notwithstanding the legitimate financial difficulties the MTA faces.

Finally, and for the reasons set forth above, the terms of this Award comport with the criteria set forth in the Taylor Law. Accordingly, they are to be implemented as indicated. It is so ordered.

**AWARD**

**(PERB Case No. TIA-2010-034; M2010-155)**

1. Term of Award

January 1, 2007 - June 15, 2010

2. Wages

Wages shall be increased as follows:

Effective January 1, 2007 - 4.0 per cent

Effective January 1, 2008 - 3.5 per cent

Effective January 1, 2009 - 3.0 per cent

3. Night/Weekend Differential

Effective September 15, 2012, there shall be a night differential paid for hours worked beginning 6 p.m. one day and ending 5:59 a.m. the next succeeding day, except that on weekends, the differential shall be paid for all hours worked between 6 p.m. Friday and 5:59 a.m. on Monday morning.

The night differential rate shall be a flat rate for each title covered by the collective bargaining agreement. The night differential rate shall be set at 4.5 % of the hourly rate of pay in effect as of June 14, 2010 but shall not be subject to future general wage increases. For the purpose of determining night differential rates, each title and each step within the wage progression for that title shall have a designated night differential rate.

4. Pensions

Effective September 15, 2012, the following pension modifications shall be adopted.

## Pension Plan

A. All employees hired by SIRTOA on or after June 1, 2010 shall become members of a new chapter of the MTA DB Plan which shall mirror the plan for employees hired immediately prior to this Agreement with the following modifications:

1. The three percent (3%) employee contributions shall be increased to four percent (4%).
2. Overtime earning which shall include the 50% bonus premium in excess of 20% of regular base wages (as defined by an employee's normal regular tour of service) shall not be included in the calculation of any retirement benefit, including but not limited to death benefits.
3. The early retirement provisions set forth in paragraph "B" below are not applicable to members of this new chapter.

B. Effective June 1, 2010, all participants of the existing chapter of the MTA DB Plan who attain age sixty (60) or greater and who are otherwise eligible to retire, shall be eligible to retire without the early retirement age reductions. The six percent (6%) age reduction for each year from age sixty to age sixty-two shall be eliminated for those who retire with less than thirty (30) ears of service.

5. Labor-Management Time

Effective September 15, 2012, the Union shall be granted 120 days released time on an annual basis without loss of pay

for the conduct of Union-Management relations. It shall provide the Employer reasonable advance notice of its intent to take such time which shall be granted unless SIRTOA's operations would be impaired as a result.

6. Sick Leave

Effective September 15, 2012, employees annual sick leave shall be increased from five to seven days.

7. Martin Luther King, Jr. Day

Effective calendar year 2013, Martin Luther King, Jr. Day shall replace Good Friday as a paid holiday.

8. Grievance/Arbitration Procedure

The standing Board of Arbitration a/k/a The Special Board of Adjustment shall be eliminated and replaced with the grievance procedures set forth herein. These procedures replace all current grievance and discipline procedures.

Grievance and Arbitration Procedure

A. Grievance Definition and Time Limits

A "Grievance" is hereby defined to be a complaint on the part of any employees, or a group of such employees, covered by the contract, that there has been, on the part of management, noncompliance with, or a misinterpretation or misapplication of any of the provisions of this Agreement or any written working condition, rule or resolution of the Staten Island Rapid Transit Operating Authority

(hereinafter the "Authority") governing or affecting its employees.

A "grievance" is also defined to be a complaint on the part of any covered employee that there has been a violation of the employee's contractual rights with respect to a disciplinary action of warning, reprimand, fine suspension, demotion and/or dismissal--except that a "grievance" shall not include the removal of a probationary employee.

An employee or his/her representative shall be permitted to file a contract interpretation grievance within thirty (30) days from the time a grievance arose to request in writing, by completing a form provided by the Authority.

B. Grievance and Arbitration Procedures

Grievances of employees covered by this collective bargaining agreement shall be processed and settled in the following manner:

1. Step I

The grievance shall be scheduled to be heard by the Superintendent or his/her designee within ten (10) days after receipt of the written request by the Superintendent or designee. The employee may be accompanied by his/her Union representative. The decision on the Step I appeal will be rendered to the employee and his/her Union representative within thirty (30) days after the meeting.

