

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
AND AMALGAMATED TRANSIT UNION, LOCAL 689  
INTEREST ARBITRATION OPINION AND AWARD  
NOVEMBER 4, 2009**

In the Matter of an Interest Arbitration Involving

**WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY**

and

**AMALGAMATED TRANSIT UNION,  
LOCAL 689**

**Introduction**

The Washinton Metropolitan Area Transit Authority (hereinafter “WMATA” or the “Authority”) and the Amalgamated Transit Union, Local 689 (hereinafter the “ATU” or the “Union”) are parties to a collective bargaining agreement which governs the wages, hours and working conditions of approximately 7,400 employees who work in various classifications in the Authority’s Bus and Rail Operating Divisions.

The collective bargaining agreement was amendable on July 1, 2008, and the parties engaged in direct negotiations from May through August of that year. When the parties were unable to resolve the differences in their bargaining proposals, the issues in dispute were processed to interest arbitration pursuant to Section 106 of the parties’ collective bargaining agreement.

In accordance with the procedures contained in that agreement the parties established a Board of Arbitration (hereinafter the "Board") on or about September 10, 2008. The Board was composed as follows:

**Mr. Thomas R. Roth  
ATU Board Member**

**R. Theodore Clark, Jr., Esquire  
WMATA Board Member**

**Richard R. Kasher, Esquire  
Neutral Chairman**

After consideration of certain preliminary procedural issues, the Board scheduled and held hearings on February 10, 11, 12, 17, 18, 19, March 4, 5, April 27, 28, 29, 30 and June 1, 2 and 3, 2009. At said hearings the parties were represented and said representatives entered their appearances as follows:

**Mr. Thomas R. Roth  
President, The Labor Bureau, Inc.  
For the Union**

**Robert G. Ames, Esquire  
Kenneth R. Hoffman, Esquire  
Venable LLP  
For the Authority**

During the hearing the parties were afforded a full and complete opportunity to present testimony and documentary evidence in support of their proposals. A broad range of cross-examination was permitted. At the conclusion of the evidentiary stage of these proceedings, counsel

filed post-hearing briefs in which they raised points and contentions in support of their respective positions regarding proposals involving economics, including wages and benefits, and proposed changes in existing work rules.

On August 5 and 6, 2009 the Board met in executive session. The Chairman held the record open for additional argument and any additional evidence that would be relevant in order for the Board to reach decisions regarding the issues in dispute.

The Board has given full consideration to the record in this case, a record which exceeds 3,600 pages of transcript and includes more than 500 exhibits.

A continuing dispute between the parties concerning the jurisdiction of the Board has focused upon WMATA's contention that the standards established by the National Capital Area Interest Arbitration Standards Act, 40 U.S.C. S18301 et seq., are the exclusive standards to be applied by the Board. In response to that contention, the ATU has argued that the National Capital Area Interest Arbitration Standards Act does not establish the exclusive standards to be applied, and that the Board may and should consider the evidence it presented regarding agreements and other criteria negotiated and applied in transit systems nationally.

Section 18303, Standards for arbitrators of the National Capital Area Interest Arbitration Standards Act provides in subsection (b) that an arbitrator in a case of this type "may not make a finding or a decision for

inclusion in a collective bargaining agreement governing conditions of employment without considering the following factors”:

**(1) The existing terms and conditions of employment of the employees in the bargaining unit.**

**(2) All available financial resources of the interstate compact agency.**

**(3) The annual increase or decrease in consumer prices for goods and services as reflected in the most recent consumer price index for the Washington metropolitan area, published by the Bureau of Labor Statistics.**

**(4) The wages, benefits, and terms and conditions of the employment of other employees who perform, in other jurisdictions in the Washington standard metropolitan statistical area, services similar to those in the bargaining unit.**

**(5) The special nature of the work performed by the employees in the bargaining unit, including any hazards or the relative ease of employment, physical requirements, educational qualifications, job training and skills, shift assignments, and the demands placed upon the employees as compared to other employees of the interstate compact agency.**

**(6) The interests and welfare of the employees in the bargaining unit, including -**

**(A) the overall compensation presently received by the employees, having regard not only for wage rates but also for wages for time not worked, including vacations, holidays, and other excused absences;**

**(B) all benefits received by the employees, including previous bonuses, insurance, and pensions; and**

**(C) the continuity and stability of employment.**

**(7) The public welfare.**

The Chairman has given full and thorough consideration to the criteria established by the National Capital Area Interest Arbitration Standards Act, and the Award in this case should be considered as having been issued in that context.

