Supervisors repositioning Buses
Weekend Bus Retrieval

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| In the Matter of the Arbitration<br><br>between<br><br>**Amalgamated Transit Union, Local 1342**<br><br>and<br><br>**Niagara Frontier Transit Metro Systems, Inc.** | OPINION<br><br>AND<br><br>AWARD |

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BEFORE:
Ronald E. Kowalski, Ph.D.
Arbitrator

**APPEARANCES**

**For the Company**

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| Wayne R. Gradl, Esq. | Attorney for the Company |
| Michael Pilarski | Transportation Supervisor |
| Steve Scime | Station Manager |

**For the Union**

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| Jules L. Smith, Esq. | Attorney for the Union |
| Kevin Kline | Union Executive Member |
| Jeffrey Richardson | Union President |

A hearing on the above-referenced matter took place in Buffalo, New York on May 30, 2018 before the Undersigned who had been appointed as Arbitrator in accordance with the parties' Collective Bargaining Agreement. The

parties were in all respects accorded a full and fair hearing including the right to present oral and written evidence and to examine and cross-examine witnesses. Briefs were submitted to the Arbitrator as agreed at the hearing.

## ISSUE

The parties were unable to agree to the issue in the Arbitration. The Arbitrator would frame the issue as follows:

> Did the Company violate the Collective Bargaining Agreement and past practice when it assigned two supervisors to assist in transferring buses and operators during weekend operations on February 29, 2016?
>
> If so, what shall the remedy be?

## BACKGROUND FACTS

The Niagara Frontier Transit Metro System (hereafter "Company") provides bus services throughout Eire and Niagara Counties including the City of Buffalo. It provides the bus services out of three (3) garages: Frontier, Babcock and Cold Springs facilities. On the weekend the company operates fewer routes and only dispatches buses from the Frontier facility on Saturdays and Sundays. To assure it has enough buses to operate these routes the Company transfers additional buses from Babcock and/or Cold Springs to the Frontier facility. The buses are returned

to these two facilities early Monday morning so they can be ready to resume regular week day service.

On Monday, February 29, 2016 the Company assigned a supervisor to shuttle operators to the Frontier garage to return buses that had been moved there on Friday for weekend service and also assigned a supervisor to operate one bus to be returned to Babcock Garage. Babcock Garage opens at 4:00 AM as does Frontier and the buses need to be returned prior to 6:00 AM when regular service begins. The buses need to be at these facilities by or before 5:50 AM to allow for an inspection that takes about ten (10) minutes. It is about a 20 to 25 minute drive between Frontier and Babcock garages and that task of returning buses from Frontier round trip takes about 45 minutes.

On February 29, 2016 the Company used operators from an extra work list, the "Crumbs list", who had signed up for extra work at the Babcock garage to retrieve the buses. There were not sufficient numbers on the Crumbs list to retrieve the buses and drive the operators to the garage and the Company utilized two supervisors to drive the operators and to retrieve one bus that morning.

The Amalgamated Transit Union, Local 1342 (hereafter "Union") filed a grievance over the use of supervisors to perform this work on March 2, 2016. (Joint Exhibit 2) The grievance was pursued through the contractually provided procedure to this Arbitration.

## RELEVANT CONTRACTUAL PROVISIONS

The relevant contract provisions are found Section 19.1 and Section 3.3 of the Collective Bargaining Agreement as follows:

### SECTION 19 – WORKING CONDITIONS, PRACTICES, ETC. TO CONTINUE

**19-1** The present working conditions, practices, rules and regulations of the Company not altered or modified by this Agreement, shall continue in full force and effect except it is understood and agreed that the hours of work and scheduling of runs may be revised by the Company if it deems such revision necessary by reason of the Award or determination of any Board of Arbitration herein provided for. However, it is understood and agreed that the Company shall always be privileged from time to time to revise, supplement and otherwise change its rules, provided same are not in conflict with any specific provision of this Agreement, and if in conflict or inconsistent with any such specific provision, such revised, supplemental, or changed rules or regulations shall be subject to the approval of the Union which approval the Union agrees not to unreasonably withhold.

