

**MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS**

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| Capital Area Transportation Authority, |) | |
| Petitioner, |) | MERC Case No. 20-A-0155-CB |
| |) | |
| v. |) | Fact Finding |
| |) | |
| Amalgamated Transit Union, Local 1039, |) | Kenneth Zatkoff |
| Respondent. |) | |

**AMALGAMATED TRANSIT UNION, LOCAL 1039’S WRITTEN NOTICE OF
ACCEPTANCE AND REJECTION OF FACT FINDER’S REPORT**

In accordance with Attachment A to the Parties’ 13(c) Agreement, Respondent Amalgamated Transit Union, Local 1039 (“Union”) hereby accepts in part and rejects¹ in part Fact Finder Kenneth W. Zatkoff’s Report dated February 12, 2021 (“Report”), as detailed below.

At the outset, the Union is compelled to highlight a required factor that the Report does not mention at all – Petitioner Capital Area Transportation Authority’s (“CATA”) financial condition. It is undisputed that CATA is a strong public transit system in good financial health. Fiscal year 2019 was “a year of outstanding progress, growth and stability” during which CATA recorded its “strongest growth in 12 years.”

Even with the COVID-19 public health crisis, CATA maintains a strong financial position. In June 2020, it was reported that “CATA did not go into debt with COVID-19” and that “Wages were still paid, there were no lay-offs and CATA reduced their overtime by \$600,000.” In July 2020, CATA received \$18.3 million in CARES Act funding, which CATA has budgeted to spread out over fiscal years 2021-2024 to offset any ongoing losses in revenue due to COVID-19. CATA’s budget for 2021 is positive. While CATA anticipates a decrease in total expected revenues of 0.5%, it anticipates a greater decrease of 1.0% in total operating expenditures, resulting in a stronger net position.

On December 27, 2020, Congress passed the Coronavirus Response and Relief Supplemental Appropriation Act which will provide CATA with an additional \$16,181,801. It is without doubt that CATA is in good financial condition and does not require any of the substantial concessions it seeks to continue providing service to the public.

1. FMLA

A. FMLA Amendments

The Union accepts the recommendation that language be incorporated into the collective bargaining agreement that mirrors the language of DOL fact sheet #28L.

¹ The Union rejects any of the Report’s recommendations or CATA’s proposals that are not specifically addressed.

The Union's proposed language closely mirrors the language in fact sheet #28L and should be adopted. CATA's proposed language is inconsistent with, and fails to include crucial language from, fact sheet #28L.

B. Substitution of Paid Time Off

The Union accepts the recommendation that there be no change to the substitution of paid time off in connection with FMLA.

The Report correctly rejects CATA's proposal to require employees to use all available paid time off concurrently with FMLA leave. None of the comparable transit systems require such substitution and there is no evidence that CATA requires such substitution for any of its employees. Being on FMLA leave is not the same as being on vacation or holiday and it is fundamentally unfair for an employee to be off for an FMLA-qualifying reason and then return to work and have no vacation or floating holidays available to them.

2. ATTENDANCE BONUS

The Union rejects the recommendation to adopt CATA's proposal to delete the attendance bonus when employees miss two shifts in a month and to change the time that counts as days worked.

Currently, the following count as days worked toward the attendance bonus: "approved vacation, funeral leave, Union business, paid military leave, paid national or floating holidays, jury duty, FMLA leave (if not covered by disability benefits) or personal leave of absence."

The Union proposes to delete "FMLA leave" from the list of days that count toward the attendance bonus, thereby resolving CATA's main issue – employees receiving the attendance bonus when they are on FMLA leave.

CATA proposes replacing the current language with the following: "Where an individual is removed from the schedule with advance notice and approval prior to board activation, they shall not be disqualified from attendance bonus pay (i.e. vacation, floating holidays, jury duty and union business per Article I, Section 7A)."

CATA's proposal goes too far by requiring advance notice and approval prior to board activation (2-3 days prior). Requiring "approval" of an absence prior to board activation could encourage CATA to deny employees' requests for time off in order to deny them the attendance bonus. That type of discretion will only lead to future disputes. There are circumstances where an employee should not be penalized for an absence that occurs after board activation. For example, an employee may be involved in a car accident, may suffer a sudden death in the family, or a National Guard member may be suddenly deployed. It is fundamentally unfair for any of these absences to count against an employee's attendance bonus.

3. BUS ASSIGNMENTS

The Union rejects the recommendation to adopt CATA's proposal to delete the requirement that the same bus will be assigned to each operator before and after lunch relief.

The Union proposes to maintain the current language and add the following exceptions: "The only exceptions to this will be Route 1 and any future (not including MSU or current funding area as of 12/1/2019) regional transportation that the Authority may develop."

