

Office of Collective Bargaining

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In the Matter of the Impasse

between

REPORT AND RECOMMENDATION

NEW YORK CITY OFF-TRACK BETTING
CORPORATION

of

IMPASSE PANEL

and

LOCAL 2021, DISTRICT COUNCIL 37
AFSCME, AFL-CIO

Case No. 1-99-73

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On February 23, 1973, the Office of Collective Bargaining, on the joint request of the New York City Off-Track Betting Corporation, hereinafter referred to as OTB and Local 2021, District Council 37, AFSCME, AFL-CIO hereinafter referred to as the Union, appointed the undersigned as a one-member impasse panel to hear and report and make recommendations on a dispute between the parties concerning the "Impact on OTB employees of agreement of OTB to employ employees of race tracks to work at OTB". (Jt Ex 1).

A hearing was held on February 27, 1973, at which the parties were given full opportunity to present testimony, evidence and argument in support of their respective positions. The OTB was represented by Lester G. Knopping, Esq., Associate Counsel, and the Union was represented by Nat Lindenthal, its Division Director. Also present at the hearing were the following:

For the OTB: Robert S. Fenn, Vice-President
Industrial Relations
Jerome T. Paul, Senior Vice-President

For the Union: Elaine Walker, Part-time Cashier
Jay R. Gettinger, Part-time Cashier
Gary Foster, Assistant Director,
White Collar Division
Elisa Calvente, Part-time Cashier
Shiekie Snyder, Local 2021 President
Anthony La Rosa, Steward-Full-Time Cashier
Gerald Lockwood, Full-Time Cashier
Harry Erdheim, Supervising Head Clerk
Joel Leichter, Council Representative
June Honay, Head Clerk
John Arrigo, Vice-President-Local 2021
Julio Vega, Full-time Cashier (Chief Steward)
Doris Loeb, Full-time Cashier (Shop Steward)

Background

The OTB was created in the Spring of 1970 by an act of the State Legislature, which provided the basic rules, the way in which revenue to be shared and the OTB's relation to various government agencies. Among the purposes behind the legislation was an effort to wipe out crime and provide revenue for New York City. Since the creation of OTB would have an effect on horse racing, the statute provides, inter alia, for compensation to the track for lost revenue and a supplement to increase the purses to attract horse breeders.

The legislation thus provided safeguards' for the track and horse breeders but made no provision for the employees of the track who feared that OTB might seriously affect their job security. They demanded that their jobs be secured and threatened to close the tracks unless OTB provided some safeguards. After negotiation, the OTB reached agreement with the various track unions on a basic agreement which provided a guarantee of the jobs of certain employees, a guarantee of a certain total number of jobs and a guarantee that pro-

tected employees who were laid off would be employed by OTB and paid their regular wages. These contracts were to last until December 31, 1973.

While the job security contracts with the track employees' unions were being negotiated, D.C. 37 organized the OTB employees and were recognized as their representative in December 1970. Negotiations for a contract were begun in early 1971 and agreement was reached in April. The document was ultimately signed in September 1971. The job security contract with the track employees unions were agreed on in early Spring and were signed in May, June and August 1971. There was, therefore, an overlap in negotiation of these various contracts.

In January 1972, the union representing the employees of the New York Racing Association (NYRA) made the first job security claim under its contract with the OTB and demanded that 100 employees be placed on OTB payroll. OTB agreed to take on 50 of these employees. It reached an agreement with the Union on the terms under which these employees would be permitted to work for OTB. Essentially, they were restricted to 20 hours as cashiers at OTB windows and 15 hours at some other job. They were paid the cashier's rate and, since this was less than they had been receiving at the track, they were paid the difference from a job security trust fund. They worked for the OTB until the end of the racing season and left.

D.C. 37 announced that it would not accept such employees again but OTB was obliged by reason of its contracts with the track employee unions to take on the track employees being laid off in the

season. Again, OTB approached the Union for the purpose of working out an arrangement which would overcome the Union's objections to the hiring of such employees. The matter was raised at a labor management meeting between OTB and the Union on February 21, 1973. It was a long and difficult session in which an agreement was worked out between OTB and a committee of the Union but was rejected by the membership. The rejection made the situation so critical that the parties were moved to invoke the aid of the Office of Collective Bargaining to help resolve the issue.

