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Regional Transit Service, Inc. and Amalgamated Transit Union, Local No. 282

Dennis J. Campagna

Regional Transit Service, Inc. and Amalgamated Transit Union, Local No. 282

Abstract
In the Matter of Fact-Finding Between AMALGAMATED TRANSIT UNION, LOCAL NO. 282 And REGIONAL TRANSIT SERVICE, INC. PERB Case No. M2008-063. Before: Dennis J. Campagna, Esq. – Fact Finder.

Keywords
New York State, PERB, fact finding

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between

AMALGAMATED TRANSIT UNION,
LOCAL NO. 282 PERB Case No. M2008-063

-And-

REGIONAL TRANSIT SERVICE, INC.

Before: Dennis J. Campagna, Esq. – Fact Finder

APPEARANCES:

a) For the Union:

Matthew J. Fusco, Esq., Counsel
Jules L. Smith, Esq., Counsel
Joseph Carey, Local 282 President
Francis J. Falzone, Business Agent/Financial Secretary

b) For the Company:

Roy R. Galewski, Esq., Counsel
Deborah Griffith, Chief Administrative Officer
Robert Frye, Chief Financial Officer

BACKGROUND

a) The Parties

Regional Transit Service, Inc. ("Company" or "RTS") and the Amalgamated Transit Union, Local 282 ("Union") are parties to a Collective Bargaining Agreement with effective dates January 1, 1998 through December 31, 2001. ("CBA" – Joint Exhibit 1) Most recently, the CBA was extended under the terms of an Interest Arbitration Award covering the period January 1, 2002 through December 31, 2006. (Joint Exhibit 2) Negotiations for a successor to the 2002-06 Contract Extension began on November 27, 2006. Subsequently, the parties met approximately 35 times between November 27, 2006 and May 25, 2008. On December 11, 2008, the Union filed Declaration of Impasse seeking assistance from the Public Employment Relations Board ("PERB"). PERB subsequently appointed a mediator to assist the parties; however mediation proved to be unsuccessful.

The undersigned was appointed by PERB as the Fact Finder in this matter on December 31, 2008. Subsequently, the parties met on March 20th and April 1st, 2009 in an attempt to settle the matter. Once it became evident that a voluntary settlement was not possible, the matter proceeded to Fact-Finding. Thereinafter, Fact-Finding hearings were conducted on April 1st, May 1st and May 27, 2009. The following represent the open issues to this impasse:

- Health Insurance (including Retiree Health Benefits)
- Wages
- Pension and Retirement Benefits
- Performance Incentives
- Attendance and Layoff Book
- Office, Clerical and Scheduling Department Employees
- Spread time & Three Tricks
- Uniform & Tool Allowance
- Mechanical Duties

b) <u>The Company</u>

In 1969, Statewide legislation created four regional transportation authorities – the Capital District Transportation Authority located in Albany, New York, the Central New York Regional Transportation Authority, located in Syracuse, New York, the Niagara Frontier Transportation Authority located in Buffalo, New York, and the Rochester Genesee Regional Transportation Authority, known as "RGRTA" in Rochester, New York. Also in 1969, the City of Rochester transferred ownership of the public transit system to the newly formed RGRTA. The bus service began as the Rochester Transit Service and was later renamed to the Regional Transit Service, RTS. As of 2009, RTS employs approximately 567 employees with a ridership of approximately 16,669,304 servicing an area population of approximately 729,921.

The RGRTA (Company) is governed by a board consisting of 13 Commissioners. Most recently, Francis Falzone, the Union's Business Agent and Financial Secretary became the 14th Commissioner, albeit, on a non-voting basis.

c) Overview of Relevant Company Financial and Cost Data Based on 2006 Figures

The following base cost figures are extremely relevant in the discussion on Health Benefits, Wages and Pension & Retirement benefits:

WAGES: Current (2006-based) Costs [in Dollars]:

1. Base Wages: $18,359,657 [1% = $ 183,597]
2. O.T., Mechanics: $739,227
3. O.T., Operators: $1,609,818

Total Wages: $20,708,702 [1% = $ 207,087]

HEALTH INSURANCE

YEAR	2006	2007	2008	2009
COST (Active)	$3,784,069	$4,190,862	$4,977,906	$5,041,858
COST (Retiree)	$2,200,268	$2,530,308	$3,053,041	$3,188,058

d) Review of the Open Issues

1. **Contract Duration:**

Each party hereto has indicated their willingness to explore terms for a five-year agreement covering calendar years 2007 through and including 2011. Accordingly, I **recommend a contract this five (5) year duration.**

2. Health Insurance - Overview

Currently, the Company subscribes to a series of Health Insurance options through Excellus BlueCross, BlueShield. The Company is part of a "community" rated group consisting of approximately 300,000 members with an average age of 34. There are approximately 351 policies covering unit members and their families. The majority of bargaining unit members (about 85%)[1] are covered by the Blue Choice Select plan. The remaining employees, (approximately 15% of those opting for Health Insurance coverage) namely those hired on or after January 1, 2004, are enrolled in the Blue Choice Value plan. The Company contributes the full cost of the Select plan and Value plan. The Company spends approximately 12% of its annual operating budget on medical benefits. It is the Company's position that all employees should switch to the Blue 25 plan with an employee contribution. The monthly premium costs for the Select, Value and Blue 25 plans are as follows:

PLAN TYPE	2009 Premium	2008 Premium	2007 Premium
SELECT	**Rx: $5/20/$35**		
Select Family	$1466.51	$1248.28	$1036.83
Select Family, No Spouse	$1393.98	$1186.27	$985.34
Select – 2 Person	$1272.77	$1083.34	$899.93
Select - Single	$553.49	$471.11	$391.31
VALUE	**Rx: $10/$25/$40**		
Value Family	$1153.82	$981.65	$813.09
Value Family, No Spouse	$1096.58	$932.95	$772.78
Value – 2 Person	$1001.48	$852.04	$705.75
Value - Single	$435.42	$370.45	$306.84
BLUE 25	**Rx: $10/$30/$50**		
Blue 25 Family	$929.65	$790.63	$606.04
Blue 25 Family, No Spouse	$883.43	$751.35	$575.97
Blue 25 – 2 Person	$812.05	$691.17	$529.87
Blue 25 - Single	$353.17	$300.59	$230.42

[1] See Company Exhibit 1.

