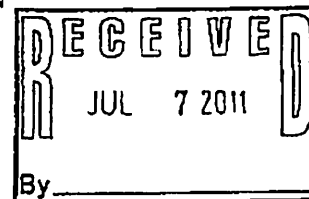


STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION
SPECIAL MAGISTRATE, MARTIN O. HOLLAND



In the Matter of Impasse)
between)
)
Hillsborough Area Regional Transit,)
Employer, Petitioner,)
and)
)
Amalgamated Transit Union,)
Local 1593, AFL-CIO, CLC,)
Union.)

Case No. SM 2011-022

Discussion and Recommended Decision

Appearances:

For the Employer: Michael A. Stephens, Esq., HART
Stephen W. Hendershott, Chief of Operations, HART

For the Union: Ray Rivera, International Vice President, ATU
Vanessa Cephus, President Local 1593

Date of Impasse: February 24, 2011

Date of Appointment: March 24, 2011

Date of Hearing: May 10, 2011

Date Hearing Closed: June 17, 2011

Date of Decision: July 5, 2011

In accordance with Section 447.201 and 447.403 of the Florida Statutes and Florida Administrative Code Rule 60CC-3, Martin O. Holland was appointed as Special Magistrate on March 24, 2011 to hear the facts of the impasse described herein, then to offer his Recommended Decision pursuant to the authority granted to the Special Magistrate by the Florida Statutes. HART declared impasse on February 24, 2011. On March 26, 2011, the parties were advised of suggested hearing dates. The parties mutually agreed to the hearing date of May 10, 2011 during a pre-hearing conference call. The hearing commenced at 9 a.m. and continued to 6 p.m. A transcript was not made of the parties' arguments. Both parties were offered liberal submissions and testimony. The hearing was deemed closed at the exchanging and receiving of the parties' post-hearing briefs.

Objective

The Special Magistrate's objective is to recommend a decision to the parties that would be acceptable in free collective bargaining, that meets the parties' realistic expectations and that the recommendations are justified under the Florida Statute criteria for such decisions. The Special Magistrate's jurisdiction and authority is limited by law. Jurisdiction is exercised only to the point of making a comprehensive recommended decision. The Recommended Decision, under the Florida Statute, is a careful and conscientious balancing of various factors in public employment, the current economic climate, and the reality of other public employment contracts with industrial norms and generally accepted labor practices. By statute, the legislative body must approve any comprehensive contract with appropriate funding or impose its economic terms for one year. The goal is quick ratification by both parties pursuant to the statutory scheme.

Background

The parties entered into negotiations for a successor labor contract on June 25, 2010 to replace their current October 1, 2006 to September 30, 2010 Collective Bargaining Agreement (CBA). The Employer, Hillsborough Area Regional Transit (HART), provides subsidized public transit in the Tampa/Hillsborough County area through a public bus system and specialized vans for seniors and handicapped citizens. HART operates 200 buses over 38 established routes. HART receives 21% of its operating revenue from fares collected and 79% from city/county/state funding along with federal funding and/or grants. HART has approximately 774 employees of which the Amalgamated Transit Union (ATU) represents 632 employees, the Teamsters Union

represents 42 supervisory employees and there are 100 non-bargaining unit employees. The parties have considered a three-year CBA but economic issues prevent a multi-year settlement of the contract. A multi-year recommended decision by the Special Magistrate is limited by law. The legislative body may only impose economic issues for one year. HART's Board of Directors serves as the legislative body. It is understood, this Recommended Decision will be for one year on the economic issues with a wage reopener for subsequent years. Of course, the parties are free to reformulate economic and non-economic issues after this Decision to accomplish a multi-year CBA. It is noted the parties have agreed on 71 of the 77 articles presented for a succeeding contract. The six (6) disputed articles will be addressed in this Recommended Decision.