At this point, it should be noted that OTB's agreement to submit the dispute to the Office of Collective Bargaining was a voluntary one, its claim being that it was not required to submit it by the New York City Collective Bargaining Law, (CBL). It contends that the hiring of the track employees is a management right which does not, present any issue of practical impact within the meaning of the CBL. The OTB made it plain that it was reserving its right in the future to reassert its position that the question is not subject to bargaining under the CBL. It asserted that it consented to this proceeding, although it was within its managerial prerogatives not to do so, in order to be fair and equitable with the employees.

The need for OTB cashiers varies from day to day, track to track and according to the season, and depends upon the neighborhood where the branch office is located. Because of these peaks and valleys in its patronage, OTB estimates that, on an average, each branch should have no more than three full-time employees to be

supplemented by part-time employees. If all were employed on a full-time basis, there would not be work for some of the employees part of the day. At present, the division among the employees is 550 full-time cashiers and 900 part-time. The OTB considers it an obligation to be as efficient as possible so as to realize the greatest revenue attainable for the City and State. Circumstances have compelled it to employ more full-time employees than it might have chosen if efficiency were the sole consideration. Its obligation to employ the track employees was one such circumstance. Another was the need to satisfy the fears of its own employees in the Union.

Part-time employees have a great desire to become full-time employees. Many of those hired as part-time employees had hopes or, in some cases, may have been led to expect that they would become full-time employees shortly after thirty days and go on from there to supervisory positions. The nature of the OTB operation is such, however, that the likelihood of additional full-time jobs being created is remote. Part-time employees do not have a contract right to full-time jobs and are usually scheduled at least twenty hours of work. They resent the fact that track employees could be employed at virtually full-time jobs and be paid almost twice as much per hour as OTB part-time cashiers. The Union asserted that this was a conviction among the employees. The OTB denies that the track employees get twice as much.

The Union takes the position that this dispute is not a matter about which the OTB can cloak itself with management prerogatives.

moreover, it asserts that the hiring of track employees does have a practical impact upon the job security and aspirations of the OTB employees and that the dispute is subject to the BCL. It was the aspiration of the part-time employee to become a full-time employee which became the essential quid pro quo for the Union's consent to the OTB's hiring of track employees last year.

The Union Proposal

The Union made the following proposal to resolve the dispute:

1. That O.T.B. sign an agreement with the Union, that subsequent to January 1, 1974, that no employee laid off at any race track may be employed by O.T.B. except on the same terms as a regular O.T.B. employee, hired at the minimum basic hiring rate as a part-time employee, and that no payment be made to these race track employees in excess of the minimum rate regardless of the source of excess payment.
2. That all part-time employees on the current conversion list be converted to standard full time shifts as of the date in which race track employees come to work at O.T.B.
3. That track employees be utilized by O.T.B. in positions other than that of Cashier.
4. That all branch offices be rescheduled and adequately staffed to the satisfaction of the Union.
5. That no manager or supervisor perform the duties of Cashier.

6. That no employee be suspended or terminated until the charges are presented, a hearing held, and a decision rendered. (U Ex No 3)

During the course of the hearing the parties reached agreement on items 1, 4, 5 and 6, in a form slightly altered from that which they had agreed upon during the meeting on February 21 but which was rejected by the membership. The background, evidence and ration to support the new agreement on these issues is not necessary in this report. I shall include them in my recommendations without further comment.

On the disputed items 2 and 3, the principle issue is the number of part-time employees to be converted to full-time employees as a result of OTB's hiring of track employees. The Union asks that 600 part-time employees be converted. It bases this demand on equivalence with the number of hours 120 track employees would work if applied to make up the 15 hours a part-time employee would need to become a full-time employee. The Union adds a similar equivalency for the salaries of the track employees which it asserts is twice that of the OTB cashiers, and an equivalency for the Managers and Supervisors who, by OTB directive issued at the demand of the Union, no longer perform work at the windows except in emergency.