## 2. Step II

In the event that the matter is not resolved with the Superintendent, the employee or his/her Union representative may, within thirty (30) days after the receipt of the written notification from the Superintendent of his/her decision, appeal in writing, on the form provided by the Authority, to the Chief Operating Officer or designee. The appeal shall be scheduled to be heard within fifteen (15) days after the receipt of the written request by the Chief Operating Officer or the designee. The Chief Operating Officer or designee shall, within thirty (30) days after such hearing is closed, render his/her decision in writing.

## 3. Impartial Arbitration

- a. If the Union representative is not satisfied with the decision on the grievance at Step 2, the Union grievance representative may, within thirty (30) days after receipt of the Step 2 decision, file with the Impartial Arbitrator, a demand that the Impartial Arbitrator give an opinion and make a determination with respect to said grievance.
- b. The Authority may also submit to the Impartial Arbitrator for opinion and determination any complaint arising solely out of the interpretation application, breach or claim of breach of the provisions of the Agreement upon Thirty

- (30) days notice to the Union.
- c. The Impartial Arbitrator shall fix a date for a hearing on at least fourteen (14) days notice to the Authority and to the employee and his Union Representative, and a representative of the Authority shall attend the hearing.
  - d. Hearings shall be held before a Tripartite Panel, The Tripartite Panel shall be comprised of the following: the Impartial Arbitrator, one (1) designated Employer representative and one (1) designated Union representative.
  - e. Hearings shall be held in accordance with the Labor Arbitration Rules of the American Arbitration Association. At hearings, the Parties may be heard in person, by counsel, or by other authorized representative as they may elect. The Parties may present, either orally or in writing, statements of fact, supporting evidence and data arguments as to the position with regard to the case(s) being considered. At the request of the Impartial Arbitrator, witnesses, records and other documentary evidence as required shall be produced. No transcript of the hearing shall be required.
  - f. The Impartial Arbitrator shall mail a copy of the opinion and award of the Tripartite Panel to the

Senior Director, Employee Policy Compliance and to the employee or his representative within thirty (30) days after the close of the hearing. His determination upon matters within his jurisdiction and submitted to him under and pursuant to the terms and conditions of this Agreement, shall be final and binding upon the parties.

- g. The parties shall mutually agree upon an Impartial Arbitrator who would serve for a two (2) year period.
- h. If the parties cannot agree on the designation of an arbitrator, they shall utilize the procedures of the American Arbitration Association for the selection of an arbitrator for each individual grievance.

C. General Provisions

- 1. In rendering his opinion and award, the Arbitrator shall be strictly limited to the interpretation and application of any agreement between the parties, any written working condition, rule or resolution of the Authority governing or affecting employees represented by the Union, but shall be without power or authority to add to, delete from, or modify any such agreement, working condition, rule or resolution.
- 2. The time limitation provided herein shall be strictly adhered to. A grievance may be denied at any level because

of the failure to adhere to the time limitations. Neither the filing of any complaint nor the pendency of any grievance as provided in the Section, shall prevent, delay, obstruct, or interfere with the right of the Authority to take the action complained of, subject to the final disposition of the complaint or grievance as provided for herein.

3. In any case where the Authority does not scheduled a matter for hearing or render a decision within the prescribed time limits, the grievance may be appealed to the next step of the procedure.
4. The parties may mutually agree to extend the time limits set forth above.

9. Health, Dental and Visual Insurance

Effective January 1, 2013, members of Local 1440's bargaining unit shall be enrolled in the current TWU/ATU health, dental and vision plans.

10. First Day of Sick Leave Unpaid

Effective September 15, 2012, the first day of any sick leave occurrence for employees with fewer than ten accrued sick days shall be unpaid.

11. Paid Leave Based on Eight Hours

Effective September 15, 2012, employees on paid leave shall be compensated on an eight hour work day.

12. Retention of Jurisdiction

The Panel shall retain jurisdiction until March 15, 2013, to resolve any dispute which may arise as to the implementation of the terms of this Award.

13. Other Proposals

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

DATED: July 27, 2012

Howard C. Edelman  
HOWARD C. EDELMAN, ESQ.,  
ARBITRATOR and PUBLIC PANEL  
MEMBER

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: July 27, 2012

Howard C. Edelman  
HOWARD, C. EDELMAN, ESQ.,  
ARBITRATOR AND PUBLIC PANEL  
MEMBER

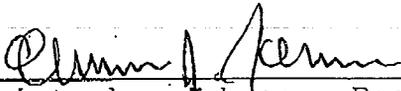
7/27/12

DATE

*Delbert M. Strunk Jr.*

Delbert Strunk,  
Employee Panel Member

July 27, 2012  
DATE

  
Christopher Johnson, Esq.  
Employer Panel Member