

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of Factfinding:)	
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OMNITRANS)	
)	PERB IMPASSE
Employer,)	No. LA-IM-148-M
)	
and)	DATE ISSUED:
)	
AMALGAMATED TRANSIT UNION, LOCAL 1704)	September 19, 2014
)	
)	
Union.)	

Factfinding Panel:

Impartial Chairperson:

_____ **Walter F. Daugherty**
 Arbitrator/Factfinder

Employer Member:

P. Scott Graham
 CEO/General Manager
 Omnitrans

Union Member:

William G. McLean
 International Vice President
 Amalgamated Transit Union

Appearances:

For the Employer:

Carol A. Greene
 Deputy County Counsel
 San Bernardino County

For the Union:

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BACKGROUND AND PROCEDURAL HISTORY

The Amalgamated Transit Union, Local 1704 (“Union”) is the certified exclusive bargaining representative for the Coach Operators Unit. This Unit consists of some 400 Coach Operators employed by Omnitrans (“Employer”), a transit agency that provides motor coach transportation services in San Bernardino County.

With respect to the impasse before the Factfinding Panel (“Panel”), negotiations on a successor Memorandum of Understanding (“MOU”) began in 2012 pursuant to its Term provisions. Negotiations continued throughout 2013, an impasse was reached and the parties attempted to resolve the bargaining deadlock in mediation. As mediation was unsuccessful, the Union submitted its request for a factfinding panel to the Public Employment Relations Board (“PERB”). By letter dated April 9, 2014 from the PERB, the undersigned was advised that he had been selected by the parties to chair the Factfinding Panel. P. Scott Graham was designated as the Employer’s Panel Member and the Union selected William G. McLean as its Panel Member.

At the request of the Chairperson, both parties waived the statutory time limits for the hearing and the completion of the factfinding process. Factfinding hearings were held on July 14 and 15, 2014 at which both parties appeared and were afforded full opportunity to present evidence and offer argument, with each party having the opportunity to present and explain its proposals and respond to the other party’s proposals. A verbatim transcript of the proceedings was provided to the Chairperson as an aid to his deliberations in this proceeding.

Pursuant to agreement of the Panel Members, the Chairperson by e-mail forwarded copies of his draft Report and Recommendations. Thereafter, it was agreed that the Panel Members

would submit their respective dissents/concurrences without the need of an Executive Session.

Their respective submissions are attached.

RELEVANT STATUTORY PROVISIONS

With respect to the Panel's deliberations, the Meyers-Milias-Brown Act at §3505.4. (d)

states:

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

ISSUES AND RECOMMENDATIONS

At the outset it is to be observed that it is the Panel's task to take the "facts" as presented by the parties and use them as a framework on which to craft recommendations that will assist in a resolution of the impasse. It should be further noted that the Chairperson subscribes to the view that factfinding is an integral component of the negotiation process and that compromise is an essential element of this process. The following recommendations are offered with these guiding principles in mind. In such regard, rather than detailing the positions of the parties and

their respective proposals advanced during negotiations, this information will be provided in brief fashion as it specifically relates to each issue still in dispute.

During the two days of hearing, presentations were made regarding 17 contractual provisions that remained in dispute. This number was winnowed down during mediation and immediately before the factfinding hearing from the articles that were in dispute when impasse had been reached. Revised and/or modified proposals were made both during mediation and in connection with the factfinding; the most recent iterations of the parties' respective proposals are addressed here. The parties elected to first present the two major unresolved economic issues – wages and health and welfare benefits – followed with their respective presentations regarding the other MOU provisions at issue in these proceedings. This order of presentation will be followed in this Report.

Article 60 – Wages

As a common denominator underpinning the Employer's position regarding wages, the contractual Comprehensive Benefits Article, and the other provisions that have an economic component are its arguments regarding its inability to pay. The "financial ability of the public agency" is a specific criterion listed in Government Code §3505.4 (d) that is to be considered by the Factfinding Panel in crafting its findings and recommendations. The Union disputes the Employer's contention, arguing that it is within its financial capabilities to provide the various economic increases presented in its proposals. According to the Union, the Panel should focus on other Government Code §3505.4 (d) criteria, namely, the relevant increase in the consumer price index, internal wage comparisons, and comparisons with compensation packages at comparable public agencies. Although these elements are specifically treated in the discussion

and consideration of the parties' respective wage proposals, the findings and conclusions of the Chairperson are applicable to the various other proposals that have an economic element or impact.

The Employer through the testimony of Service Planning Manager Jeremiah Bryant and Treasury Manager Maurice Mansion and submission of various budget related documents developed its case as to its ability to pay. The Employer's approved operating budget from FY 2008/2009 through FY 2012/2013 decreased by some \$3 million and the amounts and relative proportions of the various funding sources changed during this period, with a reduction from about \$48 million to \$34 million in Local Transportation Funds ("LTF") (E. Ex. 1 and E. Ex. 3).¹ This reduction was offset to some extent by an increase in the use of Federal Transit Administration Funds ("FTA") for operations from \$1.7 million to \$10.9 million and, beginning in FY 2010/2012, the use of State Transit Assistance Funds ("STA") to cover operating costs. STA funds can be used for operations only when the agency's cost increases do not exceed the movement in the Consumer Price Index ("CPI").

From FY 2008/2009 through FY 2012/2013, the Employer's actual expenditures for wages, salaries, and benefits were less than the respective budget allocations by a range of some \$900,000 to about \$3 million for each fiscal year. This pattern is reflected in the April 2014 Agency Management Report that shows an underexpenditure of some \$2.4 million through April 2014 for salaries and benefits (U. Ex. 3). While this savings will be reduced as year-end accruals are recorded, it does not appear that the savings will be fully eliminated and that some

¹Employer and Union exhibits are referenced as "E. Ex. __" and "U. Ex. __," respectively. "RT" refers to the transcript.

underexpenditure in salaries and benefits as in prior fiscal years will be realized. These historical “savings” in salaries and employee benefits are apparently caused by the Employer using budgeted positions to compute the budget allocation and vacancies occurring during the year.

Although the FY 2013/2014 budget provided for a reduction by about \$200,000 in salaries and benefits, the FY 2014/2015 budget increased the salaries and benefits allocation by some \$2.7 million, or about 6.7 percent (U. Ex. 2). This increase funding reflects the implementation of the sBX services for the entire fiscal year. However, since 27 budgeted Operator positions are allocated to this service along with an unspecified number of other employees, it does not appear that the increase in salaries and benefits in the FY 2014/2015 is solely attributable to the sBX services.