<u>POSITION OF THE PARTIES ON HEALTH INSURANCE (ACTIVE EMPLOYEES)</u>

A. <u>The Company's Position</u>

The Company's final position provides that all employees move to the Blue 25 Plan, for which the Company will pay as follows:

<u>For Employees Hired Prior to January 1, 2009:</u>

- The full premium cost until December 31, 2009;
- Effective January 1, 2010, the Company will contribute 90% of the Blue 25 premium cost for these employees, with the employees picking up the remaining 10%.

<u>For Employees Hired on or After January 1, 2009:</u>

- The Company pays 85% of the premium cost, with employees picking up the remaining 15%.

The Company's proposal is in line with its Strategic Plan for the reduction of medical insurance expenses (See 2009-2010 Comprehensive Plan, page 80). The rationale behind the Company's proposal is straight forward and not hard to understand. Like most employers, a significant share of the Company's expenditures is dedicated to health insurance payments – not only for active employees, but for retirees as well. Without changes, it is estimated that the Company will spend approximately $9.9 Million in 2009 on health care benefits for employees, retirees and their families. The average cost per active employee was $11,450 in 2008, and the fact-finding record reflects that the Company's premiums are 25 to 30% higher than those of other local employers based on local community survey results. In addition, as of March 2008, the Company faced an unfunded Other Post Employee Benefits liability of $94.1 Million and as of 2009, has only set aside $4 Million toward this liability.

Given the foregoing, which is but a brief overview of the fiscal difficulty facing the Company, without a change, and at current anticipated future trends in excess of 10% per year, the Company can anticipate costs to continue their upward increase by nearly $1 Million per year, and at current trends, the Company's medical costs will exceed $14.5 Million per year by 2013. As a result, the Company has proposed the following:

PROPOSED CHANGE	ANTICIPATED ANNUAL SAVINGS (2009/2010)	% REDUCTION vs. 2009 COST
Move all employees to Blue Choice 25	$2,175,000	(29)%
Move only non-Bargaining Unit employees to Blue 25	$227,000	(3)%
Increase Employee Contribution to 15%	$965,000	(13)%
Move to an Experienced Rated Plan (Based on rates proposed by Excellus)	$1,130,000 (est.)	(15)% est.

In an effort to get employees moved into the Blue 25 plan, the Company notes that it has already moved all of its non-union employees into this plan where they contribute 10% toward the premium costs.

B. The Union's Position

It is the Union's position that the Blue Choice Value plan should become the base plan for all bargaining unit employees hired before the ratification date of the new CBA. The Value plan comes with a three-tiered Rx program consisting of $5.00/$20.00/$35.00[2] copayments. Any employee hired on or after the ratification date would receive Blue Choice 25 which comes with a $10/$25/$40 copayment schedule. The Union further proposes that regardless of whether an

[2] Three Tier Rx programs consist of generic/brand name/non-formulary drugs.

employee is covered by the Value or the Blue Choice 25 plan, the Company would pay 100% of the premium costs associated with the plan.

It is the Union's position that its proposal represents the more reasonable one. As justification for this position, the Union first notes that during the last round of negotiations it agreed that the majority of its members who were then enrolled in the Blue Million plan would switch to the Select plan as a way to save the Company a substantial amount of money. While the Union understands the rationale behind the Company's desire to move all employees to the Blue 25 plan, the Union maintains that a switch to the Blue 25 plan is too drastic a change for the following reasons:

- First, a change to Blue 25 represents a downward move by two plans;
- Second, there are vast differences in coverage between the Select (or even Value) plan as compared to the Blue 25 plan among which include increased co-pays for doctor and specialist visits, increase for maintenance drugs, inpatient costs for hospitalization are imposed for the first time, emergency care and out-patient diagnosis are doubled, and qualified dependents are covered until age 23 (age 26 under the Select and Value plans).

While the Union has expressed its willingness to assist the Company in its efforts to reduce health costs, it suggests that the best and most efficient way to do so is jointly.[3]

POSITION OF THE PARTIES ON HEALTH INSURANCE (FUTURE RETIREES)

A. The Company's Position

Currently the Company notes that employees who retire from RTS under the current CBA are eligible to receive coverage under the Blue Million plan, the cost of which is fully funded by the Company. The Company asserts that the cost of this plan is staggering:

[3] The Union also seeks the creation of a Section 105(H) Medical Reimbursement Account with a Company contribution of $1000.

- Under Age 65 (Family): $2061.39/month [$24,736.68/year]
- Under Age 65 (Single): $953.13/month [[$11,434.56/year]
- Over Age 65 (Medicare Eligible): $164.93/month [$1979.16/year]
- Simply Rx: $273.38/month [2860.56/year]

The annual cost for retiree medical is approximately $2.5 million, representing 25% of the Company's total medical expenditure. As a result, and in its effort to trim costs in this area, the Company proposes that all future retirees under the age of 65 (and therefore not Medicare eligible) be covered by Blue Choice 25, 90% of which will be funded by the Company. Future retirees age 65 and older would be covered by the Preferred Care Gold plan, for which the Company would contribute the full cost of the premium. In addressing the concern regarding portability, i.e., maintaining health insurance whenever the retiree chooses to leave the Rochester, N.Y. area, the Company proposes that it contribute the same dollar value as its contribution toward the applicable retiree plan (age 65 dependant) to a different carrier of the retiree's choice in the geographical area where he/she relocates.

As noted above, the Company's proposal to change the manner and method in which it provides retiree health coverage is cost driven. The recent GASB 45 analysis performed by PricewaterhouseCoopers shows that the Company faces an unfunded liability of $94.1 million for retiree health insurance obligations alone.

B. <u>The Union's Position</u>

It is the Union's position that all future retirees under the age of 65 and therefore not Medicare eligible, continue with the same benefit coverage as they had as an active employee. Once the retiree reaches age 65 and becomes Medicare eligible, the Union proposes that they be given a choice of Medicare Blue Choice Platinum or Preferred Care Gold Anywhere. In addition, the Union proposes a Rx drug rider with co-pays of $10/$25/$40, no doughnut hole, and catastrophic coverage under either plan. The fact that the Union is prepared to move away from the Blue Million plan which currently covers the overwhelming majority of current retirees, represents a move designed to provide the Company with "enormous savings" as they move forward, the

Union notes. In addition, unlike the Plans proposed by the Company, the Union's proposed plan covers the "doughnut hole" as well as providing portability the Union asserts.

