

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

MTA BUS COMPANY,

Petitioner,

-against-

TRANSPORT WORKERS UNION OF AMERICA,
LOCAL 106, TRANSIT SUPERVISORS ORGANIZATION

Respondent.

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DR-138

**RIDER TO AMENDED
PETITION FOR
DECLARATORY RULING**

TO: PUBLIC EMPLOYMENT RELATIONS BOARD

1. MTA Bus Company (“MTA Bus”) and the Transport Workers Union of America, Local 106, Transit Supervisors Organization (“TSO”), are parties to a Collective Bargaining Agreement, effective November 1, 2006 to June 7, 2013.
2. On August 2, 2017, TSO filed with the Board a Petition for Interest Arbitration and Designation of Public Panel Member.
3. The Petition contained a section entitled “Terms and Conditions of Employment” but did not identify specific demands for submission to interest arbitration. In the same mailing as the Petition, undersigned counsel for MTA Bus also received a copy of TSO’s Declaration of Impasse, previously filed with the Board on November 10, 2016. Attached to the Declaration is TSO’s most recent demands.

4. TSO's most recent negotiation demands contain numerous demands which concern non-mandatory subjects of bargaining which are, therefore, not arbitrable.

Specifically:

Emergency Work

- A. "Emergency Work" shall be defined as follows: "Emergency Work" shall include work outside of the employee's tour of duty, and not credited under presently existing working conditions, made necessary by extraordinary occurrences, or catastrophes, which, in the opinion of the Department Head would cause a serious interruption of service. Work made necessary by failure of another employee to report for duty, shall not be considered as emergency work.
- B. Supervisory employees required to perform emergency overtime under this Article, outside their normal tour of duty and not on their day off, shall receive time and one-half in case for the number of hours worked.
- C. If, as a result of emergency work, an employee is required to work six (6) hours or more between the completion of his/her regularly scheduled tour of duty and the commencement of his/her next regularly scheduled tour of duty, and at such time or times as to prevent him/her from having eight (8) consecutive hours off duty at any time between the two regularly scheduled tour of duty as may follow the completion of the emergency work, whether that be before or after the time of commencement of his/her said next regularly scheduled tour of duty, and the time when he/she shall thereafter report back for work; except that if the time when he/she would thus report back [sic] for work should be within four (4) hours of time scheduled for the completion of his/her said next regularly scheduled tour of duty. Notwithstanding the foregoing, if an employee, upon completing a regularly scheduled tour of duty, leaves the premise without having any reason to believe that he/she may be called out for emergency work before the commencement of his/her next regular scheduled tour of duty, but is called out and performs emergency work for six (6) or more consecutive hours prior to the time such employee has had insufficient sleep and is unfit for work, shall have the discretion to excuse him/her with pay for part or all of said next regularly scheduled tour of duty, irrespective of whether or not the employee may have had eight (8) consecutive hours of duty before being called out for such emergency work. If an employee is definitely entitled under the foregoing provisions to be excused with pay from part or all of his/her next regularly scheduled tour off duty following the performance of emergency work, but is not so excused, he/she shall be allowed time off with pay from a subsequent tour of duty for the length of time for which he/she

should have been excused, but the day on which he/she is to be allowed such time off shall be determined by advance agreement with his/her superior.

This proposal is non-mandatory, because it (i) does not relate to a wage, hour, and other term and condition of employment and, therefore, infringes on MTA Bus' right to manage its operations; (ii) is vague and ambiguous as to the phrases "emergency work," "outside the employee's tour of duty," "extraordinary occurrences," "catastrophes," "Department Head," and "work made necessary by failure of another employee to report for duty" and therefore, it is not possible to determine whether the proposal relates to a mandatory or non-mandatory subject of bargaining; and/or (iii) overbroad because it encompasses both mandatory and non-mandatory subjects.

Travel Passes

Effective upon full ratification of this agreement, the Company shall issue universal passes to all represented employees and employees who retire from active service entitled the employee free passage on all MTA Bus Routes and NYC Transit Bus and Subway systems. These passes shall be surrendered to the Company in the event the employee is terminated for cause, resigns or otherwise is separated from the Company for reasons other than retirement from active service.

This demand is non-mandatory, because (i) it exceeds the scope of the MTA Bus' authority; and/or (ii) it is vague and ambiguous as to the phrase "universal pass" and as such, could exceed the scope of MTA Bus' authority.

Railroad Commutation Pass

No later than ninety (90) days after full and final ratification of this agreement, employees who reside outside of the five (5) boroughs of New York City, as filed with the Authorities for tax purposes, will be entitled to either the Metro North Railroad or the Long Island Rail Road pass for commutation. In addition, employees will be entitled to use their EPIC Pass on SIRTOA. All existing rules and regulations applicable to commutation passes shall apply. The MTA reserves the exclusive right to revoke the use of such pass, if abuse is established.

This demand is non-mandatory, because it exceeds the scope of MTA Bus' authority.

Health Benefits

- A. The Union is seeking modifications to the current co-pays and deductible of the active Local 100 medical plans to fund improvements to the pre-Medicare eligible retirees medical plans. The goal is to make improvements to the current Local 100 retiree benefits so that they equal those of the NYSHIPlans[sic].**
- B. All incumbent supervisors shall contribute 1.5% of their gross wages on forty (40 hours per week, on a pre-tax basis, to defray the cost of health benefits.**
- C. Inclusion in the non-represented Medical Opt-Out Pilot Program.**
- D. If an employee covered under the terms of this agreement leaves the Company vested with a minimum of ten (10) or more years of qualifying service, and is within five (5) years of receiving a pension benefit, the Company will continue medical benefits without cost to the employee as a vestee and as a retiree.**
- E. If an employee covered under the terms of this agreement leaves the Company vested with a minimum of ten (10) years of qualifying service, and is more than five (5) years from receiving a pension, medical benefits shall not be continued unless the employee assumes direct payment to the state health insurance program for the cost of the benefits. If the employee assumes the benefit costs as a vestee until such times as he/she begins to collect a pension, he/she will then be eligible to receive health benefits as a retiree at no cost. If the employee chooses not to pay for health benefits as a vestee, he/she is not eligible to receive health benefits as a retiree.**

This proposal is non-mandatory, because it is (i) vague and ambiguous as to the phrases “covered under the terms of this agreement” and “leaves the Company” and therefore, it is not possible to determine whether the proposal relates to a mandatory or non-mandatory subject of bargaining; and/or (ii) overbroad because it encompasses both mandatory and non-mandatory subjects.