The Chairperson notes that the Employer’s seven-year funding plan running through FY 2019/20200 shows a deficit of \$12.81 million and that the Fiscal Year 2015 Plan includes a \$0.5 million deficit (U. Ex. 2). It is also noted that this plan was developed in concert with the San Bernardino Associated Governments (SANBAG) and that SANBAG’s funding forecast does not anticipate any increase in funds that would eliminate or reduce the projected deficits. However, as noted above, the Employer has historically spent less for salaries and employee benefits than the approved budget amounts and the FY 2014/2015 budget provides for a 6.7 percent increase in salaries and employee benefits, not all apparently due to the full year implementation of the sBX service. As it relates to the Employer’s inability to pay position, the Chairperson notes its contentions regarding the effect of the bargaining unit’s attendance issues on its salary and benefits expenses. However, after careful consideration of the evidence presented and the parties’ respective contentions, the Chairperson cannot conclude that the Employer’s budgetary

position is such that it can be stated to a certainty that it does not have the ability to offer and pay a total economic package greater than currently offered to the Union. Its financial position, however, requires a fiscally prudent and careful approach in recommending any increases above those currently proposed.

The Employer's last offer regarding Article 60, Wages, was for no increase in year one, a 2.30 percent increase in year two, and a 2.75 percent increase in year three of the MOU. The Union's proposal proffered during the factfinding provides for a 2.3 percent increase effective March 2, 2013, a 3.4 percent increase effective March 2, 2014, and a 3.0 percent increase effective March 2, 2015. It also proposed a \$2.00 per hour differential for the operation of a vehicle more than 43 feet in length, language regarding potential changes in sBX operations, and that employees hired before January 1, 2013 and who enroll in the Employer's 457 deferred compensation plan, will receive an Employer match up to 3 percent of the employees' contribution.²

In support for its wage proposal, the Union points out that bargaining unit employees have not had a wage increase since 2009, that the relevant CPI has increased by some 9.5 percent during the relevant period, that certain management and confidential employees received a 3 percent pay increase on July 1, 2014, and that bargaining unit wages are lower than comparable transit districts and less than prevailing trends in settlement agreements. The Employer continues to assert its inability to pay, and argues that the increases given to the few management and confidential employees are not a valid basis for comparison, that the relevant external wage

²The proposal regarding "size pay" was also included in the Union's proposals regarding Article 39, Differentials, and is addressed in the discussion below regarding that Article. Since no discussion was had regarding the sBX proposal, no recommendation will be made concerning that matter.

comparisons show that bargaining unit employees are adequately compensated, and that the Union's reliance on salary data for agencies such as the Los Angeles County Metropolitan Transit District and on data for classifications other than coach operators is misplaced as such data is simply not comparable.

CPI data is a factor that the relevant provisions of Government Code §3505.4 (d) direct the Panel to consider. In applying the CPI data, it is readily apparent that since 2009 bargaining unit employees have experienced a some 9.5 percent erosion in the purchasing power of their wages provided by the Employer (U. Ex. 7). While it is acknowledged as argued by some economists that because of modifications in purchasing patterns the CPI does not reflect the true impact of inflationary increases, the upward movement in the CPI weighs in favor of a larger wage increase than currently offered by the Employer.

Regarding the salary increase received by certain management and confidential employees, this increase was limited to salary levels six through nine for which the greater disparity with external market values was found (U. Ex. 3). Management and confidential employees are at will with none of the job protections afforded by the parties' MOU here and it appears that these employees had not received any salary increase since 2009. Given that market-based comparisons led to the salary increases for these management and confidential employees and the differences in their respective employment status, the Chairperson does not find their 3 percent increase to be particularly relevant and persuasive in determining the appropriate wage increase for this bargaining unit.³ As to the external wages comparisons, such

³Although "Pay Compression issues?" was listed as a disadvantage concerning the management and confidential employees pay increases, the Chairperson reads this as a reference to its impact on the management and confidential employee salary grid (U. Ex. 1).

comparisons are often less than precise because of questions as to the identification of the proper agencies on which to make these comparisons and differences in total compensation structures, including health and welfare benefits and progression through the wage scales. In viewing the operator wages for various transit districts throughout the State, it is apparent that the more upscale coastal transit districts pay higher wages than their inland counterparts. However, some public transit districts operating “inland” pay higher coach operator wages than this Employer, e.g., Stockton’s top hourly wage is \$24.00 and Fresno’s top hourly wage is \$23.39 (U. Ex. 7). On the other hand, while most are privately operated, lower wage rates for coach operators than paid here are found in a number of transit districts.

The Riverside Transit Agency (“RTA”), the district the Employer asserts is most comparable, has a current top step rate of \$21.88 per hour (E. Ex. 1). However, for those Omnitrans employees who have a sufficient amount in their comprehensive benefit bucket to cover the CalPERS retirement deduction, the effective hourly rate for these employees is higher than paid by the RTA.⁴ And, as pointed out by the Employer, “local peers” SunLine and Mountain Transit pay \$1.82 an hour and \$2.99 an hour less, respectively, than the current top step wage provided in the current MOU here.⁵ While RTA, SunLine, and Mountain Transit compete in virtually the same labor market as the Employer, nothing in the pertinent provisions of § 3505.4 (d) (5) restricts “comparable public agencies” to only those that recruit in the same labor market.

⁴RTA Operators must pay 7 percent of their wages for CalPERS retirement.

⁵The top step wage for SunLine operators was increased by 3 percent effective May 1, 2014 (U. Ex. 8).

Government Code § 3505.4 (d) (8) directs the Panel to consider “any other facts” not specified in § 3505.4 “which are normally or traditionally taken into consideration into making the findings and recommendations.” In the Chairperson’s experience, industry settlement patterns are often afforded significant persuasive weight in devising recommendations as to the appropriate wage movement in bargaining deadlocks. Documents submitted by the Union show that SunLine and ATU Local 1277 recently concluded negotiations providing for 3 percent across the board increases effective May 1, 2014 and January 1, 2016, respectively (U. Ex. 8). These documents show that LACOMTA employees represented by the ATU received 3 percent wage increases on July 1, 2013, July 1, 2014, July 1, 2015, and July 1, 2016, respectively, and quarterly increases of either nine cents or 10 cents per hour (U. Ex. 9). This settlement did not involve coach operators. And in negotiations concluded in March 2014 for a collective bargaining agreement effective July 1, 2013 to June 30, 2016, coach operators employed at Long Beach Transit received a 5.25 percent increase effective at ratification and a 3.13 percent increase effective July 1, 2015 (U. Ex. 10).

The Employer’s arguments predicated upon economies of scale and differences in the funding sources for the LACOMTA and Long Beach Transit on the one hand and this Agency on the other are acknowledged and have been considered (E. Ex. 10). Nonetheless, the fact remains that transit industry labor settlements, at least for these two agencies and SunLine, show percentage wage increases for coach operators above those offered by this Employer.