3. WAGES

A. The Proposals

YEAR	**2007**	**2008**	**2009**	**2010**	**2011**
COMPANY	2.5%	2.5%	3.75%	4.0%	4.0%
UNION[4]	1.75%, 1.75%	1.75%, 1.75%	1.75%, 1.75%	2%, 2%	2%, 2%

B. The Company's Position

It is the Company's position that its wage proposal is reasonable and satisfies two objectives:

1. It reflects an increase that is in line with other Transit Authorities throughout New York State. In this regard, the Company notes that although the CBA expired in 2006 with a top Bus Operator wage rate of $21.76, as of 2008, all other upstate Transit Authorities have a top Operator wage rate that falls below the current RTS rate. Thus, by way of example as of 2011, the top Company Bus Operator would earn $25.65 per hour while Bus Operator rates at Niagara Frontier Transit Authority ("NFTA") at $24.23, Capital District Transportation Authority ("CDTA" in Albany) at $21.68, CNY Centro (Syracuse) at $22.14 are substantially lower that the top Company rate by a range as high as 18.3% (CDTA) to 5.8% (NFTA). The same holds true for Mechanics and Bus Washers the Company notes. Accordingly, from a competitive standpoint, the Company maintains that its proposal is eminently reasonable.

2. The Company's second objective in proposing as it has was designed to ease the increased out-of-pocket costs to Company employees that inure with a change to

[4] Under the Union's "split" proposal each percentage noted would take effect on January 1st and July 1st respectively.

the Blue Choice 25 Health Plan. In this regard, the Company notes that "it would be irrational to provide such wage increases to employees without corresponding health insurance changes."

C. The Union's Position

It is the Union's position that although its proposal is reasonable and one the Company can afford, it is prepared to accept the Company's wage proposal. As the Union correctly noted, the Company rejected the Union's offer in this regard, noting that the Company's wage proposal was part of a package proposal that included a change in the Health Insurance Plan to Blue Choice 25 (together with the percentage contributions noted.)

Given the foregoing, the Union notes that the only significant difference between the Company's and the Union's wage proposal is the Union's proposal with respect to non-mechanical employees in the Maintenance Department – referred to a "Bus Washers." Currently, Bus Washers earn $12.98 per hour. The 1.75% wage increase effective January 1, 2007 as proposed by the Union would raise this amount to $13.21. The Union also proposing that Bus Washers hired after the implementation of the new CBA be hired at a lower starting rate with a ten-year incremental salary schedule. The first Step of this new schedule would reflect a $10.76 per hour rate and the top (10^{th}) Step of this new schedule covering Bus Washers with ten or more years of service would top out at $19.01. The proposed rate for a Bus Washer with 10 or more years of service as of January 1, 2010 would be $21.52 per hour. These figures are based on the following proposed progression rate:

YRS. OF SERVICE	% OF MAXIMUM	YRS. OF SERVICE	% OF MAXIMUM
0-1	50	5-6	67.5
1-2	52.5	6-7	75
2-3	55	7-8	82.5
3-4	57.5	8-9	90
4-5	60	9-10	95
OVER 10	100		

As justification for its proposal, the Union notes that its overall goal is designed to encourage the retention of reliable, hard working employees in these difficult non-mechanical jobs[5]. Currently, the Union adds, the Company has expressed difficulty in retaining these employees.

As noted above, the Company's proposal is all-encompassing, covering all Bargaining Unit titles.

DISCUSSION – HEALTH INSURANCE AND WAGES

Since both parties agree that wage rates and health insurance matters are inexorably intertwined, they will be discussed as one "package".

When reviewing the foregoing proposals, it is clear that each party has staked out its position relative to Health Insurance for active employees as well as for future retirees. However, a careful review of the record reveals the following "interests" or reasons underlying each position:

From the Company's standpoint, the focal point of its interests is providing a good quality health care program at an affordable price, one that is in line with its strategic plan that is designed to save a substantial sum of money. The Union, on the other hand, has as the focal point of its interests the goal of seeking agreement on a plan that provides good coverage, but at an affordable price – that is, at a price that minimizes, to the extent possible, a unit member's out of pocket contribution. Given my vantage point as a Fact Finder, I find both sets of interests very reasonable. The question now becomes how to accomplish this task.

First, a review of the record reveals that both parties keenly recognize that their continued purchase of "off-the-shelf" products will not achieve either party's long-term goal. Case in point, in 2004 the parties agreed to move from the "million" plan to Blue Choice Select, a plan that provides good coverage at a significant savings for the Company. In this negotiation, the

[5] Currently, jobs in this category include Bus Washer, Placer, Laborer, Janitor, Watchman and Truck Driver. The Union has proposed different wage levels & schedules for Bus Washers & Laborers ,Janitors & Watchmen and Truck Drivers.

Company now proposes a move to Blue Choice 25, a plan that essentially mirrors the Select plan but at the same time provides substantially higher out-of-pocket expenses for employees. This carrot and stick approach will never achieve the goals set out by both parties. Indeed, in reviewing their presentations, each party points to the success achieved by other Labor-Management groups who now enjoy equal or better coverage at substantially lower rates. Some of these groups include:

The majority of public schools in Monroe County belong to the Rochester Area Schools Health Plan II, a Consortium (an Article 5G Municipal Trust) comprised of nineteen (19) Monroe County school districts. The Consortium offers its members an experienced rated plan at rates substantially below those surrounding area community rated plans. Currently, Excellus Blue Cross, Blue Shield is the exclusive provider of health insurance for the Consortium. Health Plans currently available through the Consortium are limited to

- BluePoint2 Extended
- BluePoint 2 Select
- BluePoint 2 Value

The majority of participants in the Consortium have chosen the Select Plan. The Select plan carries a $15 per visit co-payment, $20 co-payment for a specialist, a $50 emergency room co-payment and a prescription-drug co-pay of $5/$20/$35. On average, members selecting the Select Family plan contribute 10% of the premium share, or $1,162.92 per year based on current rates, while the Employer/School District's contribution of 90% amounts to about $10,466.28.

