

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest :
Arbitration :

- Between -

: Case No.
M2012-214;
: TIA-2012-022

MTA BUS COMPANY

:"Company" or "Employer"

- and -

LOCAL 1179, AMALGAMATED TRANSIT
UNION

:"Union" or "Local 1179" :
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NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

APPEARANCES

For the Employer

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For the Union

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Angelo Bosques, Vice-President

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James Berry, Executive Board Member

Tom Roth, President, Labor Bureau, Inc.

BEFORE: HOWARD C. EDELMAN, ESQ., CHAIRMAN OF THE PANEL
GARY DELLAVERSON, ESQ., PUBLIC EMPLOYER PANEL MEMBER
JOHN LYONS, PUBLIC EMPLOYEE PANEL MEMBER

BACKGROUND

The parties are signatories to a Collective Bargaining Agreement which expired on May 21, 2009. Negotiation and mediation efforts to agree upon a successor labor contract were unsuccessful. Consequently, pursuant to Section 209.5 of the Civil Service Law of the State of New York ("Taylor Law"), the undersigned Panel was constituted to conduct hearings and render an Interest Arbitration Award to become effective May 22, 2009. Hearings were held before us on August 14, 19 and 21, 2013. Thereafter, the parties submitted written closing arguments. In addition, the Panel met in executive session on December 9, 2013. These findings follow.

The Company is a public benefit subsidiary corporation of the Metropolitan Transportation Authority ("MTA"). It was created in 2004 pursuant to an agreement with the City of New York ("City"). It offers bus service in the New York Metropolitan area formerly provided by seven private entities - Liberty Lines Express, Queens Surface Corporation, New York Bus Service, Inc., Green Bus Lines, Triboro Coach Corp., Jamaica Buses, Inc. and Command Bus Corp ("private lines").

The Company operates local bus routes in the Bronx, Brooklyn and Queens, and express bus routes between Manhattan and the Bronx, Brooklyn and Queens. Eight depots house and service the buses of the former private lines. At five employees are represented by Local 100; at one by Local 1181; and at two, JFK and Far Rockaway, by Local 1179.

In recent years there have been a number of interest arbitration awards covering the employees referred to above as well as those employed by New York City Transit Authority ("Authority"), including the Manhattan and Bronx Surface Transit Operating Authority ("MaBSTOA") and Local 100, and Locals 1056 and 726. Awards for 2009-2012¹ have been rendered by Arbitrators John Zuccotti (Zuccotti I and II) and George Nicolau. In addition, an Award was issued by Arbitrator Stanley Aiges for Long Island Bus and Local 252. At that time Long Island Bus was a public entity. It has been replaced by a private corporation operated under an Agreement with Nassau County ("NICE"), where employees are represented by Local 252. Also, Arbitrator Arthur Riegel issued an award involving Commanding Officers working in the MTA.

¹They do not encompass identical time frames.

It is evident from the time frames noted above that Local 1179, as well as other bargaining units within the MTA family, has been subject to the terms of the Agreement which expired in 2009, or more than four years ago. While the reasons for this lapse need not be addressed here, suffice it to say both parties, MTA Bus and the Union, need to have finality to the process so that terms and conditions of employment for the retroactive years will be set.²

To that end, hearings were conducted in an expedited manner over three days in August, followed by an executive session on December 9, 2013. Also, to expedite the Panel's findings, We have summarized the parties' positions.

POSITIONS OF THE PARTIES

Union

Local 1179 contends the Panel should follow the pattern established by two Arbitrators in three MTA cases. These Awards include Locals 726 and 1056, and Local 100 in two cases involving MTA agencies. That pattern encompasses three year Awards with raises of

²The Panel recognizes that under the Taylor Law terms and conditions of employment continue after the labor agreement ends for the period covered by an interest arbitration award.

two per cent, effective August 22, 2009; February 22, 2010; August 22, 2010; and February 22, 2011; and a three per cent increase effective May 22, 2011.

In the Union's view, there is no basis to deviate from these findings. This is so, it stresses, because of the Taylor Law criteria and, in particular, Section 209.5(d)(i). That criterion, it notes, requires the Panel to compare wages and other terms and conditions of employment of its members to others performing similar work in New York City. There can be no more similar comparators than Bus Operators and other MTA employees, the Union insists.