**3-3** **Temporary Employees**. When the Company employs any persons temporarily for a particular work or operation which will not exceed ninety (90) days, the Union, after the first thirty (30) days of such temporary employment, in lieu of dues, shall collect from each such temporary employees a sum not in excess of twenty-five dollars ($25.00) per month.

## POSITION OF THE PARTIES

### Union

The Union argues the Company violated the Collective Bargaining Agreement including Section 19.1 when it utilized two supervisors on Monday, February 29, 2016 to return buses from the Frontier garage to Babcock and/or Cold Springs. The work was bargaining unit work and the Company was obligated to follow the call-in procedure to find operators to do the work before assigning a supervisor which it did not do in this case.

The Union contends that it is clear from Union Exhibits 1 and 2 that there was an agreed procedure with the Company for assigning open work on the weekends. Union Exhibit 2, a Memorandum of Agreement signed by the parties in November of 1995, clearly sets out that procedure which is to use the Crumb list and then to go to the telephone caller list, if need be, to find operators and eventually a Station call. Union Exhibit 1 also sets out a similar procedure to fill open work. The Company on February 29, 2016 had operator work to fill, moving buses back from Frontier, but only utilized the Crumbs list before assigning two supervisors to do the remaining work.

The Union further argues that even if the Company asserts this was a matter of subcontracting the work, which it is not as the procedure is contractually in place for assigning such work, it would also fail in its argument. The Arbitrator

would still have to look to past practices as the first standard in such a case and it is clear the work has been bargaining unit work.

The Union therefore submits the Company did violate the Collective Bargaining Agreement when it failed to offer bargaining unit work to unit members but rather assigned two supervisors to perform the work on February 29, 2016. The Union requests the Arbitrator sustain the grievance and the Company be directed to cease and desist from assigning bargaining unit work to supervisors and affected Operators be made whole as remedy.

**Company**

The Company argues that there was no violation of the Collective Bargaining Agreement in utilizing two supervisors to help move buses back to the Babcock garage from Frontier on February 29, 2016. There was no past practice that prevented such use when the need arose on that date.

The Company contends the practice had always been to utilize just the Crumb list to provide operators to return the buses from weekend runs from Frontier back to the Babcock and/or Cold Springs garages. That practice changed when, at the Union's request, a change took place to the payment for such work making it less lucrative. The result was a shortage of operators on the Crumb list on February 26, 2016. The Company therefore, given the time constraints of

having to get the buses back by 5:50 AM to Babcock to prepare for the morning runs at 6:00 AM had to utilize two supervisory staff. The Company did so pursuant to Section 3.3 of the Collective Bargaining Agreement which provides the Company may employ any persons temporarily for particular work or operations which will not exceed ninety (90) days (Joint Exhibit 1).

There ae a long series of arbitration awards which support the Company's right to subcontract bargaining unit work as long as it is done for legitimate business reasons and does not have the effect of undermining the bargaining unit (Company Exhibit 1). The work done on February 29, 2016 only required forty-five minutes and was necessary and done by supervisors whose job descriptions include performance of actual transportation work.

The Company therefore submits there was no violation of the Collective Bargaining Agreement in its use of two supervisors to complete bus movement on February 29, 2016. The Company requests the Arbitrator deny the grievance in its entirety as without merit.

## OPINION

The issue before the Arbitrator is the instant matter is one of contract interpretation and application. The facts are not in dispute in this instant case. The Union has argued that the movement of buses on the weekend is bargaining unit

work by practice and the use of two supervisors on February 29, 2016 to return buses from Frontier to Babcock was a violation of the Collective Bargaining Agreement. The Company has argued there was no practice of just using bargaining unit members to move buses back on weekends and that there was a need to utilize two supervisors after the Crumb list had been exhausted to get the work done in a timely fashion. The Arbitrator is of the opinion the testimony and evidence adduced at the hearing supports the Union claim in this case, but does not entirely limit the use of supervisors for such work on the weekends if necessitated by the time constraints of returning buses to prepare for early morning runs commencing at 6:00 AM.