Erie County and its Labor Unions agreed on the terms to form an Article 5G Municipal Trust approximately seven years ago. The parties designed their plan based on their then usage analysis and chose Blue Cross/Blue Shield as the Third Party Administrator. The County witnessed a $25 million savings in the first year. The Erie County plan offers a "good, better and best" plan whereby under current agreements, the County pays 100% of the cost of the "good" plan, and employees who desire the "better" or "best" plan pay the difference between the "good" plan and their selected plan. The major difference between plans is the out-of-pocket costs for rendered medical services. The NFTA and their Unions agreed to become part of the County's plan approximately 5 years ago.

The City of Rochester and their Unions have recently agreed upon the terms of a single plan with an agreed-upon Third Party Administrator (MVP)[6]. The plan covers active as well as retirees, currently at approximately 5000 enrollees. It was not designed as a Trust, but rather as a single-experienced rated product with a good, better and best alternative. At this point, the precise terms of their plan are not known, but the plan was designed around the Blue Choice Select Plan. Recently, the Mayor issued a press release in which he stated that conservative estimates on City savings amounted to approximately $30 million over the next three years. The Rochester Plan does not yet provide a mechanism for other non-City Public Employers to join the plan.

The County of Monroe has engaged an outside consultant firm to review their current plans and provide recommendations for health insurance savings moving forward. As of the date of this Report, the County has not yet finalized a future plan design, but they have succeeded in their goal of a single carrier for all County employees.

The success of each of the foregoing Plans began with a joint Labor-Management effort at a Plan Design and selection of a Third Party Administrator.

Moving forward, the Company and the Union should engage in serious discussions over a future plan design. The goal of the group should be to have a spirited and interactive dialogue about the issue of health insurance generally, not limited by any suggestions or proposals advanced only by the Company. As the committee begins its dialogue, I would first suggest the following:

- First, contact the City of Rochester to see if there is any way you can join their group.
- Second, failing that, the next alternative would be looking at a self-designed experienced rated plan with an acceptable Rx Plan and Third Party Administrator. Given the Company size, such design would necessarily include a stop-loss insurance policy for catastrophic claims. A well-designed self funded plan with a stop loss policy has

[6] MVP is part of the Cigna network and therefore enjoys the benefits of portability.

generally proven to be the most cost effective financial arrangement since these groups avoid risk and claim fluctuations and broker commissions. They can also fund claims as they arise, hold claim reserves and earn interest on these monies. Given the size of the Company, a move to a well-designed self-funded plan is not only possible, but it also makes sense. In addition, since the Rx portion of any "off-the-shelf" plan occupies the lion's share of the premium amount, a move to a well-designed self funded plan with a capable Third Party Administrator will save the Company a substantial sum of money, and will assist in the design of a cost-effective Rx alternative.[7] In their design, the parties should also consider Rx alternatives and "Clubs" offered by Wal-Mart, Walgreens and Rite Aid. Each has a broad formulary with out-of-pocket costs of $4.00 for a 30-day drug supply and $10 for a 90-day drug supply.

- As a final alternative, the parties could consider purchasing an experienced rated off-the-shelf product with an acceptable Rx rider.

FUTURE RETIREES – THE "DOUGHNUT HOLE" – AN OVERVIEW

A major issue facing the Company and the Union as they deal with Retiree Health Insurance is how to cover the "doughnut hole." Indeed, a careful review of the plans offered by the Company and the Unit for future retirees (age 65 and over) reveals that the major distinction is whether the plan covers the doughnut hole or not. Preferred Care Gold, the plan proposed by the Company does not, while the Gold Anywhere plan proposed by the Union does.

A major issue facing many retirees these days is figuring out whether they are at risk for hitting the doughnut hole. The doughnut hole refers to the way the government structures the Medicare Part D benefit. About 25 percent of plans offered by private insurance groups offer gap coverage when in the doughnut hole, but the coverage is not as generous because the government does not subsidize it.

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[7] In fashioning a self-funded Rx program, there are numerous and creative ways to save money. For example, in the Central NY area, parties were able to save $222,000 a year for those taking Lipitor, a cholesterol drug, by changing the script from 10mg (at an average cost of $66.00 for a 30 day supply) to 20mg (at an average cost of $95 for a 30 day supply and simply cutting the 20mg tablet in half. 12,000 scripts per year, at an average savings of $1.23 per script saved about $222,000 each year.

In 2009 the doughnut hole (or coverage gap), as dictated by the government, occurs when drug expenses (what you and the plan together spend) hit $2,700. The gap continues until the individual has spent $4,350 out of his/her own pocket. At that point, coverage starts again and will pay 95 percent of the drug expenses. The bottom line for doughnut hole consideration is whether an individual takes many drugs, especially expensive brand-name drugs, because the coverage gap can be intimidating and should be the central issue in the choice of a Part D plan.

In 2009 about half of national insurers offering Part D plans will offer some coverage in the doughnut hole. That includes big national insurers such as Aetna, Cigna, CVS Caremark, Humana, Medco, and United Health Group.

Most plans that cover the doughnut hole pay for generic drugs, with limited or no coverage for brand-name drugs, but even then generic coverage varies. Six percent of plans in offered by major Carriers in 2009 will cover all generics; the majority will cover about two thirds of generics. The fact that Part D plans generally cover only generics in the doughnut hole has been viewed as a drawback, and certainly becomes an issue if an individual must take more expensive brand-name drugs. However, more generics are available these days, and many generics meet the needs of people taking chronic disease medicines.[8]

<u>RECOMMENDATIONS – HEALTH INSURANCE (ACTIVE & RETIREES) & WAGES</u>

Starting with the issue of Health Insurance, since it is very clear that the Company's best hope of achieving its Strategic Goal of savings ON THE LONG TERM is at the heart of its proposal, my recommendation must assist with their short as well as long term objective. Accordingly, I **RECOMMEND** the following:

1. <u>FOR ACTIVE EMPLOYEES</u>

All employees should move to the Blue Choice Value Plan with the $10/$25/$40 Rx rider. Using a base of approximately 450 employees, 85% of whom currently have the Select plan, a

[8] This concern over the Doughnut Hole may become a moot one . Currently, Congress has before it measures designed to "reshape" the health care system in the United States. While these measures have generated a lot of controversy, both aisles of Congress have agreed that something must be done to close this Doughnut Hole gap.

move to Value will result in an approximate $300 savings per month, $3600 savings per year for an approximate total of $1,379,000, representing about 6.7% of Unit Payroll.

