

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

----- X
In the Matter of the Interest Arbitration

- between -

Transport Workers Union, Local 106 (Transit
Supervisors Organization),

"TSO" or "Union"

- and -

MTA Bus Company

"MTA Bus" or "The Company"
----- X

Case No. TIA 2017-012

APPEARANCES:

For the Union

COLLERAN, O'HARA & MILLS L.L.P.

Denis A. Engel, Esq.

Transport Workers Union, Local 106

Robert Elznic, TSO Chairman, Transportation

Patrick Brennan, TSO Chairman, Maintenance

For the Employer

PROSKAUER ROSE

Neil H. Abramson, Esq.

Rosanne Facchini, Esq.

**BEFORE: CAROL A. WITTENBERG, CHAIRWOMAN OF THE PANEL
VINCENT MODAFFERI, PUBLIC EMPLOYEE PANEL MEMBER
CHARLES GLASGOW, PUBLIC EMPLOYER PANEL MEMBER**

TSO Pension Same as Local 100
See page 3

4. Pension Benefit

Employees represented by the Union shall receive the identical pension benefit as employees of MTA Bus represented by TWU Local 100, with full retroactivity, including, without limitation, the increase in the rate of the employee contribution.

5. Health Benefits

- A. *Active employees covered by an Award in TIA 2012-012 who are enrolled in the MTA Bus TWU Local 100 medical and prescription drug benefit package or who opt-out of medical and prescription drug coverage will contribute 2% of their bi-weekly gross wages. Employees who are enrolled in NYSHIP shall make employee contributions under the same terms and conditions that apply to managerial employees at MTA Bus. All contributions shall be on a pre-tax basis.*
- B. *Dental Benefits – The parties agree to amend the dental package for current MTA Bus supervisors and current and future retirees receiving the New York City Transit TSO, Local 106 Dental Plan, as set forth in Attachment A. The Company shall be obligated to maintain the level of benefits set forth therein. The new plan will be subject to the Company's procurement process. The current Dental Plan shall remain in effect pending the completion of the procurement and implementation process for the new provider for the new plan. It is anticipated that the new Dental Plan will be in place by the end of the first quarter of 2019.*
- C. *Vision Benefits – The parties agree to amend the vision package for current MTA Bus supervisors and future retirees receiving the New York City Transit TSO, Local 106 Vision Plan, as set forth in Attachment B. The company shall be obligated to maintain the level of benefits set forth therein. The new plan will be subject to the Company's procurement process. The current Vision Plan shall remain in effect pending the completion of the procurement and implementation process for the new provider for new plan. All current retirees as of the date of issuance of an Award in TIA 2012-012 receiving vision benefits shall maintain their current vision package. It is anticipated that the new Vision Plan will be in place by the end of the first quarter of 2019.*
- D. *Dental & Vision Benefits – Incumbent employees currently participating in the managerial dental and vision benefit programs pursuant to Section 5(D)(1) and (3) of the September 15, 2014 Memorandum of Understanding shall now participate in the New York City Transit TSO, Local 106 Dental and Vision Plans as amended and set forth in Attachments A and B. This provision shall become effective when the new Dental and Vision Plans are in place. Until such time, employees shall continue to participate in the managerial programs.*
- E. *The Company will increase the line of duty death benefit to \$250,000.00.*

6. Vacation

Effective the date of issuance of an Award in TIA 2012-012, one fifty-second vacation pay shall be eliminated. Vacation shall be paid on the basis of eight (8) hours per day for all

LOCAL 100 Pension as Designed by Arbitrator Edelman. ③

Supplemental Stipulation of Facts.¹ Those submissions were completed on September 12, 2016. This matter was fully briefed by letter submission on October 17, 2016.

POSITIONS OF THE PARTIES

The Union seeks pension parity with its T/A members. It notes that in or about 1960 the New York State Legislature created MaBSTOA ("OA"), a public entity whose employees had worked for private bus lines. At that time pension assets of the private lines were transferred to the OA and employees were granted identical retirement benefits received by TA members. Hence, the Union concludes, ample precedent exists for its proposal to be adopted via a similar benefit equalization.

