

IN THE MATTER OF)
)
INTEREST ARBITRATION)
)
BETWEEN)
)
AMALGAMATED TRANSIT UNION)
LOCAL 1015,)
)
Union,)
)
and)
)
CITY OF PULLMAN, WASHINGTON,)
)
Employer.)

CASE NO. 21161-I-07-0497
ARBITRATOR'S OPINION
AND AWARD
INTEREST ARBITRATION 2006-2008
COLLECTIVE BARGAINING
AGREEMENT
MARKET ADJUSTMENT

HEARING SITE: Employer Offices
Pullman, Washington

HEARING DATE: January 24, 2008

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I.

INTRODUCTION

The Amalgamated Transit Union Local 1015 (Union or ATU) and the City of Pullman, Washington (Employer or Pullman Transit) are signatories to a Collective Bargaining Agreement that expired on December 31, 2005. The parties engaged in negotiations for the 2006-2008 successor agreement. The parties were unable to resolve all of the issues in dispute through negotiation and mediation.

The parties negotiated a successor Collective Bargaining Agreement that was executed on July 31, 2006. The new contract had an effective date of January 1, 2006, and an expiration date of December 31, 2008. During the negotiations for the 2006-2008 Collective Bargaining Agreement, the parties could not reach agreement over whether four positions in the transit department were being paid at the appropriate "market level." In order to settle the entire Collective Bargaining Agreement, the parties included language in Article 4--Wage Agreement--that provided a method to later resolve the debate over the appropriate wage for the four classifications. In the event negotiations failed, Article 4.04 allowed for interest arbitration to resolve the market adjustment for the four named classifications. The parties failed to reach agreement for a "market level" adjustment. Pursuant to Article 4.04 interest arbitration was invoked to settle the dispute.

The Public Employment Relations Commission (PERC) certified the matter for interest arbitration. PERC certified one issue for resolution by this Interest Arbitrator under RCW 41.56.492. In a letter dated July 13, 2007, Emily Martin, PERC Mediator, certified the issue at impasse as follows:

Wages for four (4) positions: Automotive Repair Supervisor, Heavy Equipment Mechanic, Lead/Driver Dispatcher and Bus Washer.

Un. Ex. 8.

II. STATUTORY FACTORS

RCW 41-56-492 sets forth the specific criteria that must be considered by an interest arbitrator in resolving controversies under the statute. The statutory guidelines applicable to employees of public passenger transportation systems are as follows:

In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

- (a) the constitutional and statutory authority of the employer;
- (b) stipulations of the parties;
- (c) compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case; and
- (d) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

There are differences between the above statute and the interest arbitration statute governing police and fire personnel. Although some of the criteria are similar, the statute governing transit employees vests in the arbitration panel the authority to consider "fiscal constraints" on the employer. There is a dispute between the parties over whether the statutory factors apply to the instant case. Each side

argued for a different interpretation of Article 4 as it relates to the scope of this interest arbitration.

III. BACKGROUND

The City of Pullman is a municipal corporation that provides public transportation to the citizens of Pullman and the students attending Washington State University (WSU). In 2006 the City of Pullman had 175 full-time employees; the majority of which are in six bargaining units represented by four labor organizations. Pullman Transit provides services to students, staff, and faculty to ride without paying a fare under a contract with WSU. Pullman is located in Whitman County in close proximity to the Idaho border. Pullman is approximately 75 miles south of Spokane, Washington.

Pullman Transit has 29 employees. Pullman Transit serves a population of 27,030 in Whitman County and WSU. The 2006 Pullman Transit System budget was \$3,300,000. In 2007 WSU provided Pullman Transit \$1.1 million or 37.7% of all revenue for transit services to students and staff. Er. Ex. 5. The 2006-2008 Collective Bargaining Agreement provided for a cost of living adjustment in each of the three years of the three-year contract. This case was advanced to interest arbitration pursuant to a provision in Article 4.04 that read:

...

Effective upon contract ratification, the parties agree to submit the following four listed positions to BDPA for determinations of appropriate market placement. Such determinations of market placement will be completed within 90 days of contract ratification.