Moreover, the Union contends, the economic settlements its members have received over the years closely parallel those garnered by Local 100, including those when its members worked for Green Bus Lines.³

Also, the Union argues, the MTA itself has recognized the necessity of maintaining this pattern. Citing the Employer's brief in the Arbitration which set terms and conditions for MTA Bus and Local 100 for 2006-09, the Union points to the following statement:

³The MTA took over Green Bus in or about 2006.

It is a given...because fundamental principles of labor relations require that the cost of the award for MTA Bus...cannot exceed the cost of the TA/OA award...

Union Exhibit 9, pp. 9-11

Similar deference to patterns exists in many MTA briefs dealing with the three Awards referred to above, the Union submits.

The Union acknowledges the MTA's claim that one or more of the prior Awards were wrongly decided and that some of its [1179's] contractual provisions vary from other MTA unions. As to the former contention, the Union argues the Panel need not and should not delve into the analysis behind those Awards. Concerning the latter, the Union argues that slight deviations in contractual provisions are irrelevant to the Panel's findings, since it is not seeking improvements in these areas, but only in wages and benefits.

Also, the Union rejects the MTA's assertion that two Awards did not follow the pattern cited above. It disputes this assertion, noting that in the Metropolitan Suburban Bus Award, there did not exist parity between the wages of those workers and MTA employees. Similarly, it suggests, the MTA Police Department Commanding Officers Award dealt with a

first contract for these Officers and that, therefore, there was no previous parity or pattern relationship to other MTA employees.

Finally, on this issue, to the extent that economic conditions have changed since the other Awards have been issued, those conditions have improved, the Union submits. Hence, it concludes, the Panel should award the wage pattern set by Local 100, especially since its cost is .014 per cent of the MTA's total budget and, as such, falls well within the Employer's ability to pay these increases.

With respect to other Taylor Law criteria, the Union asks the Panel to give little weight to the "overall compensation" and "Consumer Price Index" factors. In its view, these elements were given appropriate short shrift by Arbitrators Zuccotti and Nicolau. A similar result is warranted here, as the Union sees it.

In addition, the Union seeks a reduction in health care contribution to 1.5 per cent of wages based on a forty hour week, increases in life insurance to \$50,000 for active employees and \$30,000 for retirees, a \$1.00 per hour increase in Dispatchers' pay effective May 21, 2012; and an

additional fifty hours of paid released time for labor-management activities per week and three picks per year for Dispatchers, effective the same dates as the Winter, Fall and Spring picks. In the Union's view, these proposals either mirror improvements gained in the other Awards or fall within their overall economic cost.

Finally, the Union asks the Panel to reject the MTA's proposals. It notes that many, if not all, have been proposed to Local 100. As such, the Union urges, the "tail should not wag the dog," and that these issues are better left to bargaining between the MTA and Local 100.

For these reasons the Union maintains that its proposals are reasonable and consistent with the Taylor Law criteria. Accordingly, it asks that they be adopted as presented and that the MTA's proposals be rejected.

The Employer asserts that the wage increases sought by the Union should not be awarded. It insists, rather, that any Award must result in a "net zero" cost; i.e., wage and benefit increases offset by tangible productivity improvements or other modifications that have significant economic impact.

In support of this position, MTA Bus raises a number of arguments.

First, it alleges, the Union's focus on a snapshot of its finances ignores its efforts to return from the economic precipice of four years ago. Specifically, the Employer notes, the MTA raised fares, secured additional funding via tax authorization and implemented numerous economic efficiencies, such as reducing the head count among non-operating staff by fifteen to twenty percent and freezing wages of unrepresented employees for the last five years.

In addition, MTA Bus indicates that much of its revenue is based on the region's economic health. Thus, these projections, while fact based, are subject to uncertain trends, it submits.

Also of note, in MTA Bus's view, is its unique funding relationship with New York City. It points out that its Financial Plan assures full funding of any wage increases by the City. Were that arrangement eliminated or modified, it would face difficult choices which could impact bargaining unit employees, the Employer submits.