Moreover, the Union argues, equity demands the same result here. Citing Example 8, i.e., a pension benefit of \$37,283 at age 55 based upon a Final

¹ I would be remiss if I did not commend counsel on their joint submission of these documents. Distilling the information as they did in the format I requested made the task of culling through the enormously complex factual matters that presented themselves here far easier than would have been possible in the context of a more traditional hearing. The transcript in such a hearing could have been more than a thousand pages long. Moreover, when the first Stipulation was presented, I was able to focus on other issues that required attention and their response was likewise helpful.

Average Salary of \$74,566, it points to the following disparity.

MTA Bus Pension

OA Pension

25 Years (at age 57) \$31,500
30 Years (at age 57) \$37,800

25 Years (at age 55) \$37,283
30 Years (at age 55) \$44,739.60

In the Union's words, "No one could credibly argue that these differences are anything but an injustice to members who work at MTA Bus." Brief, p. 4.

Other factors exacerbate this gap, Local 100 insists. It notes that a cost of living adjustment ("COLA") grants OA² retirees an added pension benefit equal to 50% of the rise in the Consumer Price Index ("CPI") on the first \$18,000 of retirement compensation. No such escalation exists for MTA Bus employees, it points out. As such, it alleges, the former increases as wages rise, while the latter remains frozen, and, therefore, de-escalates in value as prices rise.

Finally, the Union asserts, an especially glaring inequity exists at the Yonkers Depot.³ It notes that individuals who retire at that site receive only \$82 per month if they cease employment at age 57, the Normal Retirement Age at MTA Bus, for that portion of

² Since OA and TA pensions are identical, reference to either group is appropriate.

³ Apparently, some eighty employees are affected.

their service at Liberty Lines. This gross disparity should be addressed by calculating the OA benefit, subtracting what is paid under the Liberty Pension Fund⁴ and paying the difference from the MTA Defined Benefit Plan, Local 100 maintains.

In sum, Local 100 stresses that adopting its proposals will do nothing more than place MTA Bus employees on a more even footing with their counterparts in the MTA system. Accordingly, it asks that they be awarded as presented.

MTA BUS insists that only a rise from \$105 to \$115 is warranted. Initially, it asserts, any pension improvement must be consistent with the established bargaining pattern. Citing a number of my prior Interest Arbitration Awards, it maintains that, "Labor relations stability is advanced by applying the relevant patterns of economic modifications from one bargaining unit to another."⁵ Since MTA Bus settlements have mirrored those in the TA/OA, they must do so here, it urges. Granting Local 100's pension demands destroys that pattern, MTA Bus submits.

⁴ There exists a "freeze and fresh start" benefit at Yonkers.

⁵ e.g., MTA Bus and Local 1179, ATU, M2012-14 (2013 at p. 16.)

Moreover, the Employer argues, the \$10 increase it proposes conforms to the bargaining pattern already established. Citing Stipulations 46, 47 and 55, MTA Bus observes that the pension enhancement it proposes equals .84% of the total economic package agreed to in November 2015; and that this figure is identical to the difference in the net cost of the 2012-2017 contract and the November 2015 Memorandum of Agreement. Thus, the Employer concludes, the \$10 monthly rise in benefits is all that should be awarded.

MTA Bus acknowledges that its offer will not ~~achieve parity between its employees and others in the~~ TA/OA family. However, it points out, comparability between TA and OA pensions took four rounds of bargaining lasting approximately a decade. Consequently, it asserts, its proposed enhancement "... is the next logical step in that incremental bargaining." Brief, p. 5. Accordingly, like the Union, the Employer asks me to grant its proposal as presented.