Bus Washer
Automotive Repair Supervisor
Mechanics
Lead Driver/Dispatcher

Upon completion of the above-referenced market study, the parties may accept the BDPA recommendations; and, if so, shall enter into negotiations regarding the implementation of such BDPA recommendations. The parties may also reject BDPA's recommendations; and, if so, the Union may request certification to Interest Arbitration of only the market adjustment for the above-listed positions.

Un. Ex. 1.

The four positions in dispute for additional market adjustment received the same cost of living adjustment as other members of the bargaining unit.

During May and June 2006 the City of Pullman collected salary range data for transit positions across the state of Washington. The data was forwarded to BDPA Inc., for analysis. BDPA produced a final report dated September 2006 entitled "Survey Data Analysis for Transit Positions." Er. Ex. 3. The parties entered into negotiations regarding the implementation of the BDPA recommendations, but were unsuccessful in resolving the market adjustment for the four positions. As previously noted, mediation failed to settle the market adjustment dispute and the case was certified for interest arbitration.

This Arbitrator has carefully reviewed and evaluated all of the evidence and argument submitted pursuant to the statutory criteria. Since the record in this case is so comprehensive, it would be impractical for your Arbitrator in the discussion and Award to restate and refer to every piece of evidence, testimony, and argument presented. However, when formulating the Award, the Interest Arbitrator did give

Careful consideration to all of the evidence and argument placed into the record by the parties.

IV. SCOPE OF THE HEARING

A. The Union

The Union takes the position the parties agreed in Article 4 to submit the four listed positions to BDPA for determination of the appropriate market placement. Both Union and Employer witnesses testified that market adjustment meant wages. The parties also agreed in Article 4.04 that the Union could request certification to interest arbitration of "only the market adjustment for the above-listed positions." According to the Union, BDPA concluded that the four subject positions were paid below the comparable wage market rate as follows:

Bus Washer	-1.7%
Mechanic	-4.7%
Supervisor of Mechanics	-11.1%
Lead Driver/Dispatcher	-5.8%

The Union requests the four subject positions be adjusted, retroactively to January 1, 2006, pursuant to the amounts the BDPA survey deemed wages were below the then current 2006 market rate.

The Union reasons the Arbitrator's Award should be within the scope of the stipulation of the parties rather than the broad statutory scope of the typical interest arbitration for transit systems. The Arbitrator should reject the Employer's position this case should be decided within the context of the broad statutory scope of interest arbitrations for transit systems.

It is also the position of the Union there is no statutory prohibition preventing the parties from framing their own issue and how they want the issue resolved. RCW 41.56.492(2) mandates that the Arbitrator take into consideration the stipulation of the parties. The BDPA study did not include an analysis that mixed other benefit costs, including medical, to make a total compensation comparison. The Arbitrator should disregard the Employer's testimony and exhibits relating to the cost of medical benefits, or comparable increases subsequent to 2006, and adopt the BDPA conclusions as the sole basis for the Award.

B. The Employer

The Employer argues that interest arbitrations are and must be conducted under the rules and regulations provided for in RCW 41.56. Interest arbitration is provided for and governed by RCW 41.56 and does not exist outside of such statutory authority. The model argued for by ATU is not appropriate for a market adjustment issue. The Employer has not agreed to any limitation on the neutral's authority under RCW 41.56 to conduct this interest arbitration. The first mention of the Union's objection to full application of the interest arbitration statute occurred at the hearing. Even if ATU is correct, the Union has clearly waived its right to object to the full application of the interest arbitration statute in this matter. Therefore, the Arbitrator should decide this case by application of all of the criteria found in RCW 41.56.492.

C. Discussion and Findings

I hold the parties' agreement set forth in Article 4.04 of the 2006-2008 Collective Bargaining Agreement can properly be considered under the statutory factor

of "Stipulations of the Parties." The threshold issue for this Interest Arbitrator is to determine what the parties intended when they agreed in Article 4.04:

...

Effective upon contract ratification, the parties agree to submit the following four listed positions to BDPA for determinations of appropriate market placement. Such determinations of market placement will be completed within 90 days of contract ratification.

