DISSENTING OPINION OF BOARD MEMBER JONATHAN C. FRITTS

The purpose of the law that governs this Board, the National Capital Area Interest Arbitration Standards Act, is clear: to establish standards that must be applied by arbitrators "in order to lower operating costs for public transportation in the Washington metropolitan area." 40 U.S.C. § 18301(b). Congress was concerned about Metro's operating costs because "higher operating costs incurred for public transit in the national capital area cannot be offset by increasing costs to patrons, since this often discourages ridership and thus undermines the public interest in promoting the use of public transit". 40 U.S.C. § 18301(a)(4).

More than two-thirds of Metro's operating costs are labor costs. Therefore, any increase in labor costs has a direct impact on the affordability of the Metro system. Additional labor costs must be paid for either by Metro's riders or the taxpayers who subsidize the system.

It is for this fundamental reason that the Standards Act requires the Board to consider Metro's "available financial resources" in rendering an interest arbitration award. 40 U.S.C. § 18303(b)(2). The Board also must consider the "public welfare," which is defined to include the average per capita tax burden of subsidizing the Metro system on residents of the Washington metropolitan area. 40 U.S.C. § 18303(a) & (b)(7).

While the Standards Act lists other factors that must be considered as well, Metro's ability to pay for the award is a paramount consideration. That is why the Standards Act contains a separate and specific provision which forbids the Board from rendering an award that exceeds Metro's ability to pay for it:

> **(c) Ability to finance salaries and benefits provided in award.**--An arbitrator rendering an arbitration award involving the employees of an interstate compact agency operating in the national capital area may not, with respect to a collective bargaining agreement governing conditions of employment, provide for salaries and other benefits that exceed the ability of the interstate compact agency, or of any governmental jurisdiction that provides subsidy payments or budgetary assistance to the interstate compact agency, to obtain the necessary financial resources to pay for wage and benefit increases for employees of the interstate compact agency.

40 U.S.C. § 18303(c).

The evidence in this case unquestionably demonstrates that Metro does not have the ability to pay for this award. The Board acknowledges the fact that Metro is facing "immediate, serious, financial issues" and a "cash crisis." This award can be paid for only if Maryland, Virginia, and the District of Columbia provide additional funding. Metro does not have the money to pay for it.

Maryland, Virginia, and the District of Columbia have passed legislation that provides for a combined $500 million in dedicated capital funding. That is not funding to be used to pay for this award. It is funding to be used to make long overdue repairs and capital improvements to the Metro system. In agreeing to provide this much needed capital funding, Maryland and Virginia imposed an annual 3% cap on the growth of operating subsidies that those jurisdictions provide to Metro. Failure to meet that 3% cap subjects Metro to a loss of 35% of the total non-dedicated funds from Maryland and Virginia – an outcome that would be disastrous for Metro, its workers, its riders, and the public at large.

This Board does not view itself to be the forum for interpreting this funding legislation. While that may be the correct conclusion from a legal perspective, the key message of this legislation cannot be ignored: Metro must control the growth of its operating costs – approximately 70% of which are labor costs – or else face the consequence of a catastrophic loss of funding for the entire system. The question for this Board is whether we have done enough to meet this critical objective, consistent with the mandate of the Standards Act. The stakes are very high in answering that question.

I dissent from this award because I do not think we have done enough to meet this objective or the requirements of the Standards Act. Metro's position is that workers deserve a wage increase and the ability to share in revenue gains associated with increased ridership, but structural changes to health and pension benefits are needed in order to stabilize Metro's finances and control the growth of operating costs. Without structural changes to the costs of Metro's generous pension and health benefit plans, Metro's ability to provide wage increases now and in the future will be severely constrained.

The Board moderated the wage increases in this award in an effort to balance Metro's financial constraints against the workers' legitimate expectation that they should receive some amount of wage growth over a four-year period of time. But the Board must bear in mind that compensation for employees represented by Local 689 already exceeds the compensation of workers in comparable positions in the Washington metropolitan area. The Board is obligated to consider that local comparison in making an award under the Standards Act. 40 U.S.C. § 18303(b)(4). In this case, there was no dispute that the wage rates for Metro workers are already two, three, or four dollars per hour above the wage rates for employees at other local transit systems, such as DASH, Ride On, and Connector. Tr. 200:4-10.

The award provides for some modest, incremental changes in employee contributions to the cost of health benefits – but still less than the average for employees in this area. The 20% employee contribution rate awarded by the Board is below the average of what employees pay in this area. It is also less than the contribution rate paid by other Metro employees and retirees, who are bearing an increasing share of their health care costs. The 25% employee contribution rate proposed by Metro was reasonable and well-justified, yet the Board majority declined to award it.

The most glaring omission in the award is that it does nothing to address the cost of the pension plan, which the Board acknowledges is an "outlier" in terms of its generosity. The pension plan is an outlier in how benefits are calculated because it provides for unlimited credit for overtime hours worked and a cost of living adjustment (COLA) that often exceeds actual changes in the cost of living. The pension plan is also an outlier because, as the Board recognizes, employee contributions to the plan are relatively small when compared to other defined benefit plans.

The Board should have done something to address the costs of the "outlier" pension plan in the midst of this financial crisis. The Board majority declined to do so because of a deal made by the parties in 1983. Metro was a much different system then, and in much different circumstances. Moreover, there have been substantial changes since 1983 in the ways that employers deliver retirement benefits to employees, with many employers moving from defined benefit plans to defined contribution arrangements. If there were ever a time to do something about pension costs, the time is now. Instead, that issue has been deferred yet again until the next round of negotiations. I do not believe that was the right decision for Metro, its workers, or the public.

By failing to adequately deal with these issues at this pivotal time in Metro's history, the Board has missed an opportunity to place Metro on a more stable financial footing for the benefit of everyone concerned. This missed opportunity diminishes Metro's ability to control operating costs and results in an award that Metro cannot pay for. This is not consistent with the requirements of the Standards Act, nor does it achieve the proper balance of the factors we are compelled to consider. For these reasons, I respectfully dissent.

Jonathan C. Fritts

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