Furthermore, MTA Bus observes, the requirement that it operate on a self-sustaining basis means it must constantly re-evaluate its priorities and monitor its fiscal condition. In its words, "Only through...difficult measures [has it] been able to find a means of stability." Brief, p.9.

Given these and related economic factors, the Employer insists it should not be directed to impose the Local 100 wage pattern. Indeed, it argues, the wage increases awarded Local 100 for the 2009-12 round of bargaining were improperly granted in the first place. It asserts that those findings⁴ are deeply flawed. For example, it contends, there was no rationale for granting a 3 per cent increase in the third year of the Award or reducing the health insurance contribution from 1.5 per cent of gross wages to 1.5 per cent of base wages.

More significant, in the Employer's view, is Zuccotti II Award's erroneous assumption of projected MTA revenue, exceeding the actual amount by \$1.769 billion, or 15 per cent of the MTA's operating budget. Such a gross miscalculation means that Zuccotti II is

⁴They are referred to herein as Zuccotti II.

entitled to no deference whatsoever, in the Employer's view.

Equally flawed, the Employer urges, is that Award's assumption that the general reserve, then \$75 million, could be used to pay Local 100 wage increases, when, in fact, it is designed for emergencies and unforeseen events. Other weaknesses in that Award abound, the Employer argues, such as the use of capital funding for wage increases and deferring needed projects. Finally, with respect to the Zuccotti II finding, the Employer argues that the economy continued to deteriorate after it was issued in August 2009.

In addition, the Employer contends, the Nicolau Award covering the same period as Zuccotti II, but for ATU Locals 726 and 1056, should not be applied here. Citing the Nicolau finding that Locals 1056 and 726 perform identical work to Local 100's bus employees, as well as its conclusion that this relationship "differentiates them from other MTA units," (Nicolau Award, at 22), the Employer submits that the terms and conditions set forth therein should not be applied in the instant dispute. Indeed, it observes, the Employer here is MTA Bus, not the Transit Authority.

Moreover, it alleges, having come from a private employer, Local 1179's members' increases have not followed Local 100's wage or benefit improvements in the past.

Additional support for this conclusion may be found in the Aiges and Riegel Awards, MTA Bus alleges. These determinations did not follow the Zuccotti nor Nicolau determinations, the Employer argues, noting that the Aiges Award did not include the 3 per cent wage raise in the last year and did not scale back health insurance premium contributions. Similarly, it observes, the Riegel Award did not award cumulative increases totaling four per cent for the first two years. Consequently, the Employer concludes, the Local 100 pattern, as suggested by Local 1179, simply does not exist in a number of MTA units.

Given these circumstances and data, MTA Bus asks the Panel to award zero net increases for the first three years, wherein any wage or benefit increases would be offset by corresponding productivity improvements. Thereafter, it allows, salary raises would equal advances in the Consumer Price Index.

This proposal is not only economically sound, but also takes into account the settlement between the

State of New York and its public sector unions, PEF and CSEA, the Employer maintains. Noting that they provide for three year wage freezes, substantial increases in contributions to health insurance premiums and two per cent raises thereafter, (two such raises for the CSEA covering two years and one for PEF covering one year), the Employer alleges that its proposal is reasonable in light of these factors.

Beyond basic wage and insurance demands, MTA Bus asks the Panel to adopt the following contract modifications:

- overtime pay after forty hours of actual work per week;
- leaves based on an eight hour day;
- an increase from 3 to 5 year wage progressions and an increase in time spent on the first two steps to eighteen months from twelve months;
- the right to assign shifting duties as a Bus Operator if no Helper or Maintainer is available;
- mandating a "fine in lieu of suspension" system whereby employees would work during the suspension period and pay a 30 per cent fine (50 per cent if the employee's arbitration claim was denied);
- the elimination of restrictions on hiring part-time Bus Operators;
- merging the duties of Dispatchers in the Command Center among all Unions.