**Position of the WMATA**

The Authority submits that, contrary to the position of the ATU, interest arbitrators award structural changes where the evidence supports such changes.

The Authority asserts that in these “troubled economic times” structural changes in collective bargaining agreements have been occurring at “breathtaking speed” in other industries, and thus it is imperative that the major structural changes proposed by the Authority be addressed in a positive manner. In this context, the Authority maintains that the ATU’s effort to “hang on to the status quo” should be rejected by the Board. In support of this contention, the Authority points out that WMATA is facing “daunting economic challenges that are unquestionably exacerbated by dramatically increasing pension and health insurance costs”, and if the Board continued the status quo the Board would be abdicating its arbitral responsibility.

The Authority submits that it has presented compelling evidence to support its final offers regarding wage adjustments and the major pension and health insurance issues. The Authority contends that its final offers regarding these issues are “measured” and specifically

designed to be phased in and/or lessen the impact upon lower paid or senior employees and current retirees.

The Authority points out that its final offers would not disturb the existing progression scale and that a substantial percentage of less senior, lower paid employees would continue to receive significant yearly pay increases during the term of the collective bargaining agreement.

Insofar as its pension proposals are concerned, the Authority maintains that the requirement to contribute to the pension plan would only be applicable to “employees hired on or after July 1, 2008 and employees hired to July 1, 2008 who have fewer than 20 years of continuous service as of July 1, 2008.”

Citing four U.S. Postal Service interest arbitration awards issued by well-known and nationally prominent arbitrators, the Authority submits that these awards contained structural changes involving significant wage, economic fringe benefit and/or working condition issues. The Authority maintains that these major structural changes are comparable to the Authority’s proposals to constrain the market dislocations which plagued its wage and benefit structure.

The Authority submits that the four U.S. Postal Service interest arbitration decisions unequivocally demonstrate that arbitrators have been willing to award major structural changes involving significant wage, economic benefit and working condition issues where the evidence presented supports such changes.

In the instant case, the Authority maintains that there is compelling evidence to support the Board’s awarding the major

structural changes encompassed in the Authority's final offers regarding the wage, benefit and working conditions proposals it has presented during the course of this proceeding.

### **Position of the ATU**

The ATU submits, that in fashioning interest arbitration awards, the key to successful resolution lies, not in the identification of general standards per se, but in the application of "qualifying" or "interpretive" factors which should guide the Board in construing the more general standards. The ATU asserts that bargaining history and the unique characteristics of the transit industry/occupations are the principal interpretative factors to be considered.

The ATU further contends that when considering any general standard, whether it be prevailing practice, comparative norms, total compensation, ability to pay or cost of living, interpretative factors enable the Board to apply the standards in an appropriate manner. In support of this contention, the ATU relies, in part, upon arbitral literature and cites certain excerpts for the Board's consideration.

The ATU points out that there has been a sixty-two year wage history of the top-rated operator from which to evaluate the quality of past wage decisions when the Board considers and credits this bargaining history. The ATU also points out that the parties' last twelve collective bargaining agreements, beginning with the first contract following WMATA's acquisition of the predecessor private bus companies

in 1973, reflect that these agreements were the product of generations of knowledgeable negotiators.

The ATU further points out that during the WMATA era, covering thirty-five and a half years, collective bargaining agreements and direct negotiations resulted in general wage increases averaging 4.8% per year compounded; that the parties frequently provided extra increases for high skilled mechanics; that in several contract years there were alternative increases in cash compensation in lieu of general wage increases; that the 1983 collective bargaining agreement eliminated the employee pension contribution in exchange for a wage freeze; and in the twelve settlement agreements between the Authority and the ATU there was an improvement in normal (unreduced) eligibility requirements and/or increases in the pension formula. The ATU argues that the present pension plan is the direct consequence of deliberate, consensual bargaining decisions.