The OTB offered 120 jobs.

Discussion

The demand of the Union for 600 jobs cannot be considered realistic since the total number eligible for such conversion were only

520 as of January 11 1973. Moreover, the Union's demand was made without regard to the needs of the City, the State, the tracks, horse breeders and the general public. The more realistic criteria in my opinion, are the following:

1. The OTB's obligation to produce the maximum revenue in accordance with its statutory mandate.
2. The recognition that every full-time job created beyond those necessary for the operation would diminish that revenue.
3. The recognition that the part-time employees at OTB are entitled to treatment as considerate as that afforded to the track employees.

In fashioning my recommendation, I have considered the documents submitted, the testimony and the arguments of the parties. I am mindful of the fact that a committee of the employees negotiated with the OTB and reached an agreement on 125 as the number of part-time employees to be guaranteed full-time jobs. The OTB submitted a scheduling chart (OTB Ex. No. 5) showing how a typical office is manned. It shows the use of four full-time employees and three or more part-timers. By stretching its concept of efficiency, OTB might be able to use one more full-time employee. In view of the number of employees involved, the efficiency needs of the Employer and the criteria stated above, the number 125 agreed to by the parties seems to be a very reasonable one in my view. Neither side gave any cogent reason why this number should be changed. It shall therefore be my

recommendation that the number of conversions be limited to 125.

It also seems appropriate-that the Union personnel be converted on a one-to-one basis with the trade employees. In my opinion this should take place at the same time as the track employees are taken on so that there is a close match-up in number and time between part-time conversions and track employee hirings. My recommendations so provide.

I hereby make the following:

RECOMMENDATIONS

1. OTB will agree to enter into no voluntary agreement with employees of race track-operators to work on the premises of the Corporation at a rate of pay greater than the rate of pay for the comparable job of the Corporation except as the Corporation may be required to employ race track employees by legislation by direction of any governmental agency or commission or as a result of a governmentally mediated or arbitrated Settlement of a work stoppage affecting the Corporation directly or indirectly.

- 2 and 3. The track employees may be used as cashiers for a maximum of 20 hours per week and assigned to duties other than Cashier for a maximum of 15 hours per week. For each track employee employed by OTB, . OTB shall convert one part-time employee to full-time provided that the Corporation shall offer to convert from part-time to full time each of the persons comprising the first 125 part-time employees who have requested conversion to full-time employees as of March 5, 1973. Such offer of conversion shall be made to the number of cashiers equal to the number of track employees employed by OTB by March 15, 1973. Offers of conversions from part time to full time shall be made to the remaining persons on said list no later than September 1, 1973. In the event the employee refuses conversion to full time in a borough other than his borough of choice, such conversion shall be offered to the next eligible employee, but the employee who has refused said conversion shall remain eligible for future offers of conversion. In the event that an employee shall refuse conversion to full time

in the borough he designates as his preference, such an employee shall have been deemed to have waived conversion and his refusal shall be deemed to be one of the 125 offers designated herein.

4. No managers or supervisors shall work at a window except in emergency situations, and the Corporation shall notify all of its branch managers of this policy. Scheduling of employees at branch offices shall be reviewed and if necessary revised on the following basis:

The Union shall select three branch offices for scheduling. The Corporation shall then schedule the work force at such branch offices taking into account principles of cost effectiveness and maximizing hours for existing employees towards the goal of establishing additional full-time positions. The Management of the Corporation and a committee selected by the Union consisting of no more than five members shall then review the results of such scheduling. upon agreeing with the results, the principals utilized in the scheduling of the said three offices shall be applied to all other offices in the Corporation. Such scheduling of the three offices shall commence no later than March 5, 1973, and shall be completed no later than March 15, 1973.

5. No permanent employee shall be suspended without pay or terminated until charges have been presented, a hearing held and a decision rendered unless the employee was involved in a dangerous or hostile act.

Dated: February 28, 1973

BENJAMIN H. WOLF - IMPASSE PANEL