DISCUSSION AND FINDINGS

Several introductory comments are appropriate. This extremely complex set of factual circumstances leads to a difficult determination. The language of the agreement to arbitrate offers significant guidance, however, in arriving at a just outcome. The parties agreed to "resolve this matter by presenting the issue of the *disparity* to arbitration for a final and binding determination as to what constitutes an "appropriate pension" for Local 100 members employed by the MTA Bus Company." (Italics added.) My charge, therefore, is to arrive at an "appropriate pension" by ~~focusing on the "disparity" between the MaBSTOA/NYCERS~~ pension benefit and the pension benefit provided by the MTA Defined Benefit Pension Plan.

Also, I recognize that my role here is an extension of the parties' bargaining process. I must complete the task the parties were unable to achieve on their own. Arriving at a fair and equitable result means recognizing both the need to award pensions which bridge a reasonable portion of the gap between MTA Bus and OA benefits and, at the same time, pay homage to the need for maintaining established patterns.

The disparity between the benefits provided by these two pensions is significant. That fact is not seriously in dispute. There are four components which comprise the gap:

1. The amount of a basic pension benefit at retirement is significantly lower for LOCAL 100 members at MTA BUS.
2. The static nature of the pension credit (multiplier) requires periodic revisiting of the issues raised in this arbitration.
3. There is no cost of living adjustment to the pension benefit after retirement.
4. There is an anomaly in the benefit provided to members formerly employed by Liberty Lines Express (now Yonkers Depot).

I address these items in order.

The Amount of the Pension Credit (Multiplier)

Initially, I reject LOCAL 100's argument that the only "appropriate" remedy is to convert the current pension construct (a multiplier x years of service equaling a monthly benefit) to a Final Average Salary - MaBSTOA style pension. This methodology would simply be too drastic a departure from the current (and long-standing) model for providing pension benefits to these members. Should the parties agree to adopt that approach at some time in the future, so be it. In this forum, however, retaining the

multiplier construct is a far better and more practicable resolution.

MTA BUS asserted that an increase in the multiplier to \$115/year of service as a monthly benefit is both appropriate and within the "pattern" of increases earned by other segments of its workforce. While not conceding the propriety of any further increase, it is not appropriate, MTA BUS maintained, to expect an increase in the multiplier to the levels the Union sought. MTA BUS noted that the proposed \$10/credit increase is *not* accompanied by any corresponding increase in the weekly contribution from LOCAL 100 members.⁶ Without increasing the member contribution on a proportional basis, no further increase should be awarded, MTA BUS asserted.

A complicating factor in arriving at an "appropriate" pension (as a comparator to pensions earned at TA/OA) is this: at MTA BUS, all years of service for the purpose of earning pension credits are treated equally, regardless of the income of the member. Thus, at MTA BUS a Cleaner/Helper (whose earnings may be in the \$50,000-55,000 range) earns the same pension as a top earning Bus Operator (whose

⁶ LOCAL 100 acknowledges that its members in the TA/OA pay more than the current \$29.06 that members at MTA BUS pay.

wages for a year can easily exceed twice that amount) as long as their years of service are the same. While the wisdom of such a construct can be debated, what cannot be debated is that arriving at an appropriate multiplier lessens the potential pension for top earners at MTA BUS to compensate for the increase in value for lower paid members. Said differently, while it might be an easy correlation (TA/OA Maintainer with MTA BUS Maintainer), the comparison falls apart when one factors in the significantly enhanced pension benefit that lower wage members enjoy at MTA BUS. Thus, while LOCAL 100's position is that \$142.50/year of service would be the rough equivalent for top earning Bus Operators and Maintainers, that value is simply too high for members whose compensation is lower.⁷

I note that the pension credit multiplier has not been effectively increased since 2009. Other LOCAL 100 members at the TA/OA see their pensions increase as wage rates rise. Accordingly, I find that a base pension credit (multiplier) that is \$25 higher than its current level (\$130/per year of service as a monthly benefit) should go into effect as of the date

⁷At the levels suggested by LOCAL 100, it is possible for a Cleaner/Helper to earn a pension that would exceed his/her earnings as an active employee.

of this Award, consistent with the remainder of my findings.