As to the Union's non-wage proposals, the Employer insists that there is no basis to reduce

premium contributions for health insurance from 1.5 per cent of gross wages to 1.5 per cent of base wages. At a time when employees' contributions and the cost of health insurance are increasing, such a reduction is unwarranted, as the Employer sees it. To the contrary, it asks that employees pay at least ten per cent of their health insurance premiums. Equally unjustified, the Employer insists, are the Union's demands to increase life insurance benefits, raise the hourly rate of pay for Dispatchers by \$1.00 per hour, increase the number of picks for Dispatchers from one to three per year and increase paid release time by fifty hours per week.

In sum, the Employer contends its proposals are reasonable and consistent with the Taylor Law criteria. Consequently, it asks that they be adopted as presented.

DISCUSSION AND FINDINGS

As the parties are aware, the Panel's determination is governed by Section 209.5 of the Civil Service Law ("Taylor Law"). Pursuant to that provision, We are required to render a just and reasonable determination by applying the criteria set

forth therein to the facts before us. As such, our analysis must begin with a recitation of the elements of that section. They 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

Not every criterion need be given equal weight. Some are more significant than others. For example, Element (i), the so-called "comparator" one, is generally accorded greatest deference by Interest Arbitration Panels.

This view makes labor relations sense. What other similarly situated employees receive or do not receive with respect to economic modifications is extremely significant both to employers and employees alike. For the former, labor relations stability is advanced by applying relevant patterns of economic modifications from one bargaining unit to another. This is especially true where the earlier settlement, by agreement or award, applies to the largest unit, and the latter to the smaller one. Indeed, the ratio between Local 100's size and Local 1179's is approximately fifty to one.

As for the employees, applying the pattern established by the larger group also promotes labor stability. Obviously, the expectation of the smaller unit is that it will receive the same economic package as the larger. To receive less is to encourage

leapfrogging in the next round of bargaining whereby Local 1179 would expect a "catch up" raise. Presumably, Local 100 would look to that extra improvement in its succeeding round, and so on. The complexities and uncertainties of this type of bargaining are to be avoided, if at all possible, We are convinced.

This is not to suggest that once established, patterns may never be modified. Altered economic conditions may well impact future settlements. Also, where the findings in the trendsetter pact or award are "palpably erroneous,"⁵ it would be improper to rubberstamp them. In this context, We reject the Union's contention that the Zuccotti and Nicolau's records must be adopted here at face value.

In light of these factors, our analysis must begin with a determination as to whether the earlier Awards cited above must be replicated in the instant dispute.

We find that they must. This is so for a number of reasons.

First, while We disagree with the Union that the Awards must be deemed to have preclusive effect here,

⁵This phrase is taken from disputes under the Railway Labor Act.

they certainly are entitled to great weight. The parent organization, the MTA, is the same in all the disputes involved in this proceeding. As such, there certainly is a nexus between those findings and the matter before us.

Moreover, the work performed by the members of Local 1179, except for subway service, is identical to the work performed by members of Locals 100, 726 and 1056. While the locations are in many cases different, 1179 members drive or repair buses just as Local 100 members do. They receive the same training at the same facility, attend the same Medical Assessment Centers (MAC's), wear the same uniforms and, in a number of instances, perform services alongside Local 100 members whose terms and conditions of employment have been set for 2009-12. (Vol I, 108-115).⁶

The only real difference between Local 1179 and Local 100 bus personnel is an historical one. Until about 2006 Local 1179 members were private sector employees working for Green Bus Lines. Most Local 100 members worked either for NYCTA or MaBSTOA, and had

⁶Numbers in parentheses () refer to pages in the transcript, unless otherwise indicated.

been public sector employees for many years prior to 2006. This was also true for Local 1056 and 726 members. Also, a number of Local 100 members worked for private lines, either in Brooklyn, Queens, the Bronx or Westchester. As such, there is no doubt that Local 1179 and the great majority of their counterparts within the MTA family performed and perform virtually identical duties and under the same conditions as those who received the pattern wages established by Zuccotti I, II and the Nicolau Award.

Moreover, bargaining in the units cited above, including 1179's, tracked each other. As noted by Union fiscal expert Thomas Roth, over the previous six contract terms, the percentage increases for Local 1179 mirrored those granted to Local 100.⁷ Indeed, as this Employer noted in Zuccotti I.