After consideration of the evidence presented, including the various budget documents, the parties’ arguments, and the relevant provisions of Government Code § 3505.4 (d), it is the recommendation of the Chairperson that the parties agree to a 3.4 percent wage increase

retroactive to March 2, 2014 and a 3 percent increase effective March 2, 2015. The Union's proposed 2.3 percent increase effective March 2, 2013 is not recommended, for such retroactive application would effectively require the Employer to absorb a some 5.7 percent increase in FY 2014/2015 for wages alone, which excludes any additional payroll costs driven by this increase in the base rate. The Chairperson does not believe it fiscally prudent under the present economic and budget situations to impose this significant cost increase on the Employer.

As to the Union's proposal regarding the Employer's 3 percent maximum match of employee contributions to the 457 deferred compensation plan, given the wage and other increases as herein recommended, the Chairperson does not recommend that this proposal be adopted.

Article 34 – Comprehensive Benefits

Full-time bargaining unit employees currently receive a maximum monthly contribution of \$970 (\$485 per pay period for the first two pay periods of each month) to a "bucket" that is allocable in fixed order to Health, Dental, and Vision Insurance, the employee's contribution to the Public Employment Retirement Systems ("PERS"), and Optional Term Life Insurance.

With respect to the "bucket amount," the Union proposes that it be increased to up to \$525 for each full-time employee that will subsequently be adjusted each September by adding 90 percent of any increase in health insurance plan premiums to this amount, with the employee responsible for the remaining 10 percent in the plan premiums.⁶ During factfinding, the Employer proposed that the amounts be increased to \$500 following ratification, to \$512.50 in September 2014, and to \$525 in September 2015.

⁶All references herein to the bucket amount are to the pay period.

Bargaining unit employees are offered two health plans, currently United Health Care and Kaiser. Depending on the plan and coverage selected, premium rates have increased by a range of some 12 percent to 22 percent from October 2011 to October 2013.⁷ For employees enrolled in the Family Plans, their out-of-pocket costs have increased by some \$200 per month.

As previously discussed, the Chairperson did not conclude that the Employer's fiscal situation was such that it was not able to provide a total economic package more than it has currently offered. The Union's proposal for the initial increase in the "bucket" comprises about an 8.2 percent increase; the Employer's proposal provides for an initial bucket increase of some 3 percent. In light of the increase in health care premiums with the associated increase in out-of-pocket expenses for employees in the Family Plan and in recognition that the Employer's fiscal position warrants a prudent approach to increased expenditures, the Chairperson recommends that the bucket amount be increased to \$510 upon ratification, a some 5.1 percent increase.

The 90 percent of the increase in the health plan costs that the Union proposes be absorbed by the Employer for the second and third years are calculated on the respective increases in each health care provider's plans, thus six different bucket amounts result from the application of the Union's proposal. The Chairperson has reservations regarding the administration of such an outcome and, as such, is reluctant to recommend the Union's "90 percent" proposal for years two and three. As to the second and third year bucket increases, the Chairperson's review and consideration of the relevant budget data, transit industry settlements, and the parties' arguments persuade that increases in the range of 3.5 to 4 percent in September

⁷Three coverage plans are offered: single, two party, and family.

2014 and September 2015 are appropriate.⁸ It is therefore recommended that the parties agree to “bucket” pay period amounts of \$510 following ratification, \$530 effective September 2014, and \$550 effective September 2015.

The Union has proposed that any available “bucket” dollars remaining after health, dental, and vision insurance and PERS retirement contributions are met be allocated to a 457 deferred compensation plan. The Employer opposes this proposal; it has proposed that any such remaining available dollars be allocated to “optional PPO Dental” premiums instead.

Whether either the Kaiser or United Health Care Plan is selected, employees with Two-Party or Family coverage have little if any remaining “bucket” dollars for allocation to a 457 Plan. Some 135 bargaining unit employees currently have Single coverage (U. Ex. 5). After healthcare plan and PERS contributions, these employees have approximately \$240 to \$280 available each month for the Union’s proposed 457 Plan. Currently, any bucket amounts not expended “revert” to the Employer and the Employer budgets its bucket contributions on the plans selected by the employees (RT, pp. 82-85). The Union’s proposal regarding the 457 Plan contributions would represent about a \$400,000 annual increase in the Employer’s budget obligation for employee benefits, an increase the Chairperson does not believe that the Employer should be required to absorb. However, 457 Plans are attractive for some employees as they relate to their retirement goals and plans. Since the Employer has proposed to add “optional PPO Dental” premiums to the list of benefits that may be paid out of available “bucket funds,” it is recommended that employees be given the option of electing either the PPO Dental Option or

⁸It appears that these dates would be subject to change based on plan dates.

contributing an amount equal to the PPO Dental premiums to a 457 deferred compensation plan to the extent that such dollars are available.

The Employer has proposed that eligibility for the comprehensive benefits bucket contribution be limited to actively working employees as defined in Article 27 of the MOU but that contributions will continue for up to 12 months for employees on medical leave. Once these 12 months have elapsed, employees will be offered Cobra. The Union opposes the inclusion of these provisions.

Limits on the duration for which an employer will contribute to employee health and welfare plans are not unusual in collective bargaining agreements. In such regard, the recently negotiated MOU between SunLine and ATU Local 1277 provides that health and dental insurance premiums will be made for no more than one year for employees off work due to illness, injury or pregnancy (U. Ex. 8). In this light, the 12-month limit as here proposed by the Employer does not seem unreasonable, nor is the requirement that employees be actively working as defined elsewhere in the MOU unreasonable or inherently unfair. The Chairperson therefore recommends that the parties adopt the Employer's proposed modifications defining eligibility for receipt of the comprehensive benefits bucket contribution and its proposal allowing for up to 12 months of Employer contributions while an employee is on medical leave.

The Employer proposes new language that allows employees to apply to the health care trust fund administrator to opt out of health insurance coverage and, if approved, the Employer will contribute \$250 per month into a 457 deferred compensation plan while the employee is actively working. This proposal is opposed by the Union, as it has concerns that employees

opting out of the plan may drive up the premium rates for those that elect to stay in the Employer's plans.