Discussion

A Special Magistrate is a neutral or arbitrator with broad labor experiences that the parties mutually select. The Special Magistrate is similar to a fact finder or judge pursuant to the Florida Statute. The impasse procedure is governed by statute because public employees are prohibited from striking, but Florida's legislature recognizes a legitimate role for labor unions and collective bargaining. Public employees and employers who bargain to impasse and then utilize the impasse procedure should expect a fair and reasonable outcome of their dispute. It has long been held, in the private sector, that arbitration between employers and unions brings "industrial peace" and is *quid pro quo* for a no strike provision in a collective bargaining agreement. Textile Workers Union v. Lincoln Mills, 353 U.S. 443, 453-55 (1957) Most states have public employee bargaining statutes and many states have impasse procedures with binding impasse decisions or impasse decisions with special provisions. In Florida, the Recommended

Decision is a public tool to test the reasonableness of the parties' impasse position. The value in the Magistrate's Recommended Decision is the scrutiny brought to bear on the parties' positions and the public's pressure to accept a neutral's recommendation that results from the impartial evaluation and analysis of each party's position. The point is, a Special Magistrate's Recommended Decision must be afforded true deference by the parties and legislative body for the statutory scheme to work. Interest arbitration, throughout the majority of states, utilizes a standard or criteria that are essentially the same as the Florida Statute, "Factors to be considered by the Special Magistrate". See Section 447. 405, Fla. Stat. One state with a long history of police/fire interest arbitrations is Michigan. The Michigan Supreme Court clarified similar standards found in the "Michigan Police and Firemen's Arbitration Act" stating:

"Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the [arbitrator] panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all applicable factors must be considered." Detroit v. Police Officers Assn., 105 LRRM 3083, 3092

Similarly, Arbitrator James J. Sherman considered the Florida Statute for standards and comparison. Arbitrator Sherman stated that the statutory standards in his opinion "are intended to be applied only selectively depending upon the circumstances of each case 'that the standards' are not to be given equal weight in every case" and "Indeed in some cases particular standards probably have no applicability and should not even influence the decision". City of Winter Haven, 65 LA 557 (1975)

This Special Magistrate will consider and give weight to all five factors listed in Section 447.405 recognizing that some factors may deserve greater weight and discussion in this

Recommended Decision. Further, the statutory language, “The factors, among others, to be given weight by the Special Magistrate”, is recognition that the Special Magistrate may also consider other well-founded principles of interest arbitration. The five express statutory factors in 447.405 are:

447.405 Factors to be considered by the special magistrate. – The special magistrate shall conduct the hearings and render recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special magistrate in arriving at a recommended decision shall include:

(1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

(2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.

(3) The interest and welfare of the public.

(4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:

(a) Hazards of employment.

(b) Physical qualifications.

(c) Educational qualifications.

(d) Intellectual qualifications.

(e) Job training and skills.

(f) Retirement plans.

(g) Sick leave.

(h) Job security.

(5) Availability of funds.

In interest arbitration situations, special magistrates are confronted with conflicting arguments raising divergent issues, which must ultimately be resolved. The application of generally applied arbitration principles used by magistrates to reconcile the conflicting arguments of the parties has been explained in some detail. City of West Bend, Wis., 100 LA 118, (Vernon, 1993) Wage issues constitute the most common subject of interest

arbitration. City of Willowick, Ohio, 110 LA 1146 (Ruben, 1998) Health insurance is also a common issue for impasse disputes. Sauk County, Wis., 114 LA 828 (Vernon, 2000) Employers are seeking to shift the cost onto the employees because of the rising costs of employee healthcare. Further, employers are seeking cost efficiency in healthcare plans. Sauk County, Wis., 114 LA 828 (Vernon, 2000) In Manitowoc, Wis., School Dist. issues of pension and retirement benefits were submitted to an arbitrator to decide. 100 LA 844 (Rice, 1992) In City of Waterville, the city's discipline policies were submitted to an arbitrator to formulate. 107 LA 1194 (Dichter, 1994) In this dispute, we have economic, healthcare, time control, safety and operational issues to resolve. Nevertheless, the impasse procedure can provide various solutions because no issue is truly unique or of first impression in the broad labor/management community. The Recommended Decisions that follow are a reasonable labor expert's resolution to these disputes.

I recognize that public dispute resolution is different in the public sector from in the private sector. The private sector is bilateral, employer and employee. The viability of a thriving business depends upon competitiveness and innovation of goods and services. Private sector unions recognize the solvency of the employer will provide job security. Whereas the public sector is trilateral. The employee, governmental unit as the employer, and the public as the taxpayer make the process different. While the profit motive is absent in public services, the taxpayers' vote and support is the ultimate decider of the level of public services. The legislative body reflects the taxpayers' vote. In State of Florida v. Florida Police Benevolent Association, the Florida Supreme Court noted public

employees' bargaining is not the same as private bargaining. 613 So. 2d 415, 142 LRRM 2224 (Fla. 1993) The Court explained that while the private sector experience could serve as a reference, the private sector is not an infallible basis for public employment. Id. Notably, the Court reasoned the public sector employees in Florida require legislative approval and discretion that cannot be bargained away. Id. @ 418 Nevertheless, the legislative body must recognize the Florida statute and its statutory scheme have a significant purpose and it should not be easily disregarded.