...it is a given - both because the parties have expressly said so and because the law and fundamental principles of labor relations requires it - the cost of the award for MTA Bus covering the period 2006 through 2009...cannot exceed the cost of the TA/OA - Local 100 award covering that same period.

While it is true that this observation was intended to demonstrate a ceiling for MTA Bus raises (i.e., no

⁷In some cases there were de minimis variations.

more than Local 100's), it applies equally to the floor; i.e., that the MTA Bus increases should not be lower than Local 100's. The same arguments were made for the 2009-12 round and Zuccotti II ordered that the 2006-09 pattern be replicated; i.e., that the MTA Bus - Local 100 terms mirror those for the NYCTA/MaBSTOA - Local 100 Award.

Zuccotti II was followed by the Nicolau Award, which established the terms for the 2009-12 raises for Locals 726 and 1056. Not surprisingly that Award also imposed the same economic settlement as Zuccotti II for these units. What this means is that, as Arbitrator Nicolau noted, every single contract for the smaller Unions in the New York City transit system for operators and maintenance personnel has been patterned on the Local 100 TA-OA contract for fifty years or more.

As noted above, this conclusion does not mean the Zuccotti and Nicolau Awards must be given preclusive effect in the instant dispute. However, compelling evidence must be presented as to why the patterns established by those findings should not be applied here. That evidence is lacking, the record reveals.

The Employer contended that Zuccotti II and Nicolau are entitled to no weight. It noted, among other things:

- a) There was no rationale given for awarding three per cent increases during the last year of each Award.
- b) equally lacking was the basis for reducing employee health insurance premium contributions from 1.5 per cent of gross to base (40 hour) wage.
- c) the Zuccotti estimates regarding MTA revenue forecasts were grossly overstated by \$1.769 billion.
- d) The Zuccotti Award misidentified funding sources to pay the cost of its Award.

These arguments, though tenable, do not justify casting aside the pattern previously established. This, too, is so for a number of reasons.

First, many of these arguments, and particularly the economic ones, have already been adjudicated. Zuccotti II was appealed to the New York State Court of Appeals. The Award was upheld. Thus, while an analysis of its findings might well be in order under other circumstances, they are not appropriate here.

In this context, the Employer suggested that the Panel should exercise greater scrutiny than the Courts which, of necessity, defer to Arbitration Awards

unless they manifestly violate public policy and/or the law. However, as noted above, this Panel is convinced that the Zuccotti Awards and its progeny, should not be disturbed unless "palpably erroneous." Such a showing has not been made, We find.

The Employer also contended that the Zuccotti Award determined available funding sources, which, if utilized, could have compromised the safety of the infrastructure or resulted in fare increases or service decreases. To the extent those assertions had validity in funding raises for a 38,000 member work force, they do not apply here. Local 1179 represents less than 700 members. The impact of applying the pattern to this unit is de minimis and surely would not result in adverse changes to the MTA infrastructure, fares or level of service.

The Employer also challenged the Union's "pattern" argument by suggesting that the Aiges and Riegel Awards demonstrated there was no discernible pattern to follow. While these awards are not "outliers," they do not justify rejection of the Local 100 pattern.

In Aiges (Metropolitan Suburban Bus and Local 252), while the first two years of the Zuccotti Award

were imposed, there was no finding as to a third year. Thus, Aiges followed the pattern, except for the last year. While it is likely the absence of a third year resulted from the general belief, not yet finalized, that MTA would no longer operate Long Island Bus after 2011, the fact remains that the absence of a third year is not a deviation from Zuccotti for the first two. Thus, though the Aiges Award did not follow the pattern completely, it did not deviate from it, either.

It is true the Riegel Award did not follow the PBA pattern when it ordered raises for Commanding Officers which were less than Police Officers'. However, unique circumstances were present in that dispute since this was the first collective bargaining agreement for that group, which had been previously unrepresented. Thus, the Award also does not invalidate the "pattern" claim advanced by the Union.