The Employer represented that the opt-out option is available only to those employees who submit satisfactory proof of enrollment in another group health insurance plan. As such, any decision to leave the health plan would ostensibly be premised on each employee's financial picture rather than on their health or the health of any dependents. It therefore does not appear that the Employer's proposed opt-out provision would adversely affect the premium rates here. The Employer's proposal has utility and advantages for both the Employer and employees who meet the conditions to opt out of the existing health care plans. It is therefore recommended that the Employer's proposal to contribute \$250 per month into a 457 Plan for each employee who opts out of health insurance coverage and is actively working be included in the MOU.⁹

Article 19 – Shop Steward's Provision and Article 21 – Leave of Absence – Union Position

Because the Union's proposals if adopted would eliminate Article 19 as a separate contractual article and meld its provisions into Article 21, these matters are considered collectively. The Union proposes to modify Article 21 to provide for two types of leaves of absence for union business, an extended leave and a short term leave. This extended leave is for elected Union officials and allows for a leave of absence for up to three years during which wages and benefits are paid by the Employer who in turn is reimbursed by the Union. The Union's proposal addressing temporary union leave allows for a "reasonable amount of time"

⁹While the savings accruing to the Employer from the opt out provision and modifications to employee eligibility for the comprehensive bucket contribution cannot be determined, it is readily apparent that some savings will be realized. These anticipated savings should offset some increased costs to the Employer attributable to the Chairpersons' recommendations regarding its comprehensive bucket contributions.

without loss of pay or benefits for “Working Officers” and “Shop Stewards” to process grievances and perform other Union business. It establishes a procedure to request such temporary leave and provides that upon written request the Employer will pay wages lost, including pension costs, for full days on temporary union business and that for union leave of less than four hours a day the Union will pay the employee their lost wages. As noted, if this proposal were adopted, Article 19 would be eliminated as a separate MOU article.

The Employer proposes no change to Article 19, asserting that tentative agreement had been reached on its current iteration. As to Article 21, the Employer proposes a modification that would allow for one employee in a full-time position with the Union to be on a paid leave of absence for no less than three months up to the duration of their term of office, which period may be extended. The Union would reimburse the Employer for all wages and contractual benefit entitlements.

The Employer’s proposal limits the paid extended union leave to one employee, in all likelihood the Union President/Business Agent. Given the size of the bargaining unit, the Chairperson believes that this limit is reasonable. However, the Employer’s proposed language should be clarified to make it clear that the paid leave of absence shall be granted for the duration of the employee’s term of office, if so requested. With this clarification, the Chairperson recommends the adoption of the Employer’s proposal on Article 21. Further, after considering the parties’ arguments and the Union’s proposal regarding Temporary Union Leave, the language that effectively eliminates Article 19 as a separate provision, the Chairperson is not persuaded that modifications in the existing language of Article 19 are warranted. It is therefore

recommended that no change be made to Article 19 and that it remain in the MOU in its present form.

Article 24 – Sick Leave

The Union has proposed that the maximum accrual of sick leave for payoff purposes be increased from 1,200 to 2,080 hours and that the percentage payout for accrued sick leave from 841 hours to the new payout maximum of 2,080 hours be increased from 50 to 60 percent. At the hearing, the Employer stated that it was amenable to the proposed payout percentage increase but was unwilling to increase the payout maximum as proposed by the Union.

It is speculative whether the Union's proposal to increase the sick leave accumulation payout maximum would have an ameliorating effect on what the Employer claims is a serious attendance problem within the bargaining unit. This increase would also have a potential impact on the Employer's future budget liability, albeit of minor impact, for it appears that only some five bargaining unit employees currently have sick leave accumulations exceeding 1,200 hours. On balance, the Chairperson is not persuaded that the sick leave accumulation payout maximum should be increased as proposed by the Union. Since the Employer has agreed to increase the percentage payout from 50 to 60 percent for sick leave accumulations from 841 to 1,200 hours, it is recommended that the parties adopt the modification to Article 24 as proposed by the Employer.

Article 27 – Attendance

The Union has proposed that a "referral to urgent care unit" be added to the list of types of or causes of absence that are not charged against an employee under Article 27's "no fault absenteeism policy." The Union argues that the inclusion of urgent care units reflects the current

trend in the health care delivery system that urgent care facilities are supplanting traditional emergency rooms for any needed emergency treatment. The Employer opposes the addition of the referral to urgent care, arguing that these facilities are readily and routinely self-accessed and again noting its attendance issues with the bargaining unit.

The Factfinder reads the Union's proposal as requiring a referral, ostensibly from the health care insurance provider such as the procedure under Kaiser, to an urgent care unit for any resulting absence to be uncharged. It does not appear to contemplate the scenario of an employee who on his or her own accord "drops in" at an urgent care facility and obtains a note to excuse an absence. Further, Article 27 as modified in the Union's proposal requires verification of any "referral to urgent care unit" so that the absence not be charged under the attendance policy.

The Union's proposal, in the opinion of the Factfinder, reflects the ongoing changes in our national health care delivery system. Further, the language is clear that visits to an urgent care unit are not charged as an absence unless the employee is referred to an urgent care unit and verification of the referral is submitted. The Chairperson therefore recommends that Article 27 be amended as proposed by the Union.

Article 30 – Audio & Video Surveillance

The Union's proposal has two elements, one concerns the current language that allows the Employer to view audio and video surveillance recordings for one and one half hours before and after a reported incident or complaint and the other that addresses discipline that may be imposed following such review.

The Union proposes that the viewing corridor be reduced to one half hour before and after the incident/accident or complaint, arguing that the Employer has rarely used the current 180

minutes allocated. It asserts that its proposal allows the Employer more than adequate time to determine if an offense has been committed. The Employer opposes any change and while acknowledging that usually the 60-minute corridor is ample, asserts that situations may arise where the current time allowance is required and needed.

The Union's other proposal regarding Article 30 comprises new language providing that should the review of the surveillance data show no bases for the search no discipline will be imposed but where the review discloses criminal conduct, an unsafe act, or inappropriate sexual conduct the Employer may follow its "normal disciplinary process." Further, the Union proposes language that requires a second offense within one year before discipline may be imposed for any misconduct discovered in the surveillance other than the three types expressly identified and that lists factors to be considered in the imposition of any such discipline. The Employer opposes this additional language as well, noting that the current language has been upheld in arbitration and no justification has been presented for either the change in the current language or the proposed new and additional language.

The Chairperson is not persuaded that the current language regarding the 90 minute review times before and after any reported incident/accident or complaint is unreasonable or unduly obtrusive, noting that no arbitrator has so found. As to the new contractual language proposed by the Union, the Chairperson finds no compelling reason to craft what appears to be multiple disciplinary tracks for misconduct or rule violations discovered during the review of the surveillance video and unrelated to the basis for the initial review. It is therefore recommended that no changes be made in Article 30 and that the current language be continued in the MOU.