Public employee bargaining in Florida does create a conundrum. The legislative body must ultimately answer to the taxpayer. The taxpayer ultimately holds the purse strings. When times are hard, legislative bodies, public employers and public employees have difficult choices to make. The legislative body is faced with only four real choices in a declining revenue period. The first is to freeze hiring, discretionary expenses, and purchases. The next choice for a legislative body is to cut existing services. The third choice is to seek wage or benefit concessions from employees. And finally, the legislative body's fourth choice is to increase taxes or fees where permissible. Obviously, the easiest legislative body choice after an expense freeze is to seek concessions from its employees. The legislative body knows cutting existing services or increasing taxes may upset the taxpayers. In truth, a proper solution in this economic time should be a mixture of all available tools without political posturing. Public services come with increased costs by external factors beyond anyone's control. If the public employee must give up some wages, the legislative body should raise taxes or cut

services in a fair matching amount. The following Finding of Fact and Recommended Decision is a product of that statutory scheme.

The Bargaining Unit Employee

ATU represents a broad range of HART employees of which the bus operators are the dominate employee class being 362 of the total 632 bargaining unit members. The current CBA commands a topout pay rate for bus operators at \$20.00 per hour after eight (8) years of service. The \$41,600.00 top pay in the Hillsborough area is reasonable compensation and roughly comparable to other transit operations in Florida. Notably, the existing wage rate is supported by free "single rate" healthcare benefits and free retirement benefits provided by the Florida Retirement System (FRS). "Free" meaning at no cost to the employee. HART has a long-standing practice of paying single rate healthcare for their employees. Under state law, the FRS mandates the employer to pay the full cost of its employees' retirement contribution. By statute, 10% of HART's payroll is paid to FRS for its employees' retirement benefits. HART's payroll is 21 million for 2011. Accordingly, HART's pension contribution is 2.1 million this year.

Further, ATU also represents other HART employees such as van operators, mechanics, paint and body technicians, electronic technicians, streetcar mechanics, customer service employees, maintenance workers, cleaners, helpers, and clerks. The pay scale for these employees are either the same as bus operators or substantially less for clerks and the general skilled workers. For example, topout pay for a customer service worker at six years of service is \$14.63 per hour. A van operator at eight years of service is \$16.77 per hour and a clerk at 6 years of service earns \$13.57 per hour.

Magistrate's Notice of Post-Hearing Facts

On July 1, 2011, pursuant to Senate Bill 2100, all active employees of the Florida Retirement System (FRS) will begin to contribute 3% of their salary, on a pretax basis, to the retirement fund. The doctrine of arbitral notice is well established. Social Security Admin., 69 LA 1149, 1151 (Kaplan, 1977) The FRS was created by the Florida legislature, as a statute, to provide retirement benefits for a wide range of public employees in Florida's various governmental units. Statewide, the FRS has 650,000 active members. HART employees are members of the FRS. Since 1974, the state legislative body required a public employer to make 100% of the employee's retirement contribution to FRS. Generally, the FRS requires public employers to contribute 10% of payroll toward a retirement plan for its employees. The pension statute has a 6-year vesting policy. Significantly, the parties to this impasse are affected by this new law. At hearing, the Special Magistrate addressed the issue of potential pension reform and advised the parties that new legislation may benefit the employer at a cost to the employee. In effect, this 3% employee payroll contribution is a huge savings for HART by converting \$630,000 of their \$2.1 million dollar pension costs to its employees. Conversely, each of the bargaining unit employees will now suffer a 3% reduction in take home pay or lose approximately \$1,200.00 per year. The employer's "ability to pay" criteria under the labor statute is increased by this legislative change. HART received a substantial cost reduction by action of Senate Bill 2100. The Special Magistrate, parties, and legislative body must consider the financial impact of this change when considering the ultimate solution for a succeeding CBA. It is noted, Senate Bill 2100 is being challenged in Florida courts as an illegal action of the legislature.