In arriving at the \$25 increase in the current level, I have taken into account each of the parties' positions relating to incremental increases, and the historical precedent set by the MaBSTOA Pension Plan. MaBSTOA did not achieve true pension parity until after twelve (12) years of having been acquired by the Transit Authority. MTA Bus took over the various private lines between 2005 and 2006. Thus, achieving full parity before 2017 (the tenth year after the full takeover) would be inconsistent with that historical pattern.

However, as LOCAL 100 contended, for those who retired prior to this increase in the pension credit (multiplier) set forth above, some incremental increase is warranted. As MTA Bus has already stated that increasing the pension credit to \$115 is consistent with the pattern of increases afforded to other MTA bargaining groups, I conclude that Local 100 members at MTA BUS who retired after the date of the Memorandum of Understanding (November 9, 2015) are entitled to that increase for all their years of service. These former members shall have their

pensions recalculated to reflect \$115 for each year of service. However, such increase shall be prospective only and MTA Bus is not obligated to make any retroactive payments.

Subsequent Increases in the Pension Credit (Multiplier)

LOCAL 100 contended that utilizing the general wage increase and applying it to the pension credit multiplier would be a satisfactory resolution to the issue of disparity that is inherent in the non-escalation of the MTA Bus pension. Its approach raises two major concerns, however. First, applying the general wage increase to the multiplier times years of service formula (for both past and future service) would, over time, result in a much higher pension benefit for members of LOCAL 100 at MTA Bus (as compared to members in the TA/OA). Second, there would be a significant financial impact in applying the increased multiplier to that service, when neither the member nor MTA Bus has made contributions to support the prior years' service at the higher rate.

MTA Bus rejected LOCAL 100's position as to how to increase the pension credit on a going forward basis, insisting that its offer of \$115/year of

service was sufficient. This figure, however, does not address the inequity of rising OA pensions vs. static MTA Bus ones.

Neither of the options proposed by the parties strikes me as particularly palatable. Adopting MTA BUS' position by freezing the multiplier at \$115 (or even \$130) merely puts off for another day a problem that has "plagued LOCAL 100 members for decades." See, Brief, p. 4. On the other hand, LOCAL 100's approach swings too far in the opposite direction by providing a better pension benefit over time, rather than one that resolves the "disparity" between the pension benefits. In my view then, the following determination reflects both parties' concerns. It increases the pension credit over time but not to the extent the Union proposed. Thus, I shall direct that the pension credit shall be increased on a going forward basis, i.e., effective January 1, 2018, by the same general wage increase (g.w.i.) accorded members of this bargaining unit.

By way of example, the 2017 figure is \$130. If the wage increases are 3 per cent for 2018 and 2019, the pension credit would rise to \$133.90 for 2018 and \$137.92 for 2019. As such, the pension credit

increases annually, but rather than multiply the pension credits by the number of years of service, the yearly adjusted figures are added together.

This finding is fair to LOCAL 100 members, for their pensions will increase over time commensurate with the increases in wages (similar to what exists at the TA/OA). It also represents a substantial increase over the prior formula. In addition, it is also fair to MTA BUS since future increases in pension costs can be taken into account as g.w.i.'s are known.

I recognize it is difficult to predict what the future will hold for both MTA Bus and LOCAL 100. However, as noted, this approach represents a fair balance between the competing needs of the parties. Moreover, nothing in this Award precludes the parties from negotiating a different pension benefit. I encourage them to do so if that is their will.