Bus Washer
Automotive Repair Supervisor
Mechanics
Lead Driver/Dispatcher

Upon completion of the above-referenced market study, the parties may accept the BDPA recommendations; and, if so, shall enter into negotiations regarding the implementation of such BDPA recommendations. The parties may also reject BDPA's recommendations; and, if so, the Union may request certification to Interest Arbitration of only the market adjustment of the above-listed positions.

The Union pointed to the words in Article 4.04 where it read, "the Union may request certification to Interest Arbitration of only the market adjustment for the above-listed positions" as the basis for the claim your Arbitrator should review this case within the scope of the stipulation rather than the broad statutory scope of a typical interest arbitration. I hold the Union's narrow reading of the last phrase in Article 4.04 is misplaced. The parties did agree "to submit the following four listed positions to BDPA for determinations of appropriate market placement." The BDPA's final report was provided to the parties to serve as the basis for negotiations.

Present in the last paragraph is clear and unambiguous language that the "parties may accept the BDPA recommendations." By using the word "may," the parties agreed they would not be bound by the BDPA recommendations. The final phrase

relied on by the Union refers to a market adjustment for the above-listed positions. The thrust of this language prevents the Union from opening up the agreed-on wage schedules for an additional cost of living increase. The contract language does not, in any manner, preclude the use of the statutory scheme for resolving disputes in transit systems. Further, the contract language does not confine the scope of this interest arbitration to BDPA's recommendations. Thus, I must conclude the full scope of the statutory factors applicable to interest arbitration for transit systems are appropriately before this Interest Arbitrator.

V. MARKET ADJUSTMENT

A. The Union

The Union's position is rooted entirely in Article 4.04. According to the Union, the BDPA study concluded the four positions at issue were being compensated below market. The mediator certified the issue at impasse to be:

Wages for four (4) positions: Automotive Repair Supervisor,
Heavy Equipment Mechanic, Lead/Driver Dispatcher and
Bus Washer.

Un. Ex. 8.

Thus, the Union submits the only issue for the Arbitrator to decide "is whether or not there should be an upward wage adjustment for the four affected positions, and if so, how much." Un. Brief, p. 4.

The Union requests that the Arbitrator institute wage adjustments as outlined in the BDPA report effective January 1, 2006. Union representatives testified they would not have agreed to the contract stipulation if the Employer had taken the position it now takes that any wage adjustment would only be agreed to if any or all of

the four positions were more than 6% below the market rate. Employer witnesses admitted this was not mentioned to the Union during negotiations over Article 4.04. For better or for worse, the parties are stuck with their stipulations contained in Article 4.04 and the results of the BDPA wage survey.

The Union reasons that interest arbitrations often involve deciding disputes over conflicting comparables and conflicting data. Arbitrators then have to resolve those conflicts so they can make an appropriate determination as to the level of wages to be paid a particular group of employees. In the instant case, there is no conflict. The four subject positions are below market as determined by the expert engaged and agreed to by both parties.

The Union concludes the Arbitrator should award pay adjustments--as determined in the BDPA report--retroactive to January 1, 2006, to the following positions in the following amounts:

Bus Washer	1.7%
Mechanic	4.7%
Supervisor of Mechanics	11.1%
Lead Driver/Dispatcher	5.8%

B. The Employer

Pullman Transit begins by claiming the Union never advanced a written proposal for the Employer or the Arbitrator to consider as required by WAC 391-55-220. According to the Employer, the Union's letter of January 10, 2008, to the Arbitrator failed to include a proposal and a list of comparable jurisdictions. The vague reference to the rough data BDPA used in reaching its final recommendation does not satisfy the notice provisions of the statute. PERC case precedent is clear on the matter, a party failing to

present a proposal as required is deemed to have waived their right to have such matters considered by the arbitration panel.

At the hearing, the Union tried to argue the BDPA rough data was their proposal. Absent from the BDPA rough numbers, is a proposal or an effective date to implement the purported offer. Accordingly, the Employer submits this argument should be rejected on its face.