In addition to the move to the Value Plan, I recommend that all participating employees pay $40 per month toward the cost of their coverage for a family plan, and $20.00 per month towards the cost of a single plan. Such contributions shall begin effective January 1, 2010. If not already established, the Company should create and fund a Section 125 plan to allow for pre-tax payments. Assuming 450 participants, this contribution will save the Company an additional amount of approximately 1% of the Unit Payroll.

Next, I recommend that Article 11, Section (C) be modified so as to provide a waiver sum of one-half the value of the premium amount. The current incentive of $1200 ($600 for Single) is not, in my opinion, a sufficient amount to induce a waiver from an employee who is able to secure coverage from another source.

2. **FOR RETIREES (CURRENT AND FUTURE)**

For future retirees under the age of 65 (not Medicare eligible), I would recommend that this group of future retirees retire with the same health insurance benefit, and same contribution rate, as active employees. In other words, this group of future retirees' health insurance benefit (and contribution rate) tracks that of active employees.

The two proposals currently on the table for Future Retirees over age 65 (Medicare Eligible) include the Preferred Care Gold and the Gold Anywhere. The difference in premium is $98.31 per month or $1179.72 per year. As noted earlier, the primary difference between the two plans is doughnut hole coverage. Since both plans are Blue Cross/Shield products, both are portable. The current cost of the Blue Million plan, the plan of choice for current as well as future retirees (absent agreement between the parties to change this benefit) ranges from a high of approximately $25,000 (Under 65-Family), to a low of $1965 (Over Age 65-Medicare Eligible). I would therefore recommend that future retirees be given a choice of Preferred Gold or Gold Anywhere, with 90% paid by the Company and 10% by the retiree.

For Current Retirees, while these retirees are legally entitled to certain rights and coverage, I would recommend that the Company and the Union create an incentive for current retirees, particularly those on the Blue Million under Age 65 plan to voluntarily move to the Preferred Gold or Gold Anywhere Plans. Since the Union remains actively engaged with these retirees, with the Union's assistance and encouragement, a number of the current retirees may elect a move to a less expensive plan.

3. ON THE FUTURE – THE PLAN REDESIGN

The Company and the Union, working together, should strive to create an alternative to the current off-the-shelf products and have such alternative in place within a one-year period. In order to accomplish this task, their first step should be to agree upon a consultant to guide them through the process. Since the City of Rochester is the most recent successful example of a Plan Redesign with Labor-Management cooperation, I would recommend contact with the City to seek suggestions moving forward.

4. ON WAGES, DENTAL & SECTION 105(H) PLAN

Since the Union has already indicated its willingness to accept the Company's proposal on Wages, I **RECOMMEND** the Company's proposal, with one modification as noted below (and without the "splits" proposed by the Union) for years 2007, 2008, 2010 and 2011. As for those Non-Mechanical Employees identified by the Union, I would recommend the creation of schedules along the lines proposed by the Union – that is, the ten-step schedule concept as proposed by the Union adjusted by the percentages proposed by the Company.

For 2009, I recommend that wages be increased by 3.5% and that the additional 0.25% proposed by the Company (approximately $50,000) be used to fund the beginning of a **Section 105(H)** plan. The administration fees associated with the creation and continuation of this Plan shall be funded by the Company.

As for the **Dental Plan**, the current CBA provides a monthly contribution of $31 ($372 per year). I recommend that the Dental Plan be discontinued, and that those monies contributed by the Company roll into each employee's Section 105(H) plan. Thereinafter, the Company shall be obligated to contribute a minimum of $372 per year toward each employee's Section 105(H) plan. The obvious advantage of placing these monies in a Section 105(H) plan is their roll-over effect from year to year and even into retirement.

PENSION PROPOSAL

A. Overview

The Pension Plan currently offered to bargaining unit employees is a defined benefit plan under the Internal Revenue Code. The Plan's assets are funded by three sources of revenue:

1. Employee contributions of 1 ½% of employee wages;[9]
2. Company contributions of 1 ½% of employee wages;
3. Investment yield on the Plan assets.

Benefits are paid from the assets of the Plan to participants who have met the Plan's eligibility requirements according to a formula set forth in the CBA as well as in the Plan. The Plan's formula for computing monthly benefits are keyed to the average of the retiree's highest five (5 years of earnings, also referred to as the "five year average"). This five year average is then multiplied by 1.65%, and the result is divided by 12 in order to compute the monthly benefit. The minimum monthly benefit per year of credited service is $35, and the maximum benefit is capped at $50 per year of credited service.

[9] Should additional contributions become necessary in order to adequately fund the Plan, employee contributions are increased by 0.5% after which additional and required contributions are split evenly between the Company and the employees on a percentage basis.

B. The Union's Proposed Changes to the Pension Plan

The Union's first proposal seeks to increase the maximum monthly cap upward to $53.00. In addition, the Union proposes that should the Plan's annual actuarial valuation show that the ratio of actuarial value of assets to actuarial accrued liability equals or exceeds 95%, then the monthly cap would be increased in as many one dollar increments per plan year as possible such that the increases would not reduce the funded ratio below 92.5%. In addition, should the Plans annual actuarial valuation report show that the ratio of actuarial value of assets to actuarial accrued liability equals or exceeds 95%, the monthly cap would be eliminated provided that the removal of the cap would not result in the funded ratio falling below 92.5%.

The second part of the Union's proposal deals with contributions to the Plan. In this regard, the Union proposes that employees and the Company each contribute a mandatory 4% of each employee's earnings to the Plan. In addition, should additional contributions become necessary to adequately fund the Plan, such required contributions would be split evenly between the Company and the employees on a percentage basis.

The Company did not make any proposal relative to the Pension and Retirement Benefits program.