Cost of Living Adjustments

The MTA Defined Benefit Pension Plan (Article 14) does not provide for cost-of-living-adjustments ("COLA"). LOCAL 100 argued that this COLA is a necessary component to any "appropriate" pension, as all members in the TA/OA receive such increases during their retirement years. In my view, a COLA identical

to the TA/OA one should be applied to MTA Bus. This is so because the current formula is very limited in nature. The COLA only applies to pensioners who have been receiving pensions *for more than five (5) years*. Further, the amount of the COLA is capped in two significant ways: the percentage increase of the COLA is **50%** of the CPI (Consumer Price Index); and the increase is limited to the first \$18,000 of the pension benefit (or the Maximum Retirement Allowance - whichever is *less*.) If, for instance, the CPI is 2% in a given year, only 1% will be multiplied by \$18,000 for a COLA of \$180/year. Each year's COLA is added to the prior years' COLA's to arrive at the total COLA payment. Such a modest improvement will not unduly burden MTA Bus on a going forward basis, I am convinced. Indeed, given the enormous sums that could be involved were this benefit applied to *all current retirees*, I Award this COLA benefit, as limited in NYCERS/MaBSTOA, only to the pension benefits of those who retire on or after the date of this Award.

Yonkers Pension

This issue is the most difficult one presented by the parties. As indicated in the record, LOCAL 100 members who have prior service with Liberty Lines will

receive two different pension checks: one from the Westchester Pension Fund and the other from the MTA Defined Benefit Plan. The pension benefit for service at Liberty Lines is "frozen" as the result of an agreement between the parties (LOCAL 100 and Liberty) in late 2004 at \$105/year of service with a Normal Retirement Age of 62. Because the pension benefit for LOCAL 100 members employed at MTA BUS has increased, (Normal Retirement Age 57 and the pension benefit/year of service increase as provided for above) the relative value of the service earned at Liberty has and will decrease. Such a diminution is problematic and raises serious equity concerns.

Conversely, MTA BUS argued strenuously that it cannot be held responsible for the deficiencies in a private pension plan, over which it has no control and to which Local 100 agreed. Unlike the other private pension plans, MTA Bus observed, none of the assets of the Liberty Pension Plan were transferred to the MTA Defined Benefit Plan as part of the takeover.

The costing out issue is also very difficult. It appears that a yearly contribution of \$100,000 would suffice to fund the difference between current levels and \$115/year of service. However, no data was

available to make a determination as to the cost of the increased benefit levels provided above. Moreover, I am extremely mindful of MTA Bus' claim that supplementing the private pension earned by former Liberty Lines employees could be seen as an illegal gift of public monies.

The only viable resolution, as I see it, is to require the parties to address this issue in bargaining for a new contract. Though I can sympathize with the eighty or so members who will not see this perceived inequity addressed, it is equally unfair to hold up the Award for the vast majority of the bargaining unit (some 2,000 employees) while this complex issue is sorted out. Thus, I shall direct that consistent with the Side Letter annexed to the November 9, 2015 Memorandum of Understanding, the parties shall address this issue in its next round of negotiations.

Remaining Issues

Three remaining issues require attention. First, in the June 9, 2009 Award, the Parties were directed to address a "costing gap" (of .296%) between the MTA Bus Award and the TA/OA Award. LOCAL 100 argued that the costing gap was addressed by the parties' failure

to mention it in the context of the Memorandum of Understanding of November 9, 2015. MTA Bus insisted that the parties never resolved this cost-carryover issue, despite several attempts in the intervening period (from 2009 to 2015) to do so.

Local 100's argument is not persuasive. As far as my Award is concerned, the cost-carryover matter still requires resolution, and I direct the parties to engage in such discussions as will put finality to this issue.

Second, MTA Bus asked that LOCAL 100 members must be required to increase their pension contributions, currently \$29.06/week, in the corresponding amount of the pension credit increase. I agree. A \$25/credit increase in the multiplier is a 23.8% rise in the benefit. A corresponding increase to the weekly employee contribution is \$6.92 resulting in a new contribution (effective January 1, 2017) of \$35.98 per week. This member contribution shall thereafter increase in the same percentage amount as the pension credit, as set forth above, at the same time as