Based on the failure of the Union to file a written proposal of the issues ATU intended to submit to arbitration, the Employer avers the Arbitrator is bound to award the Employer's proposal as the only one properly advanced to interest arbitration. Arbitrators are fairly consistent in awarding for the party presenting the proposal and not considering the objections or positions of the party who has failed to make their positions clear on the record.

The Employer next argues that a market adjustment must consider total compensation. For transit employees, the two major elements of total compensation are wages and employer contributions to the medical insurance premiums. Members of this bargaining unit enjoy a medical insurance benefit of the Employer paying 100% of the full family premium. Past practice in Pullman with all its bargaining units, and the controlling statute, require the use of total compensation package comparisons in interest arbitration.

At arbitration, the Union purposely ignored the total compensation received in order to advance the award of their position, even though they have never submitted a written proposal. In the view of Pullman Transit, this type of conduct is neither productive nor within the statute. The Union bargained hard for the Employer to

pay the entire cost of full family medical. For the Union to now attempt to argue the Employer's payment of the full cost of family medical coverage is not an important consideration is disingenuous at best. Evidence produced by the Employer shows that on total compensation, members of this bargaining unit are well above the market position among the comparators. Er. Exs. 10-18. None of the documentary evidence adduced by the Employer was refuted by the Union. As such, the Arbitrator should conclude that no adjustments are needed or warranted aside from the Employer's proposed 4% market adjustment for the Supervisor of Mechanics position.

The Employer points out the BDPA findings and recommendations are clear that no market adjustments are warranted for any of the four positions surveyed. However, the Employer did propose an increase of 4% market adjustment for the Supervisor of Mechanics position. With the one exception, the Arbitrator should award the Employer's position that no market adjustment is needed for the positions of Bus Washer, Mechanics, and Lead Driver/Dispatcher.

C. Discussion and Findings

At the outset of the discussion, I must point out this is truly a unique interest arbitration case. Because of the stipulations set forth in Article 4.04, of the 2006-2008 Collective Bargaining Agreement for resolving the wage issue for Bus Washer, Mechanics, Supervisor of Mechanics, and Lead Driver/Dispatcher, your Arbitrator was confronted with an unusual arbitration record. The Union relied exclusively on the Article 4.04 stipulation that resulted in the BDPA findings and recommendations to support its position. Pullman Transit countered with evidence traditionally offered in an interest arbitration dispute over wages. See your Arbitrator's

Discussion and Findings on the scope of the arbitration hearing in Section IV of this Award.

It is the position of the Employer the Union's notice was defective under WAC 391-55-220. Since the Union failed to present the required "written proposal" to the Employer or the Arbitrator, Pullman Transit argues ATU has waived its right to have the Union's position considered at interest arbitration. I hold the Union's written notice taken literally met the minimum requirements set forth in the statute. There are several sets of numbers included in the BDPA report the Union failed to identify that constituted its "market adjustment" proposal. Given the vagueness and lack of specificity in the Union's written notice to the Arbitrator and Employer, I hold the Union's position for a market adjustment based on the BDPA report to be seriously undermined.

Commencing with BDPA's report, your Arbitrator held in Section IV of this Award, neither party was contractually bound by Article 4.04 to accept BDPA's findings and recommendations. Nothing in Article 4.04 obligated either party to accept or follow BDPA's methodology. The Union cannot have it both ways. The Union wants this Arbitrator to adopt the BDPA's statewide data showing Pullman Transit's top step wages for the positions at issue are below market.

The problem with this approach is the Union ignores BDPA's express caveat set forth in its report:

BDPA considers a structure competitive if it is within 5% plus or minus the competitors.

Er. Ex. 3, p. 4.

Moreover, the Union relies on one part of the BDPA study, which would compel this Interest Arbitrator to overlook the specific findings and recommendations of

BDPA for each of the disputed positions. In conjunction with each job discussed, BDPA wrote:

- Bus Washer: BDPA does not recommend a change in grade level.
- Mechanic: BDPA does not recommend a change in grade level.
- Supervisor of Mechanics: BDPA believes the job is appropriately aligned internally and does not recommend a change in grade level.
- Lead Driver/Dispatcher: In this regard, BDPA believes the position is appropriately aligned for internal equity purposes and does not recommend a grade level change.