The Report incorrectly found that: “The Union’s primary objection to the proposed language change is based on safety concerns which are not supported by the record.” (Report p. 14) The Union explicitly wrote in its brief that: “While these safety issues are important and support maintaining the bus assignment provision, this issue is not primarily about safety or buses being assigned to a particular operator.”

The primary issue is how the bus assignment provision impacts the manner in which CATA can design its service schedule. CATA management testified that the bus assignment provision prevents CATA “from being creative.” CATA never provided a single example of what the runs would look like without the bus assignment provision. This issue is crucial to operators’ daily work life and the bus assignment requirement ensures consistency in the runs that are offered to operators. If that language is deleted, it will give CATA management too much discretion to get “creative” with the runs in a way that adversely impacts the operators.

The Report also incorrectly found that the Union’s proposal to exempt Route 1 and future regional transportation service “undercuts the Union’s safety argument.” (Report p. 14) The Union proposed to exempt Route 1 because it is a major run that connects downtown Lansing to Meridian Mall and is a safe route to perform street relief. Significantly, CATA told the Union during bargaining that it did not want to be limited by the bus assignment provision as it relates to future regional service, and the Union agreed to that on a prospective basis.

4. PREMIUM PAY

The Union accepts the recommendation that the current language be maintained that requires time and a half after 8 hours in a day and over 40 hours in a week. The Union accepts the recommendation that all work performed on the 6th workday will continue to be paid at time and a half and that all work performed on the 7th workday will continue to be paid at double time. The Union rejects the recommended language on the time off that should count as days worked toward 6th and 7th day premium pay.

At the outset, the Report correctly recognizes that the Union has agreed to the following substantial changes to the extra work process requested by CATA:

- Employees assigned to work on Saturday and Sunday shall have two consecutive days off.
- Reduce the number of overtime lists from 12 to 2 (part-time and full-time), with each list to be rotated one spot per day.
- All of CATA’s language in the “Overtime Scheduling” section.
- Require eight hours’ rest period between shifts.
- Operators accepting overtime will complete both their run bids and overtime assignments.
- Operators will not be assigned to protection on a day when the operator is scheduled for a bid run.
- Operators working protection will be available for overtime prior to the protection assignment.

Given these concessions by the Union, it is appropriate for the daily overtime, weekly overtime, 6th day overtime, and 7th day overtime to remain in the agreement and the Report properly rejects CATA's attempt to gut those provisions.

Moreover, the Union has proposed that 7th day overtime be added to the 6th day provisions of Article IV, Section 3, so that an employee who is absent during the work week is not eligible for 7th day overtime. At the hearing, CATA made a big deal out of the fact that employees can be absent during the week for FMLA and still work on their 7th day at double time. The Union's proposal resolves this concern. The recommended language goes too far because it would require paid sick leave, Union business, and funeral leave to be approved prior to board activation (2-3 days prior), which is unacceptable for the reasons stated above.

5. EXTRA WORK DISTRIBUTION

The Union rejects the recommendation to adopt CATA's proposal to impose a safe driving limit of 13 hours pay and spread time of 18 hours.

The Union proposes a safe driving limit of 14 hours pay and spread time of 16 hours.

The parties' bargained-for "Work Assignment System" provides that "[t]he maximum work time for an Operator in a single day is 16 hours." The shorter the safe driving limit, the less overtime an operator can be assigned, resulting in more operators being assigned shorter pieces of overtime. The shorter safe driving limit will exacerbate CATA's manpower issue, which resulted in part-time operators being forced to work overtime. The slightly longer limit proposed by the Union will result in more volunteers getting overtime, distributing overtime among those who want to work it, rather than forcing those who do not.

Spread time limits the overall start and stop time and impacts operators who work split runs, meaning they work a few hours in the morning and a few hours in the afternoon or evening. Employees have time in the middle of the day, but that is not "free time" since they are away from home, still in uniform, and are limited in what they are able to do since they have to return to work. Currently, spread time is an outrageous 20 hours! CATA proposes that spread time be reduced to 18 hours. The Union proposes a spread time of 16 hours, which is equal to a double-shift. Anything more than that is unreasonable. Split runs with long spread times are terribly disruptive to operators' personal lives.

6. EXTRA BOARD

A. AM/PM Extra Board

The Union rejects the recommended adoption of CATA's language that contains no minimum of operators who will be scheduled Monday through Friday.