The initial threshold issue in this case is whether the work of returning buses from the Frontier garage on Monday morning after weekend use to the Babcock and/or Cold Spring garages is exclusively bargaining unit work by practice or contract. While there does not appear to be any practice with respect to what happens with such work if there are not enough operators on the Crumb list at Babcock as it has apparently from the testimony not occurred in the past, the work still is bargaining unit work as it has always been performed in the past by bargaining unit members. The parties also have a Memorandum of Agreement supporting the fact that all open work would be assigned to bargaining unit members on the weekend. (Union Exhibit 2) The testimony indicates the work

has always been performed by operators on the Crumb list and the memorandum sets forth that open work should be assigned to operators at the station using the work assignments procedure for weekends.

The memorandum sets out a procedure for assigning the work which includes the Crumb list as well as other steps for seeking operators. There is no dispute the Company did not make any effort beyond utilizing the Crumbs list on February 29, 2016 to seek additional operators once it became apparent that there was a shortage of two operators after exhausting the Crumbs list. The Company has argued that the problem arose because of the Union's request to change compensation for such work leading to fewer people signing up on the Crumbs list. There is a time constraint on the work, the buses having to be back to Babcock by 5:45 to 5:50 AM to get inspected in time for the 6:00 AM morning buses. The Company therefore needed to use supervisors when there had been no such need in the past.

It is clear that the particular work of returning of buses from Frontier to Babcock and/or Cold Springs has time constraints in that there is less than two hours for it to be completed. It takes a minimum of 45 minutes from the time operators are available to complete the work which must be done before 5:50 AM. Hence, while the Arbitrator is of the opinion as noted earlier that the Company was obligated to try to fill this bargaining unit work with operators utilizing the

procedure set forth in the Memorandum of Understanding (Union Exhibit 2) to the degree possible, if it becomes clear after a reasonable effort that operators to retrieve the buses and to transport operators to Frontier cannot be secured at the station prior to 5:00 AM to complete the work the Company has the right to utilize supervisors to ensure the work gets done in a timely fashion as it takes forty-five (45) minutes to get the buses back in time for an inspection at 5:50 AM, before the 6:00 AM runs. In this instant case the Company did not make that effort prior to assigning the work to supervisors and hence violated the parties Collective Bargaining Agreement and the practice as this was bargaining unit work.

It is not clear or easy to determine who might have been reached or accepted the work had the Company followed such procedures. The Arbitrator would therefore limit the remedy to directing the Company to cease and desist from utilizing supervisors for such work until it has followed the procedures for seeking operators to the point that time constraints necessitate the use of supervisors to timely complete the work.

For the reason set forth above, the Arbitrator would therefore adjudge the Company did violate the Collective Bargaining Agreement and practices by not utilizing the procedures agreed upon by the parties for the assignment of bargaining unit work on weekends prior to using supervisors to complete the work

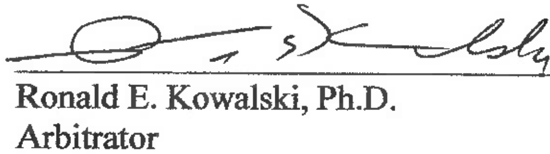
if necessitated by time constraints. The Company will cease and desist from not utilizing the appropriate procedure of the assignment of work on weekends.

**AWARD**

The Company did violate the Collective Bargaining Agreement and practice when it did not utilize the established procedure agreed by the parties for assignment of bargaining unit work on the weekends prior to using supervisors to complete the work if necessitated by time constraints.

The Company shall cease and desist from not utilizing the proper procedure for the assignment of work on the weekend.

9/8/18
Date



Ronald E. Kowalski, Ph.D.
Arbitrator

State of New York )
) SS:
County of Onondaga )

I, Ronald E. Kowalski, Ph.D., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

9/8/18