Article 35 – Vacations

The Union has proposed two modifications to the existing article: 1) the inclusion of forced overtime in calculating vacation accrual and 2) a new provision that allows bargaining unit employees to bid for partial weeks of vacation and if the employee's vacation bank is insufficient to cover the balance of the week those days will be unpaid if the employee remains on vacation.¹⁰ It is only fair and equitable, says the Union, that mandated overtime hours, like the mandated hours regularly worked, be counted toward vacation accrual. Regarding its second proposal, the Union maintains that because of the interrelation between vacations bid on a weekly basis and vacation earned on an hourly basis, employees may encounter the situation where they would have vacation time that could be used only for casual vacation.

The Employer opposes both these modifications, its position being to remain with the contractual status quo. It asserts that it is not industry practice to use overtime hours, either voluntary or forced, in calculating hours worked for determining vacation hours accrued and notes that this provision has a cost component. Concerning the provision allowing for unpaid time off in connection with vacation, the Employer says that this proposal would further exacerbate the unit's attendance problems.

As to the first proposal, the Union's argument grounded in fairness and equity concerns is noted. However, it does not appear that the prevalent practice among transit agencies that use hours worked in determining vacation earned that overtime, either voluntary or forced, is

¹⁰Article 35 includes a table specifying how many hours of vacation pay are earned for "every 26 Regular Hours Actually Worked" for four categories of continuous years of service. This article provides that time "worked in excess of the normal forty (40) hour work week will not be counted for the purpose of vacation accrual."

considered in such computations. Regarding the Union's second proposed change to Article 35, the Chairperson believes that contract language that arguably encourages employees in a service delivery industry to take time off without pay comprises a poor employment practice. As such, it is the Chairperson's recommendation that no modifications should be made in Article 35.

Article 36 – Holidays

The Union has proposed new language that provides for a separate bidding process should the Employer reduce service on any full service Holiday.¹¹ The Employer opposes this proposal, arguing that it is premature and that any reduction in transit services involves a lengthy process that would ensure sufficient time to bargain over its effects.

While it is not unusual to find what may be characterized as contingency language in a collective bargaining agreement, the Chairperson finds no sufficiently compelling reason at this point to include the Union's proposal in the negotiated agreement. It is therefore recommended that no change be made in the contractual Holidays article.

Article 38 – Overtime Pay

The Union's proposal involves two changes to the existing provision: 1) a requirement that part-time Operators under the maximum 30 hours per week limit be given forced overtime work before any full-time Operator is required to work and 2) an increase in the forced day off guarantee from four to eight hours. The Employer opposes both proposals; it offers to maintain the current language.

¹¹The collective bargaining agreement specifies 11 holidays, two that are Floating Days. Currently, no services are operated on six holidays, including Thanksgiving Day and Christmas Day.

The reasons advanced by the Union were to the effect that requiring forced overtime first be assigned to part-time Operators increases their earnings and reduces the forced overtime burden on full-time Operators and that if an employee is forced to work on an off day the employee should be compensated in full for the day, to wit, eight hours minimum pay. The Employer points out that currently there are only five part-time Operators, two being retired employees with statutory limits on the hours they may annually work, and argues that the Union's proposal would mandate that part-time employees work more hours than they are willing or able to work.

As to the forced overtime proposal regarding part-time Operators, the Chairperson first notes that he has no information as to the amount of forced overtime required of bargaining unit employees. Nonetheless, contractual language that could require every part-time Operator to work up to 30 hours each week despite no interest in so doing might, as the Employer argues, very well hinder its ability to recruit and retain part-time Operators. Further, the ratio of part-time Operators to full-time Operators is currently minimal and any effect on the amount of forced overtime worked by full-time Operators is therefore limited. As such, the Chairperson does not recommend that the Union's proposed language regarding the assignment of forced overtime to part-time Operators be adopted.

The MOU at Article 32 (C) guarantees four hours pay for employees who volunteer and work their day off. While the Union's position regarding the forcing of an employee to work on his or her off day has been considered, the Factfinder is not persuaded that under this scenario the minimum hourly guarantee in Article 38 should be twice that as provided in Article 32 (C) or in

the current iteration of Article 38. Hence, no change is recommended in the minimum hourly guarantee as currently specified in Article 38 (D) (3).

Article 39 – Differentials

Article 39 currently addresses only the pay rate for Coach Operations Instructors (“COI”). Regarding the existing provision, the Union has proposed modifications requiring the payment of the differential to any employee “who are selected to train on the line/job” and “train students,” eliminating the COI reference, and increasing the current differential from \$2.00 to \$3.00 per hour.¹² The Union has proposed new language requiring a \$2.00 per hour differential for “actual hours driving” a coach more than 43 feet long. It has also proposed a new provision regarding the selection of relief supervisors or dispatchers that, *inter alia*, limits the number of employees on the lists of qualified relief supervisors and dispatchers, provides for payment of the top step rate plus a \$3.00 hour differential for all hours assigned as a relief supervisor or dispatcher, and requires that permanent openings to these positions be filled by the senior Operator on the appropriate list.

It was undisputed that by policy employees doing either relief supervision or relief dispatcher assignments currently receive a 5 percent differential. At the hearing, the Employer agreed to the hourly differential proposed by the Union for these assignments if the 5 percent differential was eliminated.

Turning to the Union’s proposal regarding Coach Operations Instructors, the Chairperson finds to reason to change the existing language defining the conditions under which an employee

¹²This provision currently provides that employees assigned to a COI position will receive the current top step rate for the Operator plus the differential. The COI is not a separate classification in the MOU; it is an “in-house” term used to refer to Operators who provide training.

will receive the differential. However, as noted by the Union, it does not appear that the differential has been changed in more than 20 years. As such, and since the Chairperson believes that the proper training of new operators has significant implications, particularly regarding safety matters, for the Employer, it is concluded that time expended in this valuable service should be compensated at the rate equal to that given the relief supervisors and dispatchers. It is therefore recommended that the parties adopt the Union's proposal to increase the current differential for Coach Operations Instructors to \$3.00 an hour and that no other changes be made in the current MOU language.

Regarding the "Size Pay" differential proposed by the Union, except for the six flexible coaches currently operated in sBX service, all the coaches now in operation are 41 feet long excluding the bicycle racks. While this appears to be the current "industry standard," the Chairperson is hesitant to recommend a provision with potential substantial economic liability contingent on changes in bus construction or manufacturers' practices or preferences in the types of buses marketed. The inclusion of the "Size Pay" differential is therefore not recommended.