Economic Considerations

In 2011, Florida's governmental units are faced with declining property tax revenues and other declining revenue sources. State/County/Municipal governments have made drastic cuts in expenses and services because of the downturn in the national economy. Florida's unemployment rate stands at 12.6%, the fourth highest rate in the country. The Florida Consumer Price Index (CPI) was measured recently at 3.4% annually. The future economic outlook is depressed and economic advisors indicate there will be several more years of hardship. Nevertheless, the public employee cannot provide all the concessions and givebacks. It is noted, HART is still hiring new employees. The transit system provides a basic service that the government wants to provide. Lower wage earners rely upon the transit system for work opportunities. Tourists use a transit system for travel to shopping malls, restaurants, galleries, and beaches. Disabled citizens and seniors require specially equipped van services. A transit system reduces pollution and increases commerce. Revenues must be found to balance the legitimate needs of the public employee as well as the public employer.

Finding of Facts and Recommended Decision

Article 43 – Health Insurance Premiums

It has been long accepted in the labor management community that employers pay for employee healthcare costs so that the employee will be enticed to stay at that employer because of the quality of benefits offered. A rapidly changing workforce always costs an employer monetarily in retraining and employee efficiency.

HART argues the proposed change to Article 43 is to better align projected healthcare cost increases to economic reality. HART's healthcare benefit plan has rapidly increased in cost and it is expected to increase 13% in future years. HART needs additional cost mitigation and funding. HART's proposal would end its employer fully paid healthcare benefit. The single rate amount would change to a 20% co-pay of the employer's single rate monthly premium. At the current time, the single rate premium is \$535.62 per month. In effect, HART wants 475 bargaining unit employees to pay \$110.00 per month for single rate healthcare. This new funding source could provide HART with new revenue of \$627,000.00 per year. Stated differently, the 475 employees take home pay will be reduced by \$110.00 per month. An approx 4% after tax wage reduction will be incurred if employees pay \$110.00 per month for healthcare. HART also suggests the "Employee + 1" and the "Family" healthcare rate be adjusted to a new rate of \$145.00 and \$434.00 per month respectively. There are 163 employees with "Employee + 1" coverage and 41 employees with "Family" coverage.¹ Some employees declined healthcare benefits because of other spousal coverage or veteran benefits that merely duplicate HART's healthcare benefits. An employee's right to decline healthcare coverage shall continue. Naturally, the ATU opposes such cost shifting to the employees.

I find HART needs to cost-shift its healthcare costs. It is a nationwide reality that employees should pay for some cost of the employer's healthcare system. Most employees accepted healthcare benefits as a given or automatic benefit without any consideration for its costs. Employees should have a stake in employer paid healthcare.

¹ The number of employees and dollar amounts appear in the Record as the employer's estimated proposed changes in Exhibit 15

The employee should recognize the substantial benefit of employer provided healthcare in their daily lives. However, healthcare must be affordable and reasonable in coverage. HART has unilateral control of policy features and deductibles through its healthcare carrier. Some costs can be saved within the plan itself. HART can raise the co-pay percentages or deductible amounts. Certain coverage may be reduced. Nevertheless, HART should receive some cost shifting even if at a lower fixed amount as suggested here. I suggest \$55.00 per month rate for the 475 "single rate" coverage, giving HART \$313,500.00 in yearly revenue. Healthcare benefits are an economic issue that influences wages. The \$313,500.00 could fund a 1½% general wage increase for the entire ATU unit. A 1% general wage increase costs \$210,000.00. The cost savings to the employer must be viewed in the total economic package. Here, the employees should receive a minimal wage increase but at a much lower rate than the CBA of 2006/2010. In the previous CBA, a bus operator moved from \$17.43 per hour in October 2006 to \$20.00 in October 2009. The ATU should realize their economic gain in wages during this very depressed time period of 2006/2010. Consequently, the Special Magistrate will recommend a 1% unit-wide wage increase. A 1% wage increase will move a bus operator rate from \$20.00 to \$20.20 per hour or \$416.00 per year wage increase. Given the FRS 3% contribution change and the change from free single rate to \$55.00 per month, I believe HART can clearly afford this healthcare rate combined with other economic benefits suggested herein. HART is free to seek a raise in these rates in subsequent contracts.