POSITION OF THE PARTIES

A. The Company's Position

It is the Company's position that the Union's proposal be rejected in its entirety. The Company offers the following in support of its position:

First, the Company maintains that the Union's proposal may very well violate IRS requirements. In this regard, among other things, the Company has expressed its concern that the Union's proposal to change benefit levels is based solely on the actuarial value of assets and does not take into consideration the market effect on those assets. Thus, while the market value exceeded the actuarial value in 2005, 2006 and 2007, the Company correctly notes that the market value of assets decreased by 22% as of October 31, 2008 due to the downturn of the market.

Next, the Company maintains that the Union's proposal to increase and/or remove the monthly cap is equivalent to an "automatic escalator" since the monthly cap would automatically increase if the actuarial value of the plan meets certain levels. With this "automatic escalator" in place, the Company is concerned that the Plan would never reach 100% funding status because each time the plan reached the 95% funding level, the funding would be significantly decreased in order to increase the monthly benefit cap. This contradicts the goal of the funding method applicable to this Plan the Company asserts.

Finally, the Company maintains that the Union's proposal raises significant legal questions that could cause the IRS to strip the Plan of its tax-qualified status. This is because the Plan, if modified pursuant to the Union's demands, would no longer be "definitely determinable"[10] In this regard, the Company maintains that the IRS could very well conclude that the automatic escalator which is tied directly to funding status nullifies the plan's tax-qualified status due to the fact that the benefit would no longer be "definitely determinable" pursuant to applicable IRS rulings.

Given the foregoing, the Company urges the rejection of the Union's proposal in its entirety.

B. The Union's Position

It is the Union's position that its proposal is reasonable, valid and well within IRS guidelines and should accordingly be recommended. The Union offers the following in support of its position.

First, in addressing the movement of the cap to $53, the Union notes that this proposal is not only warranted and affordable, but also fair. Under the current system, once an employee's five-year average exceeds $35,365, the current $50 cap results in a loss of income for the life of the

[10] "Definitely determinable" connotes a benefit set by a fixed formula without regard to outside forces.

benefit. In addition, since the cap has not been increased since 2001, at the very least, it is deserving of an increase to ameliorate higher costs of living.

Next, the Union maintains that tying further increases in the cap to the plan's fiscal resources is reasonable, warranted and affordable. In this regard, the Union notes that its members are responsible for funding the majority of the Pension Plan, certainly more so than the Company. In addition, the Union further notes that increases in the monthly pension benefit are based on the Plan's financial resources, i.e., an increase above the $53 cap is based on the Funded Ratio surpassing 95% but limited by the Funded Ratio remaining above 92 ½%. Accordingly, the cap only rises above $53 if the Plan has sufficient resources to pay the increased monthly benefit.

Next, the Union maintains that increasing the required contribution is fair, reasonable and responsible. In the past, the Plan has required additional funding, which resulted in Union members shelling out over $150,000 more than the Company in additional contributions each year from 2005-2007. By requiring the members and the Company to equally share any required increases, the burden on the members is substantially eased.

Given the foregoing, the Union seeks a recommendation on its Pension proposal.

RECOMMENDATIONS – PENSION PROPOSAL

Following my careful review of the record, I find that while an increase in the cap from its current level of $50 to the proposed amount of $53 is both affordable and reasonable, the remainder of the Union's proposal leaves a serious question as to its affordability as well as its legitimacy judged by IRS standards. In this later regard, the Company has raised serious and valid concerns over the Plan's ability to maintain its 100% funding status. In addition, I do not find the Company's concern regarding continued IRS approval to be frivolous and while the request for a letter ruling from the IRS might very well answer the question, letter rulings take time. Accordingly, I **RECOMMEND** the following:

- First, that the current cap of $50 be raised to the proposed amount of $53.00, and
- Last, I recommend that the remainder of the Union's proposal be dropped at this time.

ATTENDANCE AND LAYOFF BOOK

A. Overview

In a 1995 Settlement Agreement, the parties agreed upon the terms of an attendance policy. This policy outlines a disciplinary procedure associated with employee attendance. Among other noted features, the attendance disciplinary process does not begin until an employee has nineteen (19) absences in a one year period. Once an employee has reached this threshold, he/she is administered a verbal warning. Each time the employee is again absent, he/she continues to progress through the disciplinary process using a progressive discipline scheme (written warning, disciplinary suspensions of varying durations, and finally, discharge). Accordingly, a driver cannot be terminated for attendance until he/she has over 20 absences. While the attendance policy is not contained in the CBA, the CBA at Article7 does provide a “clean record rule” wherein an employee “who has not been called in for discipline for poor attendance for a period of twelve months shall be considered to have a clean attendance record for purposes of further discipline.” This attendance system has created a “nightmare” for the Company. In this regard, the record in this case demonstrates that in 2008 and 2009, the Company was forced to “cut” work due to operator attendance problems – i.e., forced to cancel scheduled public bus service. These issues underscore the Company’s desire to essentially redo the attendance system to insure that the work it was designed to perform gets done.

B. The Company Proposal

In a nutshell, the Company’s proposal seeks to lower the threshold for disciplinary action for attendance violations and to clarify the attendance rules applicable to all bargaining unit employees. Under the Company’s proposal, an employee who has 7 sick time occurrences or unapproved absence occurrences within a twelve month period is subject to discipline by oral warning, Step 1 of the disciplinary process. Subsequent occurrences result in a written warning, suspension from 1 through 5 days and finally, termination. Accordingly, under the Company’s proposal, it is possible for an employee to be discharged following 14 occurrences, rather than the 19 under the current policy.

In addition to the foregoing, the Company seeks to modify the "clean record" language so as to provide that "an employee who has not progressed one or more steps in the attendance disciplinary process for eight (8) consecutive months will be moved back one step in that process." To get the process started, the Company proposes to wipe all employee attendance records "clean" at the outset of the new CBA.

The Company has also proposed changes to the current "Layoff Book Procedure" located at Article 20 of the CBA. Currently, the Layoff book permits employees to request days off in advance. Two employees each day in the Maintenance Department and four employees in Transportation are permitted to be off daily with the required advance notice. Days off are granted on a first come, first served basis. The Company proposes to change the Layoff Book procedure so as to permit more Transportation employees to take off on certain days of the week but also to provide that employees who take time off under the procedure without accrued personal time to cover their absence will incur an "unapproved absence occurrence" for purposes of the Company's attendance program. This later addition is aimed at curing the situation that currently exists where employees use the Layoff Book to obtain numerous unpaid leave days off when they do not have accrued personal leave time to cover the absence.