As to the Union's proposals regarding relief supervisors and relief dispatchers, the Factfinder can identify no compelling reason to limit contractually or restrict the Employer's right to determine the number of relief supervisors or dispatchers that it needs to meet its operational requirements. Although provisions regarding seniority concerning promotions within the bargaining unit are common, the supervisor and dispatcher positions are not included in this bargaining unit. It is generally acknowledged that management is entitled to substantial latitude in its selection of employees for promotions outside the bargaining unit, particularly to supervisory positions. Other than the inclusion of new language in Article 39 specifying that

employees who work as supervisors and dispatchers on a temporary basis are to be paid at the current step of the Operator range plus \$3.00 per hour, it is not recommended that the Union's other proposals regarding relief supervision and relief dispatchers be included in the MOU.¹³

Article 40 – Uniforms

The MOU's Uniforms provision identifies the items of clothing and their quantities that will be provided by the Employer, articles of clothing that may be purchased by employees and optionally worn, and allows for the wearing of an ATU tie tac or lapel pin. The Union's proposal allows for the exchange of one pair of trousers for one pair of approved shorts, adds the "[a]pproved Omnitrans new logo baseball cap" to the list of clothing supplied by the Employer, and provides that the ATU logo may be worn on the back of this cap. In its counterproposal, the Employer agreed to the exchange of the shorts for the trousers, proposed renumbering the provision regarding the wearing of summer shorts, and modified the language in such regard. The Employer did not agree to supply the new baseball cap, proposed to restrict the size of the ATU logo on the cap, and limited employees to wearing only the cap with the ATU logo or the "approved" tie tac or lapel pin. The requirement that the tie tac or lapel pin be "approved" comprises new language.

The parties' respective positions are not that far apart. The Chairperson believes that the following recommendations should serve to close this gap while protecting the respective interests of each party and not imposing an unreasonable economic burden on the Employer. In such regard, it is recommended that the approved new Omnitrans logo baseball cap be included

¹³This recommendation is contingent on the elimination of the 5 percent differential currently paid to bargaining unit employees.

in the list of authorized clothing supplied by the Employer as proposed by the Union. Since the parties have previously agreed to limit the size of the ATU logo on the lapel pin, consistency suggests that a limitation on the size of the baseball cap ATU logo is not inappropriate.

Therefore, it is recommended the Employer's proposal in such regard be adopted. With this recommendation and the current language limiting the size of the ATU lapel pin, the Chairperson is not persuaded that the Employer's proposal that only the ATU baseball cap logo or the ATU label pin may be worn at any one time should be included in the MOU.¹⁴ Because no persuasive reason was found to enact the language change proposed by the Employer regarding the wearing of the approved summer shorts, it is recommended no change be made to the current language. Lastly, since the parties have agreed to the language regarding the substitution of the approved shorts for one pair of uniform trousers, this provision should be adopted.

Article 44 – Run Shift Bidding

The Union has proposed that the current language be modified to require that the regular run bid shifts begin on the first Monday of the months of January, May, and September, respectively.¹⁵ It has proposed further that relief shifts that are currently created by Agency staff after the completion of the initial run bid be bid by the Operators in order of their preference, that relief shifts will be bid by the Operator picking the shift rather than by proxy, and that the Union will bid for those who neither appear for the bid nor leave a proxy. Further, the Union proposes

¹⁴Article 40 currently provides that only the tie tac or the lapel pin can be worn at any one time.

¹⁵The MOU states that regular run bidding is to take place at least three times annually for shifts that begin during the months of January, May, and September.

to reduce the nine and one-half hours off duty time between relief shifts to nine hours and has proposed essentially style and grammar changes to Section J.

Since the Employer concurs with the Union's proposed changes to Section J, it is recommended that this proposal be adopted. Regarding the Union's proposed to impose the "first Monday" requirement for regular run bid shifts, the Employer argues that operational necessities require some flexibility as to when these shifts are implemented. It takes the position that the Union's proposal regarding the relief shift bid process adds additional layers and further complicates the process. The Employer therefore opposes any changes to Article 44 other than the language modifications in Section J.

In considering the Union's proposed modifications to Article 44, it does not appear to the Chairperson that employees have been unduly disadvantaged or suffered any adverse consequences under the current MOU language. As such, and as the Union's proposed modification regarding the "first Monday" implementation poses problems because of operational realities or, as in the relief shift bidding, further complicates an already complex bidding/scheduling process, the Chairperson does not recommend the adoption of either proposal.

Article 47 – Report Time, Preparation Time and Sign Off Time

It is essentially undisputed that the Union's proposal to include references to the Divisional Sign On and Sign Off Terminals was in response to changes in operating procedures driven by technological advances, for the terminals replace the weigh bill process previously used. The Employer's concerns regarding the Union's proposal center on the requirement that

Operators must receive a receipt of their sign on and sign off times, which is printed by the involved electronics.

The Union's position that bargaining unit employees, particularly because of the daily changes in work hours and sign off times, should have a printed record that undisputably verifies their hours worked is not without merit. However, the Employer's concerns that language mandating such printed receipts would lead to a plethora of grievances when the equipment malfunctioned are not unfounded. On balance, the Chairperson has reservations that the negotiated MOU be amended to include language mandating that a printed receipt be given daily to bargaining unit employees. Hence, the inclusion of this mandatory sign in/sign out receipt language is not herein recommended. Because the Union's other proposed modifications to Article 47 are consistent with current operations, it is recommended that Article 47 be amended accordingly.

Article 48 – Spread Time

The Union has proposed that the term "premium" included in this Article be changed to "penalty" and that the rate for time actually worked on a spread shift be compensated at \$7.00 per hour for all time actually worked commencing with the tenth hour. It proposed further that an employee be paid \$10.00 per hour for time actually worked in the eleven or more hours worked after the time the employee began work that day. Currently, the MOU provides for a \$7.00 per hour premium for all time worked commencing eleven hours after the time the employee began work that day.¹⁶ The current \$7.00 per hour spread time premium, says the Union, was tied into

¹⁶Spread time results from an employee being assigned to a split shift, where the employee works for a number of hours, is off work for some time, and then returns to work to complete the remainder of the assigned shift. Article 48 limits the maximum spread on an Extra Board assignment to 13 hours and

the then prevailing minimum wage when initially negotiated. As the minimum wage will soon be increasing to \$10.00 an hour, the Union asserts that the spread time premium should be increased to reflect the movement in the benchmark minimum wage.

The Employer opposes the Union's proposals to replace "premium" with "penalty," to provide for receipt of the current \$7.00 per hour premium commencing with the tenth hour, and to increase the premium to \$10.00 per hour beginning with the eleventh hour worked on a spread time run. It argues that these cost increases are precluded by its financial position and that although there are currently only some five spread time runs, absences both scheduled and unscheduled require that employees be assigned from the extra board to cover these absences, thus driving up the number of spread runs for which the premium must be paid.