Recommended Decision – Article 43

Effective on the first (1st) of the month, thirty (30) days after ratification, the single employee rate will be \$55.00 per month for the term of this Collective Bargaining Agreement. The “Employee + 1” employee rate will be \$145.00 and the “Family” employee rate will be \$434.00 per month for the term of the Collective Bargaining Agreement.

Article 51A – Wages

HART currently proposes a one-year wage and step freeze for all ATU bargaining unit members with a provision for a one-year reopener for economic issues. Previously, in 2010, HART did offer a 1% bonus on employee base wages. HART restates its major source of revenue is Hillsborough County property tax and that revenue has plummeted over the last five (5) years. HART’s attempt at a sales tax increase was rejected. HART is concerned a fare box increase would lead to fewer riders.

ATU seeks a wage compression to 6 years of service from 8 years of service for top pay, such as bus operators, and a \$500.00 bonus unit-wide. The Union contends a high turnover rate at the probationary stage and the fact that 61% of its members have less than 7 years of service shows the current wage rate is unacceptable and depressed for the area’s workforce. Further, the ATU cites the FRS 3% contribution and the single rate healthcare charge to its members as compelling reasons for an economic wage increase.

I believe that the ATU employees need a wage increase. The 3% FRS contribution and single rate healthcare cost is a substantial hardship to these employees. The very reason

the top pay in the previous CBA was acceptable at \$41,600.00 was the free healthcare and FRS retirement benefit. The economic conditions for ATU bargaining unit members have substantially changed. CPI is 3.4% in Florida. The employees' buying power is reduced by rising healthcare and pension costs. The ATU members are facing a serious decline in real wages. Even with a modest wage increase, HART may expect a higher turnover of its workforce. The employee cannot bear such hardships of pension costs, healthcare costs and CPI without an increase in wages. In contrast, HART may increase the fare box revenue. The simple fact is, gasoline prices are at \$3.50 plus a gallon. A fare increase will not reduce riders who need to get to their work sites, schools, or retail stores. HART may stop hiring new employees. HART may reduce or cut some services with a reduction in labor costs. HART has multiple options and the ability to pay its workforce a modest increase. At this time, I cannot recommend wage compression as the ATU proposes.

Recommended Decision – Article 51A

Effective October 1, 2010, the bargaining unit wages will be increased by 1% and upon the end of that one-year period a wage reopener will be in effect.

Article 54 – Extra Board Operators/Procedures

The Union proposes to change existing language from a one-board system to a two-board system referred to as the AM/PM Board. In either system, 60 employees are allocated various bus routes/assignments as fill-ins for regularly assigned bus operators or special needs drivers. In fact, HART adopted the two-board system in 2009 and implemented it for over a year until just a few months before this impasse hearing. HART called it a

pilot program that the Union was advocating as a two-board system. Accordingly, HART may be playing hardball with the Union. I listened to the testimony from HART's operation chief but I could not understand why a well-liked system was ended for minor reasons. HART offered no history of problems or grievances. While the Union contends the two-board system is a win/win situation, HART claims some costs and confusion with the two-board operation. In summary, the ATU presented testimony that HART has mastered the two-board system and it saved HART money. The employees liked the two-board system. The employees could plan their day knowing that the night shift work will be covered by employees who want to work the night shift. At best, HART identified that a dispatcher would have to schedule one of the two boards manually and errors of seniority could occur. HART also contends a management study revealed excessive overtime during a sixteen (16) week study period. The Magistrate notes that HART took its study and actions to end the two-board system unilaterally. HART should have consulted the ATU for advice and input. Many or all of HART's perceived problems could have been solved or minimized by a HART/ATU study committee. HART should return to the two-board system immediately and form a joint committee to monitor and maximize the two-board system for at least six (6) months. After that, the parties may alter or amend its CBA by a reopener clause. Finally, ATU's proposal to seek language to impose a two-board system does not violate the management rights clause. Work schedules are a mandatory subject for bargaining. School Board of Orange County v. Palowitch, 367 So. 2d 730 (1979)

Recommended Decision – Article 54

Upon ratification, the parties shall immediately reinstitute a two-board system for six (6) months with a joint committee to monitor its progress and problems and prepare a monthly joint report of its findings. After six months, a reopener clause may allow the parties to alter or amend its CBA to reflect any new agreement on this issue.