We note the Employer's assertion that imposing the Zuccotti pattern in this case does not support its "net zero" approach to labor costs and does not represent a mutual sharing of burdens imposed by difficult economic times, since Managers and the riding public have made sacrifices while Local 1179,

along with the rest of the Unions, has not. There is some merit to this claim. However, it is significant that our Award is retroactive only. To award anything but the pattern is to disadvantage this Union when compared with virtually all others under the NYCTA/MaBSTOA, MTA Bus umbrella. Such an inequity overshadows the MTA's claim. To the extent it finds it necessary to achieve a "net zero" labor growth, that must be applied prospectively, beginning, presumably, with Local 100 and the 38,000 members it represents.

In this context, awarding no wage increases beyond the years covered by the previously established pattern, as suggested by MTA Bus, is not justified. It would constitute the "tail wagging the dog." This the Panel is not inclined to do.⁸

For these reasons the Panel concludes that criterion (i) of Section 209.5 of the Taylor Law strongly supports the wage structure over a comparable period of time, as contained in the Zuccotti and Nicolau findings.

⁸We express no opinion as to what raises, if any, an Interest Arbitration Panel should award in post-Zuccotti years.

Criteria (iii) and (v) also comport with this determination. These provisions list two elements - the interests and welfare of the public (v) and the financial ability of the public employer to pay (iii). Each supports the Union's position here.

As to the former, the interests and welfare of the public is served by, inter alia, a work force that has a strong work ethic and believes it is being treated fairly. While employees should work hard regardless of what economic adjustments, if any, are awarded, it is understandable that Local 1179 members would believe they are under-appreciated if virtually every other similarly situated bargaining unit received the Zuccotti pattern while it did not.⁹ Thus, though "morale" may be difficult to measure, there is no doubt Local 1179's would be adversely affected were anything but the Zuccotti pattern awarded.

It is true that the interests and welfare of the public are positively enhanced if service cuts are restored, and/or fare increases are kept to a minimum. It is also true that any increase in expenditures must be weighed against the employer's ability to pay.

⁹ See Subway-Surface Supervisors Association/TSO Local 106 Award decided herewith.

However, as Union Exhibit 17 (Tab 10) makes clear, the cost of its proposal is .014 per cent, an amount so negligible that it can have no bearing on service improvements or fares. Clearly, the decision to improve the former or moderate increases in the latter will be made without regard to the cost impact of this finding. Also, as previously suggested, the retroactive nature of this Award means it will not establish any pattern for bargaining units negotiating for 2013 or beyond. Finally, with respect to Taylor Law criteria, that the Award exceeds the rise in the cost of living (iv) is not dispositive. In times of very low inflation, wage increases are often greater than the rise in the CPI. In high inflation periods, they often are lower. Nor is there any evidence regarding criterion (vi) which would justify a different finding.

In light of this analysis, the Panel concludes that the wage pattern previously established should be applied here. Thus, we shall direct that the following wage increases be implemented:

Effective August 22, 2009 - two per cent
Effective February 22, 2010 - two per cent
Effective August 22, 2010 - two per cent
Effective February 22, 2011 - two per cent
Effective May 22, 2011 - three per cent

Wage increases shall be compounded as contained in the Zuccotti II Award. The Award shall encompass the period May 22, 2009 through May 21, 2012.

Health Insurance

The Employer proposed that unit members pay a portion of health insurance premiums. It is true there is an increasing trend toward employee contributions to health insurance premiums. It is equally true that overall costs are rising, though given the Affordable Care Act's impact, it is difficult to predict whether and to what extent this trend will continue. However, there is no doubt this benefit is part of the economic package analyzed above and awarded Locals 100, 726 and 1056. Consistent with that finding, employee contributions to health insurance premiums shall be reduced to 1.5 per cent of a regular week's wages (40 hours), effective December 22, 2009.

Overtime Pay

The Panel finds that this proposal of the Employer's must be rejected. While there is logic to the concept that overtime pay should apply only when employees actually work more than forty hours per

week, this demand has been made MTA-wide, the Panel notes. As with other items, it would be inequitable to apply it to a group which represents a fraction of bargaining unit members within the MTA family. Also, since the Award is fully retroactive, if an item were to be seriously considered, it is better applied prospectively. Consequently, this demand is rejected.