Inasmuch as pay differentials, whatever their genesis, are most frequently called premiums or premium pay in collective bargaining agreements, the Chairperson does not believe that the descriptive language change proposed by the Union is warranted. Further, and while acknowledging that split shifts are not desirable for most employees, no compelling reason was found for requiring that the spread time premium commence with the tenth hour as proposed by the Union. As to the Union's proposal to increase this premium from \$7.00 to \$10.00 per hour, this amounts to a some 43 percent increase, a substantial and significant increase in these still uncertain economic times and given the financial posture of the Employer. However, the spread pay differential is a flat rate, unlike overtime pay that is effectively a percentage and increases in proportion to increases in the hourly pay rate. Thus, as pay increases are negotiated over the years, the spread shift differential proportionally declines as related to the bargaining unit

the maximum spread on a "Run in any Run Bid" to 11 hours.

employees' base pay scale. Here, the Chairperson is persuaded that some increase in the spread shift premium for those employees assigned to a split shift is warranted. Again, spread shifts for most employees are less than desirable. An increase from \$7.00 per hour to \$8.00 per hour with no other change in the current contractual language is therefore recommended.

Because the proposed modification specifying that one copy of the required log be given to the on duty dispatcher rather than be attached to the waybill is the current practice, it is recommended that the proposed change to Article 48 in such regard be made.

Article 58 – Part-Time Provision/Part Time Coach Operators

The Union's proposal includes provisions establishing and relating to seniority for part-time Operators. In brief, the Union proposes that part-time Operators accrue seniority in their own classification, that part-time Operators will be assigned to a five-day work week, and that forced overtime will be assigned in inverse seniority order. The Union has proposed further that part-time Operators' uniforms are to include one casual shirt and that any increased amounts for health care given to full-time Operators be given to part-time Operators. It acknowledges that its proposed changes to Article 58 are premised on the assumption that the Employer will hire more part-time Operators. The Employer's position was that the current language of Article 58 should remain unchanged in the successor agreement.

The Chairperson first observes that seniority and its protections are sacrosanct to the Union movement. However, it does not appear that seniority protections for part-time employees are routinely included in collective bargaining agreements for transit employees. According to the Employer, it prevailed in an arbitration regarding seniority for part-time Operators, thus the Chairperson can appreciate and understand its reluctance to negotiate away this "victory" secured

in arbitration. It is therefore the recommendation of the Chairperson that the Union's proposals addressing seniority for part-time employees as well the assignment of forced overtime not be included in the MOU. As to the Union's proposal to add one casual shirt to the contractually enumerated uniform articles for part-time Operators, it is not recommended that Article 58 be amended in such regard.

Regarding the Union's proposal to increase the Employer's health care contribution for part-time employees, the Chairperson does not recommend the flat dollar increase proposed by the Union. For such an increase effectively gives part-time employees a higher percentage increase than that received by their full-time counterparts. However, for reasons of internal equities, the Chairperson recommends that the part-time bargaining unit employees receive an increase in the Employer's contribution to their health insurance benefits by an amount equivalent to the percentage increase(s) in the "bucket" amount given to full-time bargaining unit employees. This percentage is to be rounded to one integer to the right of the decimal point when expressed as a percentage.

New Article – Drug and Alcohol Testing Policy

The Union has proposed to include a new article addressing drug and alcohol testing in the MOU that, in pertinent part, prohibits the Employer from applying drug and alcohol testing requirements "beyond that applicable and enforceable under Federal law" and requires that the drug and alcohol policy for bargaining unit employees be "separate and distinct" from any other Employer drug and alcohol policy. The Employer opposes the inclusion of language regarding drug and alcohol testing in the MOU as well any restrictions on its right to impose more stringent requirements than mandated by Federal law.

The Employer points out that arbitrators have upheld its current drug and alcohol policy, concluding that the federal regulations establish a floor rather than a ceiling in matters concerning drug and alcohol testing procedures. The Union's position that the Employer should not be establishing additional testing procedures or standards beyond those provided in the applicable federal law is acknowledged. However, the arbitration decisions as represented by the Employer comport with the Chairperson's understanding of an employer's discretion under the federal law governing safety sensitive positions such as the coach operators here to adopt more stringent standards and testing procedures. Further, the Employer's obligations and responsibilities for the safe transport of the public who relies on its services cannot be gainsaid. For these reasons, the Chairperson does not recommend that the Union's proposed language pertaining to drug and alcohol testing policy be incorporated into the MOU.

As noted, an Executive Session was not held. Based on the Recommendations of the Chairperson the Panel Members concur or dissent as follows:

For the Employer:

_____ Concur

_____ Dissent

_____ Concur in Part

_____ Dissent in Part

Report Attached: _____

For the Union:

_____ Concur

_____ Dissent

_____ Concur in Part

_____ Dissent in Part

Report Attached: _____

P. Scott Graham
Employer Panel Member

William G. McLean
Union Panel Member

Issued with attachments on September 19, 2014 by

Walter F. Daugherty
Chairperson

The following is Omnitrans' response to the Factfinding Report issued following the hearing held on July 13-14, 2014. Any deviation from the Last, Best and final Offer made by Omnitrans on February 26, 2014, was conditioned upon a final agreement being reached with Amalgamated Transit Union, Local 1704. In the event that no agreement is reached and the Omnitrans' Board of Directors acts to impose terms, any imposition will be consistent with the Last, Best and Final Offer. Such imposition will not include the terms that were compromised at mediation and factfinding as all such compromises were conditioned upon a final and binding Memorandum of Understanding.

Article 60 - Wages

Omnitrans' Response: Dissent: Propose Last, Best, and Final

The statement that between 2009 and 2014, the CPI increased by approximately 9.5% misses the key economic factors that were driving the labor market and wages at that time. Within our local labor market, unemployment rates spiked to 14-15%, median wages rates fell, average hours worked declined and sales tax revenue, as measured by Local Transportation Funds fell by over 30%. Many local agencies including the County, Cities, special districts and even Omnitrans' Teamster unit employees took furloughs, pay cuts and significant layoffs on top of wage freezes. Private and public employers laid off workers and cut back wages and benefits.

During this time, Local ATU 1704 operators were generally not impacted. While the community saw actual wages decline and unemployment increase, Operators were able to maintain. Now while the rest of the community suffered, ATU1704 is asking to recoup lost purchasing power, where as a group they "lost" nothing in actual dollars. They fared better than most through the depths of the recession and are now expecting to see higher wages, because they did not see wage growth during the recession, when others lost homes, lost jobs, lost salary and saw standard of living significantly decline.

As a result of funding declines, Omnitrans is now dependent on State Transit Assistance (STA) funding for operating. STA funding had historically been used solely for capital funding. In order to use STA funding to cover operating expenses, the Transportation Development Act § 99314.6 requires agencies to meet specific efficiency standards. The key standard is that an agencies operating cost per hour increase from year to year may not exceed the corresponding year's CPI. Omnitrans must complete this test each year and has been informed by our funding agency that they are closely watching the results of this test. Should Omnitrans fail the test, Omnitrans has been informed that there is no replacement funding available and use of STA funds for operations would not be allowed, resulting in a loss of \$4 million in operating funds.