Article 56 – Paratransit/Van Operator

HART proposes to change the classification title of this article to “Van Operators”. HART claims the proposal is non-substantive and/or administrative. Article 56 defines “vans” as motor vehicles with a fifteen (15) passenger seated capacity or less. Van operators, by contract, are paid less than bus operators. For example, the top pay for a van operator of 8 years is \$16.77 per hour. Paratransits are smaller vans or handicapped equipped vehicles or sedans that carry fewer passengers. Article 56 also makes special provisions for seniority, training, markups, and bidding of paratransit/van operators and bumping rights for laid off bus operators. Article 56 is complex contract language that may have impact on several other contractual provisions. The Magistrate cannot support a change of language for “non-substantive and/or administrative” convenience. I recommend no change in the title of Article 56.

Next, HART proposed that van operators be required to wear safety vests at all times. HART’s proposal is without costs to the ATU members. HART does justify a safety factor in the use of safety vests. Again, HART cannot impose this requirement without meeting and conferring with ATU. See Virginia Elec. & Power Co., 102 LA 445

(Aronin, 1993) Even employer provided safety items have a duty to bargain or impact requirement.

In contrast, the ATU proposes to limit a safety vest to “in the street” or “evening/dark periods”. This limited use proposal is confusing and I will not recommend it. Also, the ATU proposes to change the Article 56 title to “HART flex/paratransit van operators”. The ATU’s proposal for title change is without substantial reason.²

Recommended Decision – Article 56

The Magistrate recommends no change in Article 56 except for an inclusion of safety vests as discussed.

Article 60 – Time Allowances

The Union proposes an addition of five (5) minutes time to their current pretrip inspection time of ten (10) minutes. The current language has been in effect since 1992. HART admits it surveyed eight (8) other transit properties and found six (6) authorized a fifteen (15) minute pretrip. The other two transit properties had a ten (10) minute pretrip time. HART claims that operational efficiency has improved so that a ten (10) minute pretrip is sufficient and that a change would cost HART \$250,000.00 in direct wages. I agree. The ATU does not substantiate a good reason to increase the existing 10-minute pretrip allowance. The status quo will be recommended.

² The ATU did discuss an issue of improper schedule pickups by HART. It appears a van operator was scheduled for a pickup well before his start time. HART explained it was a single mistake and no contract language is needed for an isolated event. I agree.

Recommended Decision – Article 60

The Magistrate recommends no change.

Article 61 – Transportation Bid

Over many years, Article 61 has been negotiated and renegotiated with various concessions resulting in its present complex contract language. The fact that this language was the subject of a recent grievance arbitration award manifests the parties' interest in such language. Any magistrate must balance the pros and cons of changing such language by using traditional principles applied by interest arbitrators. In short, the proponent must show a substantial reason to change existing language. When the proponent of changed language is the employer, cost factors, operational difficulties, or unintended mistakes of such language must be provided in clear and convincing examples. Otherwise, the magistrate may be sacrificing a long sought after union language that developed over many contracts with union concessions made in other parts of the contract language. When the proponent's evidence is insufficient to support such a change, then the magistrate should maintain the status quo and let the parties resolve any disputed issues in future CBAs. When the union proposes changes in existing language, the burden of proof is even higher. The union also must put forth substantial documented reasons why the changes are needed, the benefit to the unit employee, and the ability of management to operate under the new language. Language changes for the sake of change or mere convenience is not acceptable.

Here, in HART's brief to the Magistrate, they state their reason for changing existing contract language.

HART proposed language changes to paragraph 7 of Article 61 to provide management flexibility in scheduling, using the A-E run classifications in the existing contract article language as follows: When possible, the Authority gives priority in the make-up of rosters in the following order, allowing for operational, business, and budgetary constraints.

Employer exhibit 20 sets forth the arbitration opinion and award in FMCS Case #09-59166, involving Article 61, Transportation Bid. In that grievance the arbitrator found that HART violated Article 61, Paragraph 7 when it lumped C, D and E runs together and failed to provide two consecutive days off, either Friday – Saturday, or Sunday-Monday (D runs), or two consecutive weekday days (E runs).