Leaves Based on Eight Hour Pay

Currently, most leave pay (except holidays and personal days) is based on run pay; i.e., the actual wage due an employee for his/her regular run, which often exceeds eight hours. A leave day replaces a day of work. Consequently, it is reasonable to pay the employee for the work he/she would have done if he/she reported for duty. Thus, the Panel finds, this proposal must be rejected.

Changes in the Wage Progression

As with other Employer proposals, it would be inequitable to award this change for one of the smallest bargaining units. Nor does our rejection of this demand have any impact on the possibility it will be incorporated into other agreements or awards prospectively. Thus, it is not granted.

Shifting Duties

We agree with the Employer that restricting shifting duties to Helpers or, if unavailable, to qualified Maintainers, impairs operational efficiency. When there are no Helpers or Cleaners available, it is a better use of Maintainers' time to have them continue to service buses and, instead, require a Bus Operator to perform this function. Also, We agree with MTA Bus that though efficiency is improved, Bus Operators do not lose pay if required to perform this duty. Consequently, We shall direct that, effective the date this Award is signed, MTA Bus shall have the right to require Bus Operators to perform shifting work if no Helper or Cleaner is available.

Fine in Lieu of Suspension

This proposal is designed to make fines in lieu of suspension mandatory, rather than optional. However, implementing it arises after an employee has been found culpable of misconduct or poor performance. To impose a specific form of a penalty - a fine in lieu of suspension - is unreasonable, We find. Operational needs of the Employer and personal needs of the employee may not be the same. Thus, We are convinced, the current system - which allows the

parties to agree on how the penalty will be assessed - should not be disturbed.

Transportation Department Restrictions on Hiring Part-Time Bus Operators

Awarding this proposal would signal a major shift in Departmental operations. While We note that a modified form exists in the 1181 bargaining unit, this matter is better left to the parties' negotiations than imposed by the Panel.

Dispatcher - Bus Command Center

This issue is complex. There is little reason why a Dispatcher should not take calls from any depot, since the nature of the problems will likely be the same, regardless of their source. On the other hand, the impact of such a proposal on the number of Dispatcher jobs in this unit is unclear. Also the Union's proposal for proper meal breaks for Dispatchers is related to how they will be deployed at the Bus Command Center. In our view, then, this proposal is better left to the parties to negotiate on their own. If an agreement cannot be reached within six months, We shall retain jurisdiction to decide the matter.

Dispatchers' Rate of Pay

The Union proposed a \$1.00 per hour increase in Dispatchers' pay, effective May 21, 2012, the last day of the period covered by this Award. It pointed out that Dispatchers run the three picks per year but do not have released time for this assignment.

In our view, this proposal has merit. There is no doubt the time necessary to run the picks is substantial. Also, We agree that the cost estimate of this benefit is .33 per cent on a "going out" basis, as Roth testified. Union Exhibit 13. As noted below, this amount is within the Zuccotti and Nicolau findings when added to the cost of the wage and health benefit findings. Thus, We shall direct the inclusion of the \$1.00 increase in Dispatcher pay, effective upon the date this Award is signed.

Life Insurance

Obviously, even low rates of inflation, which currently exist, result in higher costs to grieving families upon the death of a bargaining unit member or of one who has retired from the bargaining unit. Increasing the sum to \$50,000 and \$30,000, respectively, is consistent with the overall cost of the Zuccotti and Nicolau Awards. Therefore, it is

awarded as proposed, effective the date this Award is signed.

Paid Release Time

This proposal was modified by the Union to conform its economic package to the one received by Local 100. It now proposes that its President or designee receive an additional fifty hours of paid release time per week for labor-management matters. Since it is within the 11.77 per cent pattern, it is granted.

The overall cost of the Union's proposal is as follows:

General Wage Increase	11.28 per cent
Health Insurance	.53 per cent
Life Insurance - Active	.09 per cent
Life Insurance - Retired	.19 per cent
Dispatchers	.33 per cent
Paid Release Time	<u>.15 per cent</u>
	12.57 per cent

The economic package awarded Locals 100, 1056 and 726 for the three years covered by those Awards is 11.77 per cent. However, it is undisputed that .80 per cent of that figure was attributed to increased pension costs resulting from higher wages.