C. <u>The Union's Response to the Company's Proposal</u>

It is the Union's position that the "draconian" procedure as proposed by the Company is not warranted and should be rejected. The Union's reasons underlying its position include:

- First the Union notes that the Company has acknowledged the fact that it has not applied the current attendance policy consistently and as a result, there have been a number of employees who have garnered a "terrible" attendance record. The uncontroverted testimony of Matt Shaw revealed that when the Maintenance Supervisors finally decided to consistently enforce the attendance policy, attendance improved dramatically.

- The Union also notes that the policy as proposed by the Company is, in effect, a one way ticket to termination. This is due to the fact that once in the system, an employee must have absolutely perfect attendance for 8 consecutive months and failing that, any tardiness, absence or even the use of a sick day will move the employee one more step towards termination. Thus, by way of example, an employee who was on the 4^{th} step and received a two-day unpaid suspension would need perfect attendance for 2 ½ years before he/she was considered to have a clean record. Accordingly, if the employee was ill or late on four occasions in the 2 ½ year period, the employee would have advanced to step 8 and been terminated.

- With regard to the Layoff Book language proposed by the Company, the Union maintains that from a "logic" viewpoint, it is inconceivable why the Company would agree to the use of the Layoff Book, approve an absence, and then sanction an employee who took a day off. Based on this point alone, the Layoff Book proposal should be rejected the Union asserts.

Given the foregoing, while the Union is willing to assist the Company in "tightening up" the current attendance policy, the Company's proposal should be rejected.

DISCUSSION & RECOMMEDATION – ATTENDANCE & LAYOFF BOOK

Following my careful review of the record in this case, I find that there is plenty of blame for both sides to share.

From a practical point of view, I find the Company's concern regarding the horrific attendance record held by a number of employees warranted. There is a basic and fundamental understanding that an essential requirement of any job is proper attendance – which includes being there to work and coming to work on time. Under the majority of private sector attendance systems with which this Fact Finder is familiar, the overwhelming number of employees noted by the Company would have been terminated long ago.

On the other hand, the Union is correct in its assertion that the Company has failed to consistently enforce the policy it now has. In this regard, Mr. Shaw's uncontested testimony established that at least in the Maintenance Department, consistent enforcement by Supervisory personnel produced noted improvements in attendance.

Finally, while agreeing that revision of the current policy is warranted, (if for no other reason given the simple fact that no employee can even receive a verbal warning until he/she has had 19 attendance incidents). I share the Union's concern that once in the system, there may be no way out, even for legitimate absences.

In light of the foregoing, I **RECOMMEND** the following:

That the Company's proposed policy be implemented except for that portion dealing with the "Clean Record Rule." In this regard, I would recommend that the language be modified as follows:

> Any employee who has not progressed one or more steps in the attendance system for three (3) consecutive months will be moved back one step in the process. Consecutive absences of longer than thirty (30) days will not count toward the calculation of clean record time.

<u>SPREAD TIME AND THREE TRICKS</u>

A. <u>Overview</u>

The current CBA divides runs Bus Drivers pick on a quarterly basis into two groups: Regular Runs, which are governed by Article 25 and Package Runs which are governed by Article 27. Package runs are distinguished from Regular Runs in that Packages must contain some school work. Each type of run has rules associated with it as follows:

Regular Runs: -- Can contain no more than two "tricks" (or pieces);

- At least 50% of Regular Runs must be designed with an outside time not to exceed 9 ½ hours, and none may exceed 12 ½ hours.

Package Runs:
- May include 3 tricks and
- Cannot exceed 13 hours

As a result of a Federal Trade Commission appeal over the question of unfair competition by the Company in its business of transporting students, the FTC determined that a public authority like RTS which receives Federal Financing should not be permitted to unfairly compete with a private bus company (Laidlaw). In January 2008, the Federal District Court for the Western District of New York issued a decision permitting the RTS to carry school children as long as it did so in the context of "tripper service" and not in the context of providing work that was specifically not designed to transport school children. Following the Federal Court's decision, the FTC issued a ruling accepting the distinction between tripper service and "school bus operation". School Bus Operation is defined as including "service a reasonable person would conclude primarily was designed to accommodate students and school personnel and only incidentally to serve the non-student general public.

In response to the FTC's ruling, the Company created a new system of routes called "Express Transfer Service" ("ETS"). While ETS routes have stops that coincide with the start and end of the school day, unlike the traditional package runs, ETS runs are open to the general public and do not have schools as their sole destination. It is the Union's position that since the introduction of these ETS runs, significantly more ETS runs are posted for bid which contain three tricks or which consist of longer total spread time. The Union proposes amending the current CBA language so as to limit the number of runs having three tricks and imposing a monetary penalty on runs that have a spread time in excess of 9 ½ hours. In order to balance its proposal, the Union also proposes an increase in the percentage of all runs that are scheduled beyond the 9 ½ hour spread, and also proposes raising the upper limit from 12 ½ hours to 13 hours for all runs. Finally, the Union proposes capping the number of three trickers daily to 35% of the total daily runs.

B. The Company's Position

It is the Company's position that this issue cannot be determined at Fact-Finding. In this regard, the Company notes that there are currently a number of grievances pending arbitration wherein the Union has asserted that given the Court's (and FTC's) rulings, "packages" no longer exist. Accordingly, a determination of this threshold issue is required before proceeding with the Union's proposals.

Notwithstanding the above, the Company also asserts that the Union's proposal should be denied on the basis that it interferes with the basic management right to determine the bus service the Company provides to the general public. In addition, the Company maintains that since bus operators pick their own work assignments quarterly on the basis of seniority, most operators have a choice of whether to drive a "package" or a regular run.

The Company presented no proposal on this issue.

DISCUSSION & RECOMMENDATION – SPREAD TIME & 3 TRICKS

As an initial note, the discussion and recommendation that follow should not be interpreted by either party as agreement (or disagreement) with any position taken by the Company or the Union as to pending grievances over the issue of package existence.