Er. Ex. 3, pp. 4, 5; emphases added.

Based on all of the above-stated reasons, your Arbitrator is compelled to reject the Union's proposal at arbitration for wage adjustments in the disputed positions equal to BDPA's top step statewide analysis.

The Constitutional and Statutory Authority of the Employer

No constitutional or statutory objections were raised that would put this Award in conflict with Washington law.

Stipulations of the Parties

The parties stipulated in Article 4.04 of the current Collective Bargaining Agreement a method to resolve the market adjustment dispute over the four identified positions. I have taken the stipulation into account when formulating this Award. The parties also stipulated to waive the statutory obligation of the Interest Arbitrator to submit the Award within 30 days of receipt of the post-hearing briefs.

Compensation Package Comparators

The Union offered no evidence to rebut the Employer's compensation package comparators. I have carefully reviewed the Employer's data on compensation package comparators contained in Employer Exhibits 5 through 17. Because of the manner in which this case was presented to the Arbitrator, I will not burden this Award with a review of each of the exhibits. I find the Employer's unrefuted evidence shows the wage levels in the four disputed positions provide a competitive and reasonable wage when evaluated against the statewide comparator jurisdictions.

Members who hold positions in the four classifications at issue have received the benefit of a cost of living adjustment effective January 1 in each of the three years of the 2006-2008 Collective Bargaining Agreement. The Employer's evidence showed that for 2008, Bus Washer base wages are .8% behind the top step average for the state of Washington and 5% above the average in total compensation. Er. Exs. 14A, 14B, & 14C.

Turning to the statewide 2008 Mechanic base wage, the Employer is 5.5% behind the average at base wages, but 2% behind the average when total compensation is considered. Er. Exs. 15A, 15B, & 15C.

The wage comparison for the Lead Driver/Dispatcher base wage and the total compensation also compares favorably with the statewide comparators. Er. Exs. 13A, 13B, & 13C.

The 2008 comparison for Supervisor of Mechanics base wage shows the position is 9.8% behind the average and 4.3% behind the average when total

compensation is considered. Er. Exs. 16A, 16B, & 16C. The Employer is proposing a 4% market adjustment for the Supervisor of Mechanics job.

The Employer's comparison study included several much larger jurisdictions from western Washington such as Pierce Transit with 822 FTEs, Intercity Transit with 191 FTEs, and Everett Transit with 135 FTEs. The Employer also included in its statewide comparison data Spokane Transit that has 464.5 FTEs. Generally, the larger transit agencies in western Washington pay a higher level of compensation to their employees than do the smaller transit agencies in eastern Washington. By including these much larger properties from western Washington in the comparator group, the conclusion is inescapable that Pullman Transit wages compare favorably on a statewide basis.

Cost of Living

Neither party provided the Arbitrator with any cost of living data as measured by the Consumer Price Index as a factor for resolving this wage dispute. It is important to note that each member of this bargaining unit, including the Bus Washer, Mechanics, Supervisor of Mechanics, and Lead Driver/Dispatcher received cost of living adjustments effective January 1, 2006, effective January 1, 2007, and effective January 1, 2008, based upon a CPI formula set forth in Article 4--Wage Agreement.

Fiscal Constraints

The Employer offered un rebutted evidence concerning the fiscal constraints on the City of Pullman. The Arbitrator finds this evidence supports the Employer's position.

Other Factors

No evidence was presented by either party that could be utilized by the Interest Arbitrator to assist in the resolution of this dispute.

AWARD

The Arbitrator awards the Employer's position that no market adjustment is justified for the classifications of Bus Washer, Mechanics, and Lead Driver/Dispatcher. The Arbitrator awards the Employer's proposal for a 4% market adjustment effective January 1, 2007, for the Supervisor of Mechanics position.

Respectfully submitted,

Gary L. Axon
Interest Arbitrator
Dated: May 12, 2008