The pension increase does not apply to the Local 1179 bargaining unit. Its members' pensions are based upon flat dollar amounts for each year of service.

Those amounts are not being raised via this Award. Consequently, the Union should be given a credit of .80, the Panel finds, yielding a net cost of 11.77 per cent over three years, identical to the cost of the Zuccotti and Nicolau Awards.

In sum, the Panel concludes that the items awarded above are consistent with the Taylor Law criteria, not only as to appropriate comparators but equally with respect to the Employer's ability to pay, as well as the interests and welfare of the public. Accordingly, they are to be implemented as indicated in this Opinion. It is so ordered.

AWARD

(Case Nos. M2012-214; TIA-2012-022)

1. **Term**

May 22, 2009-May 21, 2012 except as to those items granted effective the date this Award is signed.

2. **Wages**

Wages shall be increased as follows:

Effective August 22, 2009 - two per cent
Effective February 22, 2010 - two per cent
Effective August 22, 2010 - two per cent
Effective February 22, 2011 - two per cent
Effective May 22, 2011 - three per cent

Increases shall be granted as follows: August 22, 2009 and February 22, 2010 on the 2008 base. All other increases shall be based on the rate in effect on February 22, 2010.

3. **Health Insurance**

Effective December 22, 2009, health insurance premium costs shall be reduced to 1.5 per cent of an employee's weekly base wage (40 hours).

4. **Shifting Duties**

Effective on the date this Award is signed, MTA Bus shall have the right to assign Bus Operators to perform shifting work, if no Helper or Cleaner is available.

5. **Dispatchers - Bus Command Center**

This issue is remanded to the parties for negotiations. If it is not resolved within six months after the date this Award is signed, the Panel shall decide the matter upon request by either party.

6. **Dispatchers' Pay**

Effective May 21, 2012, Dispatchers' pay shall be increased by \$1.00 per hour.

7. **Life Insurance**

Effective the date this Award is signed Life Insurance shall be increased to the following amounts:

Active Members - to \$50,000

Retired Members - to \$30,000

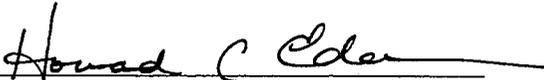
8. **Paid Release Time**

Effective the date this Award is signed, paid release time for labor-management issues shall be increased by 50 hours per week.

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

MTA Bus/Local 1179
Case Nos. M2012-214;
TIA-2012-022

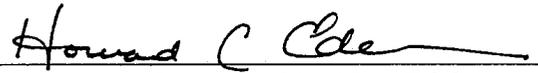
DATED: 12/21/13


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, ESQ.,
ARBITRATOR

NYCTA and MaBSTOA
and
SSSA/TSO, Local 106

Concur _____

Dissent X

12/21/2013
DATE



Gary Dellaverson, Esq.
Public Employer Panel Member

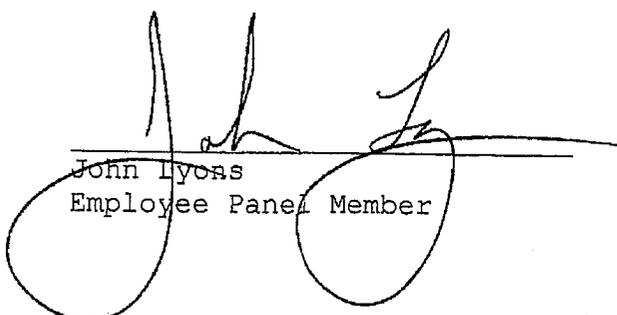
I must respectfully dissent from the Opinion and Award of my colleagues. Like them, I firmly hold a traditional view regarding the importance of maintaining pattern bargaining in a complex multi union environment. Unlike them, however, I recognize that the impact of the Great Recession on the MTA's customers 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.

MTA Bus/Local 1179
Case Nos. M2012-214;
TIA-2012-022

Concur ✓

~~_____~~
12/24/13
DATE


John Lyons
Employee Panel Member