general wage increases are applied.⁸

Also, I note MTA Bus' insistence that any enhancements to the pension over and above its \$115/pension credit must be accounted for in order to fit within the existing "pattern" of increases.⁹ The necessity and amount of such are a matter of significant dispute. The history of the parties' relations informs the discussion to a large degree. Both parties acknowledge that a similar situation was presented in assimilating MaBSTOA. Over the course of years, the pensions became identical. But first, the parties agreed to approach both NYCT and MaBSTOA as one collective bargaining agreement for Main Table negotiations purposes, with Departmental negotiations handled separately. Furthermore, as with the cost-carryover issue discussed above, the parties have addressed issues such as these in subsequent rounds of bargaining. Building on these historical precedents, I direct the parties to conduct their Main Table negotiations for MTA BUS together with NYCT and MaBSTOA and to consider the MTA Bus collective

⁸ The parties' collective bargaining agreements are expiring on January 15, 2017. This Award is written without the benefit of knowing whether the parties will come to terms on successor agreements (or what those terms will be). The timing of any general wage increase may have an impact on the terms of this Award.

⁹ It is worth noting that in the context of the June 9, 2009 Award LOCAL 100 members funded the entire increase (from \$82/year of service to \$105/year of service, as well as other pension enhancements) with work rule concessions.

bargaining agreement part and parcel with the TA/OA Contract. Thus, I shall afford MTA Bus the opportunity to petition me for an appropriate remedy if it believes the value of the .296 has not been accounted for in the next round of bargaining.

Finally, as previously indicated, this dispute is complicated. It would be irresponsible to the parties were I to end my role as "functus officio", if issues, including unintended consequences, arose concerning the meaning and/or implementation of the terms of this Award. Thus, in the event any such matters arise, I shall retain jurisdiction to resolve them.

In sum, I conclude that this finding represents a fair and equitable balance between the obligations of the Employer and the needs of MTA Bus-LOCAL 100 members. Accordingly, its terms are to be implemented as indicated. It is so ordered.

AWARD

1. Effective upon the date of this Award, the pension/credit multiplier shall be increased for all years of service (except as indicated in this Opinion) from \$105 to \$130.00.
2. Former members of the bargaining unit who retired between the date of the parties' Memorandum of Agreement (November 9, 2015) and the date of this Award shall be entitled to have their pension benefit recalculated to reflect \$115 for each year of service, subject to the same limitations as above, prospectively. MTA Bus is not obligated to pay any retroactive adjustments.
3. There shall be increases in the pension credit, hereafter, which shall coincide with the general wage increase and which shall be applicable to service in the year of that increase. Subsequent years general wage increases shall be applied to the pension credit for each of those years. The sum of the pension credits for each of the years of service shall be the monthly benefit, as described above, with the caveat that there shall be no year in which the pension credit decreases, except as I may order.
4. There shall be cost-of-living adjustments to pension benefits for all retirees who retired on or after the date of this Award, which shall be the same COLA increase, with the same limitations, as provided for in the MaBSTOA Pension Plan.
5. The parties are directed to address the .296% costing gap referenced in the Zuccotti Award, dated June 9, 2009, in their upcoming negotiations relating to the next collective bargaining agreement, as it pertains to the funding of the pension benefit increases awarded herein.

6. The weekly Employee pension contribution shall increase from \$29.06 to \$35.98 commencing January 1, 2017 and shall thereafter increase in the same percentage amounts as the pension credit as set forth in paragraph 3.
7. I shall retain jurisdiction to aid the parties in implementing its terms, including, without limitation, addressing the above cost-carryover issues and the Yonkers Pension issue.
8. There shall be no other changes to the pension benefit for LOCAL 100 members at MTA BUS, except as provided above.
9. Article 14 of the MTA Defined Benefit Pension Plan shall be amended in accordance with this Award.

DATED: November 17, 2016

Howard C. Edelman

HOWARD C. EDELMAN, ESQ.

ARBITRATOR

STATE OF NEW YORK)

) s.:

COUNTY OF NEW YORK)

I, Howard C. Edelman, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

DATED: November 17, 2016

Howard C. Edelman

HOWARD C. EDELMAN, ESQ.

ARBITRATOR