Putting aside the question of penalty and money, the mainstay of the Union's proposal, as presented through the testimony of Caesar McFadden, is designed to address the exhausting nature of the current three trick scheduling. In this regard, recognizing the fact that three trick operations are no doubt here to stay, the Union's proposals seek to gain the Company's attention by capping the number of three trick runs to 35%[11], raising the upper limit applicable to all runs to 13 hours. I

[11] While the Company maintains that this portion of the Union's proposal hamstrings the Company's ability to manage its schedule, I respectfully disagree. As I read the Union's proposal, it is apparent that the Company can schedule up to 35% of its runs as three trickers, but that any additional three trick runs over 35% will be assessed a penalty.

As a **RECOMMENDATION,** I would suggest the following:

- Eliminate any reference to the term "package" and substitute the name "Express Transfer Service Runs." In other words, call it what it currently is.
- Set a limit on the number of three trickers scheduled for ETS runs to 40%. Any three trick runs scheduled beyond the 40% figure would be assessed a penalty.
- The Company and the Union shall form a committee consisting of 4 members, 2 of which are chosen by the Union and 2 by the Company. The committee shall monitor the number of three trick runs in comparison to the 40% figure and may agree to adjust this figure on an annual basis by a majority vote. Should the committee deadlock, the matter shall be referred to expedited arbitration using one of the panel arbitrators mutually agreed upon by the parties. The Union should hold in abeyance all pending grievances on the three trick issue for at least one year in order to assess the success of this new system.
- The "penalty" used above shall be that proposed by the Union.
- The Union's proposal to raise the upper limit applicable to all runs to 13 hours should be adopted.
- The remainder to the Union's proposal not specifically addressed above is rejected.

PERFORMANCE INCENTIVES

A. The Company's Proposal

The Company proposes adding new language to the CBA to provide for performance incentives. Such incentive program will be based on objective and tangible guidelines established in advance in order to avoid the perception of "favoritism". The Company proposes that the Union be consulted prior to the commencement of the new performance incentive program. In addition to providing an incentive for outstanding performance, the Company notes that it will also add additional money to an employee recipient's wages.

B. The Union's Position

While the Union is not opposed to the creation of a performance incentive per se, it has suggested that any such system be the result of a Labor-Management design. Such a joint design effort will insure that any performance incentive system is truly based on objective criteria and is not based on favoritism.

RECOMMENDATION

The idea of a performance-based incentive system is a good one. However, in this Fact Finder's 37 years of experience on both the Labor and Management sides of the aisle, performance incentives, unless carefully designed and implemented, can have an effect opposite to its purpose. Accordingly, in order to avoid even the perception of impropriety, I would recommend that any such system be the result of a Labor-Management design.

OFFICE, CLERICAL & SCHEDULING DEPARTMENT EMPLOYEES

A. Overview

The Company and the Union have each included proposals in their final packages that address office, clerical and scheduling department employees who were accreted into the bargaining unit during the term of the last CBA. While the parties are close on the majority of issues, they are apart on how the CBA should be applied to these white collar employees. More specifically, the Union proposes that these employees be paid weekly like all other bargaining unit employees, that they receive overtime for work performed over 8 hours per day or 40 hours per week, that their jobs be posted for bid, and that they receive the same benefits as received by Operators and Maintenance employees.

RECOMMENDATION

Following a review of the record, I recommend that the parties adopt the Company's proposal with the following three changes:

First, that before seeking outside applicants, any open position be posted within the Office, Clerical and Scheduling Departments, and that qualified employees within these Departments be permitted to bid on any such position. Positions should be filled on the basis of qualifications and experience, with seniority as a tie breaker if any two or more applicants are equally qualified. Failing any qualified applicants from within the Office, Clerical and Scheduling Departments, the Company can seek outside applicants, provided however, that other qualified candidates within the bargaining unit as a whole shall be invited to apply as well.

Second, these white collar employees should be paid at the overtime rate for work over 8 hours in any one day or over 40 hours in any week, and finally,

That failing agreement by the Union to the contrary, these employees be paid on the same frequency as other bargaining unit employees, which at the present time is weekly.

MECHANICAL DUTIES

A. Overview

The Company seeks to list certain duties that all employees in the "mechanical" category can perform. Adoption of this proposal will, according to the Company, eliminate the "exclusive" nature of any work, and permit the Company to assign such work across the vacation boards.

B. The Union's Position

The Union opposes this proposal for three reasons:

First, the delay in getting body shop employees to do work to assist garage mechanics is a situation created by body shop foreman.

Second, body shop employees have certain and specific tools that are used for these jobs.

Third, garage mechanics are not responsible for ordering parts for the panels, bumpers and railings – this is the job of the body shop mechanic.

The Union maintains that the problem has been resolved as a result of the retirement of certain body shop foremen. Moreover, the Union maintains that the true solution to the issues presented by the Company lies in the proper agreement about the prioritization of work, and not the mixing of crafts.

RECOMMENDATION

The three reasons noted above supporting the Union's opposition to the Company's proposal were supported by uncontroverted testimony. Accordingly, I recommend that this proposal be the topic of regular discussion between the Company and the Union with an eye toward resolving any real problems that might remain following the above noted retirement of certain supervisors.

REMAINING PROPOSALS

A. UNIFORM AND TOOL ALLOWANCE

The Company proposes to increase the tool allowance to $40.00, and then to increase this amount by 5% in 2010 and again in 2011. The Company also proposed an increase in the uniform allowance to 10.00 per week.

I **RECOMMEND** acceptance of the Company's proposal.

B. CBA'S GENERAL STRUCTURE

The Union proposes a restructuring of the CBA such that the first 24 Articles are applicable to all employees, Articles 25 through and including 54 are applicable to Bus Drivers, Articles 55 through and including 59 apply to Maintenance employees, and a final section that apply to all employees or to the Union in general. Seeing no opposition from the Company, I **RECOMMEND** the adoption of the Union's proposal.

ANY PROPOSAL NOT SPECIFICALLY ADDRESSED IN THIS REPORT AND RECOMMENDATION IS RESPECTFULLY REJECTED.

CONCLUSION

The foregoing discussion and recommendations represent a just and reasonable approach to the open issues facing the parties. Accordingly, the parties are urged to adopt these recommendations as a means of breaking the current impasse.

DATED: September 7, 2009

Dennis J. Campagna

Dennis J. Campagna, Esq.
Fact Finder