The ATU concludes that collective bargaining between these parties has been successful, and submits that the Board should recognize that reason and discipline have sustained the parties' past decisions. In this context, the ATU submits that the proposals of the Authority do not track any of the U.S. Postal Service interest arbitration awards, nor do the Authority's proposals support the proposition of a freeze or reduction in the labor costs for the ATU's members.

The ATU submits that the concessions sought by the Authority have never been found acceptable in the long history of negotiations on this property nor has any arbitrator or negotiator, either before or after

the National Capital Area Interest Arbitration Standards Act, found such concessions to be acceptable.

**Observations by the Chairman**

The Chairman has considered and weighed the Authority's proposals which the Authority has characterized as representing "moderate restraint" against the ATU's proposals which the ATU has characterized as "historical progress". This Award seeks to blend those two positions in the context of the applicable standards and the underlying goal of all interest arbitrations. This Award attempts to fashion a result that the parties likely would have achieved had they reached agreement through direct negotiations.

It should also be noted that there was substantial evidence in the record regarding the nation's economic crisis. This crisis was signaled, at least, by the response of the federal government in September, 2008 to what has been characterized as the most dramatic downturn in the nation's economy since the "Great Depression". The Chairman has given full consideration to the economic conditions extant between that date and the date of this Award, and the extent to which those economic conditions have or have not been ameliorated to some extent as a result of governmental action. The parties' proposals have been weighed in that context.

There can be no question at this time, based upon the predictions of economists of every stripe, that the economy of the nation including the Washington, D.C. Metropolitan Area is in a state of flux. One would

be hard pressed to predict where the economy will be at the end of year 2010, when some economists have predicted that the recession “will be over”, much less to predict where the economy will be when this Agreement is subject to re-negotiation on July 1, 2012.

None of the interest arbitration decisions cited to the Board, including those involving the United States Postal Service, nor any of the negotiations conducted between WMATA and the ATU beginning in 1973 required those arbitrators or negotiators to consider the extreme uncertainty in near future economic conditions that this Board has had to access.

It is in this context that the Chairman has concluded that it would be unwise and unjustified if the Board disturbed much of the status quo in the current collective bargaining agreement by awarding significant structural changes. In this same vein, it is the Chairman’s opinion that increasing benefits in these uncertain times would also be unwise.

Therefore, this Award shall maintain the status quo insofar as Vacations, Sick Leave, Holidays, Tool Allowances, Longevity Progression, the Cost of Living Escalator\*, Pay for Meal Time, Expansion of Special Class Runs, Subcontracting and the Preparation Allowance are concerned during the term of this Agreement.

\* The COLA clause set forth in Section 125(e) of the Parties’ Last collective bargaining agreement shall be continued in its present form subject to updated language regarding CPI reference dates and effective date of payment.

**General Wage Adjustment**

Insofar as a General Wage Adjustment is concerned the Board awards the following:

Effective July 1, 2008 – 2% lump sum payment\*\*

Effective July 1, 2009 – 3% general wage increase

Effective July 1, 2010 - 3% general wage increase

Effective July 1, 2011 - 3% general wage increase

\*\* To receive the 2% lump sum payment as provided above, the employee must have been on the employment rolls as on the date of this Award. The lump sum payment shall be based upon the total straight-time hourly wage earnings (including scheduled run overtime for Operators and Station Managers) between July 1, 2008 and June 30, 2009. The lump sum payment shall also be payable on the same basis to any employee who retired on or after July 1, 2008.

**ELES – New Business Agreement**

Insofar as the issue regarding the ELES – New Business Agreement is concerned, the Board has reviewed the parties' respective positions and has decided that the ELES – New Business Agreement shall be extended through December 31, 2012 consistent with the proposed October 26, 2007 letter agreement.