This CPI test has nothing to do with budget vs. budget, but actuals vs. actuals. As a result, Omnitrans efficiency test will be based solely on the actual expenses regardless of if there were cost avoidances compared to budget.

Using CalTrans' forecasted CPI for San Bernardino County of 2.1% in 2014 and 1.5% in 2015, the maximum increases in Salaries and Wages that Omnitrans can afford without risk to \$4 million of STA funding is 2.1% and 1.5% in 2014 and 2015, respectively. In Omnitrans existing last best and final offer of 2.5% and 2.75%, Omnitrans was already putting STA funding at risk, but Management had committed

to ensuring that increases in other cost areas are kept low enough that Omnitrans will meet the STA efficiency tests. An increase of 3.4% would not be possible to offset with further cost savings in order to meet these standards.

Specifically, Salaries and Benefits account for 58.6% of Omnitrans budget. Under Omnitrans offer of a 2.5% increase as in the Last Best and Final, Omnitrans' other expense increases would be capped at 1.5%, an amount that is below the inflation, but Omnitrans believes this is achievable through strict cost containment. If on the other hand, Omnitrans were to offer 3.4%, all of Omnitrans other expenses would need to see a growth of no more than 0.25%, an amount that is 1/8th of the expected inflation rate and completely unrealistic. This is especially true in light of the testimony received regarding the other large components of the other expenses which include fuel (historically volatile) and insurance (rates set by outside agencies) If this increase were to occur, Omnitrans operating funding would decline by \$4.0 million dollars from STA funds and Omnitrans would be forced to cut service, directly impacting ATU 1704 members, and would require the implementation of other cost savings measures likely including wage freezes, layoffs, etc. in order to balance its budget.

During the recession, Omnitrans tapped every available funding source for operating expenses. This was necessary to maintain service and ultimately maintain wages for coach operators. Omnitrans practiced prudent fiscal management to stave off deeper cuts in wages, jobs or service. In preparation for future, Management took prudent and precautionary action to reduce administrative costs by restructuring the agency which included the elimination of the Chief Financial Officer, Director of Planning and Director of Safety and Regulatory Compliance; in addition to imposing a 10% fee to all management confidential employees on their health premium payment. These changes occurred partially through the year, but were aimed at reducing expenditures in FY2015. As a result these savings from the restructuring of administration, an annual saving of approximately \$0.5 million, was saved on overall salary to close the projected budget deficit.

However, Omnitrans no longer has additional revenue sources to call on. When the ATU International challenged PEPR through the US Department of Labor, Omnitrans Federal Funding was put on hold. Omnitrans was forced to plan for a 30% reduction in service and employees before the interim agreement was reached to allow for the release of the federal funds. There were no other sources that could be drawn on to make up for the frozen federal funds. Should Omnitrans over extend itself financially with a 3.4% wage increase, it would not be practicing prudent financial practices and any hiccup would put our vital service to the community and the jobs of our employees at risk.

The wage and benefit recommendation by the ATU would burden the Agency with a \$3.4 million operational budget increase over the next 3 years compared to the \$1.99 million offered by Omnitrans. This would not only severely impact other operating cost centers but jeopardize STA funding which would result in service reductions and workforce reductions.

Omnitrans believes that by offering a fair and prudent wage increase of 2.5% and 2.75%, similar to all other agency represented employees, it allows Omnitrans to maintain its fiscal responsibility while relying on limited funding sources. This wage increase maintains and improves upon current standard of living compared to the expected CPI.

The Last, Best and Final Offer proposed by Omnitrans offered increases of 2.5% in 2014 and 2.75% in 2015. However, if no final agreement is reached, the Last, Best and Final Offer requires a 5% salary reduction upon imposition in order to balance the financial impact of the imposition as it relates to Wage Order 9 and other terms effected by imposition.

Article 34 – Comprehensive Benefits

Omnitrans' Response: Dissent: Proposes Last, Best, and Final language based upon current financial conditions. Refer to Article 60 Dissent response.

In addition, ATU, Local 1704 currently receives the medical coverage through the Teamsters' Trust. Pursuant to the Trust documents, employees that are represented must have a valid collective bargaining agreement in order to continue coverage. As such, if Omnitrans is forced to impose the Last, Best and Final Offer, the benefit contributions will remain as proposed by Omnitrans and replacement benefits will need to be identified and procured.

Article 19 – Shop Steward's Provision and Article 21 – Leave of Absence – Union Position

Omnitrans' Response: Dissent in Part, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement.

Changes to Article 21 based upon further negotiations, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement.

Article 24 – Sick Leave

Omnitrans' Response: Concur in part, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement.

Article 27 – Attendance

Omnitrans' Response: Dissent in part, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement. Omnitrans does not agree to the acceptance of Urgent Care documentation in place of emergency room documentation.

Article 30 – Audio & Video Surveillance

Omnitrans' Response: Concur

Article 35 – Vacations

Omnitrans' Response: Concur

Article 36 – Holidays

Omnitrans' Response: Concur

Article 38 – Overtime Pay

Omnitrans' Response: Concur.

Article 39 – Differentials

Omnitrans' Response: Concur in part any compromise on the Last, Best and Final Offer was and is conditioned upon reaching a fully integrated agreement.

Article 40 – Uniforms

Omnitrans' Response: Concur

Article 44 – Run Shift Bidding

Omnitrans Response: Concur

Article 47 – Report Time, Preparation Time and Sign Off Time

Omnitrans' Response: Concur

Article 48 – Spread Time

Omnitrans Response: Concur in part, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement. No increase was provided in the Last, Best and Final Offer and if Wage Order 9 is required to be implemented due to imposition, then the spread time cost to the agency would increase due to route restructuring and no increase in spread time pay would be included in the imposition.

Article 58 – Part-Time Provision/Part Time Coach Operators

Omnitrans Response: Concur

New Article – Drug and Alcohol Testing Policy

Omnitrans Response: Concur

The Panel Members have met in Executive Session (by conference calls) on _____ . Based on the above recommendations of the Chairperson they concur or dissent as follows:

For the Employer:

____ Concur

____ Dissent

759 Concur in Part

769 Dissent in Part

Report Attached: _____

For the Union:

____ Concur

____ Dissent

____ Concur in Part

____ Dissent in Part

Report Attached: _____


P. Scott Graham
Employer Panel Member

William G. McLean
Union Panel Member

Issued (with attachments if any) on _____ by

Walter F. Daugherty
Chairperson