HART's proposal in this article is intended to reconcile the arbitrator's award to true operational outcomes that comply with the plain language of the contract. While the arbitrator rejected ATU's position that "priority" means more, she also determined that "priority" means in decreasing levels of alternatives. To address this as effectively as possible in light of the operational need to put service routes out where service is required, HART needs some flexibility towards scheduling shifts that will not violate the plain language of the contract each time it posts a new mark-up going forward. ...

In contrast, the actual CBA language is straightforward as follows:

7. The Authority shall post a new mark-up for bidding by operators in accordance with the times required. A biddable run is defined as one or more pieces of work. The biddable runs for full time operators shall contain not less than forty (40) scheduled pay hours. The Authority shall post all weekly work assignments. The Authority will package the assigned days off for all runs. The Authority shall give priority in the make-up runs in the following order:*

- A. Straight day (AM) runs with Saturday and Sunday off. Not to exceed 11 hours.*
- B. Straight afternoon (PM) runs with Saturday and Sunday off. Not to exceed 11 hours.*
- C. Split runs with Saturday and Sunday off.*
- D. Straight day (AM) runs with Saturday or Sunday off. Not to exceed 11 hours.*
- E. All other runs.*

**The Authority will attempt to package weekday work hours with similar weekend work hours.*

...

The Magistrate accepts that HART wants greater flexibility in scheduling to reconcile this provision with the arbitrator's award. HART also offers a fallback position for

lumping the C, D and E runs only for operational, business and budgetary constraints. Accordingly, a thorough review of the Grievance Award is needed. ATU and HART, FMCS #09-59166 (Arbitrator Pike, 2010) Arbitrator Pike's discussion and finding is as follows:

However, the lumping together of the C, D and E runs into one category by Hart does not comport with the CBA, Article 61.7. After A and B runs are created, as many C runs as possible must be created before the D runs are considered. As many D runs as possible must be created before the E runs are considered. This is plain and clear language in Article 61.7. In clear and express language the CBA calls for priority order for runs A through E. I am compelled to agree with the Union on this point.

Although Mr. Creaton stated there is no CBA requirement to have two days off together, he is quite correct in scheduling consecutive days off. In Article 61.7 the statement, "The Authority will package the assigned days off for all runs," clearly means Hart must assign consecutive days off to each run. Package means put together. Therefore Article 61.7 does require consecutive days off in clear and plain language, as Mr. Creaton testified he is doing.

FINDINGS

It is my finding that "priority" in Article 61.7 of the CBA means earlier in time and rank, "precedence." Hart must create as many A runs as possible before B runs are considered; as many B runs as possible before C runs are considered; as many C runs as possible before D runs are considered and as many D runs as possible before E runs are considered.

However, I find the Employer did violate Article 61.7 of the CBA by lumping together the C, D and E runs in the makeup of runs. After the A and B runs have been created, as many C runs as possible must be created before the D runs are considered, then as many D runs as possible must be created before the E runs are considered.

Article 61.7 of the CBA also requires Hart to provide consecutive days off for all runs.

Arbitrator Pike's decision was on February 24, 2010 and HART apparently has been able to follow the CBA for the past 16 months or longer. Of course, HART wants more flexibility but the employees' needs for some orderliness in their work life are also

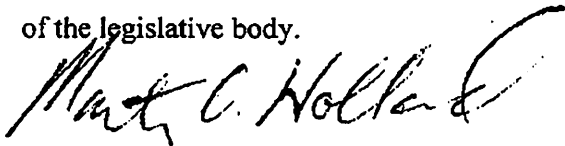
important. Some employees may wish to work an AM shift and avoid the night shift altogether. It appears HART can apply the existing language with minimal difficulty. The Magistrate recommends the status quo.

Recommended Decision – Article 61

The Magistrate recommends no change.

Conclusion

HART has gained cost shifting in healthcare and a reduction in FRS contributions by action of the State. A modest wage increase of 1% in the face of such employee givebacks is justified. The ATU has maintained its rights and benefits in a depressed economic decline. The parties are free to renegotiate these and other issues in just a few months. I encourage the ratification of these Recommended Decisions and the approval of the legislative body.



Martin O. Holland, Special Magistrate

July 5, 2011

Certificate of Service

I hereby certify that an original and correct copy of the foregoing Recommended Decision and Case Closing Report was sent by Registered Letter on this 5th day of July 2011 to the parties listed below. In addition, a copy is forwarded to PERC per Rule.

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Martin O. Holland, Special Magistrate