Because the AM/PM extra board will operate when MSU is not in service, there are more operators on the extra board and fewer regular runs to protect, such that there is an opportunity for operators to enjoy a quality of life during the summer. For that reason, a minimum of 60% of the extra board should be scheduled Monday through Friday to permit extra board operators to have weekends off when there is not that much work to cover. There is no credible evidence that this "failed miserably," other than unsupported assertions by CATA management.

B. Bundling of Work

The Union rejects the recommendation that CATA be permitted to bundle work for distribution to the extra board.

“Bundling,” or “run grouping,” permits CATA to combine different runs and protection less than eight (8) hours in length. The Union vehemently opposes “run grouping” because it has no idea what those pieces of work will look like and could substantially impact operators’ schedules. The bargained-for Work Assignment System limits the runs that can be grouped together – only split runs can be broken apart and grouped – and the Parties should live by that agreement.

Furthermore, there are numerous elements to CATA’s extra board proposal, which are not acknowledged or addressed by the Report, that would give CATA unprecedented discretion to change the manner in which extra board work is created and assigned, in violation of operators’ seniority rights. The Union rejects each of those proposals.

7. **VACATION PAY**

The Union accepts the recommendation that there be no change to vacation pay.

Currently, vacation pay is based on 1/52 of each employee’s total straight time wages, overtime wages, vacation pay, and Union business for Union officers, during the eligibility year. Employees can elect to receive their vacation pay in a lump sum on the earlier of their anniversary date or the pay day prior to the vacation.

CATA proposes that vacation be paid at 8 hours a day, payable on the pay day after the vacation.

As discussed above, the Union has agreed to substantial changes to the extra work procedure that CATA claims will spread out the extra work options and reduce overtime, thereby reducing the amount of vacation pay. CATA’s historically high overtime is not the fault of the drivers or mechanics – it is a reality of the marketplace that has a shortage of skilled labor. The calculation and timing of vacation pay has been in the contract for decades and CATA’s proposal would significantly reduce employees’ compensation.

8. **INSURANCE**

A. Retiree Healthcare Benefits

The Union rejects the recommendation that retiree healthcare benefits be eliminated for employees hired after the rate of ratification.

The Union proposes that employees hired after ratification of the agreement will not be eligible for retiree healthcare, but that CATA will contribute \$250 or 5.0% of pay, whichever is greater, per month to a health care savings plan for all new employees upon reaching full time status.

The Union’s proposal to eliminate retiree healthcare under CATA’s plan for new employees is a massive concession that will help CATA rein in its massive OPEB liability and replace it with ascertainable contributions to a health care savings plan. This is the equivalent of agreeing to “freeze” a defined benefit pension plan and replace it with a defined contribution plan. In an August 21, 2019 memorandum to the Michigan Department of Treasury, CATA wrote that, in connection with eliminating the current retiree health care benefit, it “intends to implement a defined contribution plan for retiree health” (i.e. a health care savings plan). Despite those

written representations to the State, CATA never made such a proposal. It is disingenuous for CATA to propose, and the Report to recommend, eliminating the retiree health care benefit without a contribution to a health care savings plan.

B. Dental Caps

The Union rejects the recommendation to maintain the current dental and orthodontia maximums.

The Union proposes to: increase the dental maximum from \$1,000 to \$2,000; increase the orthodontia lifetime benefit from \$1,200 to \$2,500; increase the lifetime maximum benefit from \$1,200 to \$2,500; and to remove the dependent age limit of 19 years. Ann Arbor has a higher dental maximum of \$1,500 and a higher orthodontia benefit of \$2,000. Based on this comparison, an increase is warranted.

C. Employee Participation Fees

The Union rejects the recommendation that there be a reopener for the employee health insurance participation fees to be effective in March 2023.

Since the 2023 plan year is so far out, CATA does not know the claims experience and has not provided a specific participation fee, instead proposing that the parties will meet to “discuss” the 2023 participation fees, without any proposed mechanism for resolving any disputes. The Union rejects this proposal because such fees are speculative and there is no mechanism for dispute resolution. A shorter duration agreement mitigates this concern.

D. ACA/Act 152 Reopener

The Union rejects the recommendation that there be reopener language for the ACA or Michigan Act 152 of 2011.

CATA has not identified any insurance provisions that it believes are close to violating any provision of the ACA or Act 152, and the Union is not interested in reopening the agreement. A shorter duration agreement mitigates this concern.

E. Paid Sick Leave

The Union proposes that all full-time employees will be credited with 40 hours of sick leave each calendar year, which time can be used in 1 hour increments up to 8 hours a day. The Report did not address the Union’s proposal.

CATA employees do not receive any paid sick leave. They only receive three unpaid “actual sick days” per year under CATA’s work rules, which state that they can be rescinded at any time. Employees must substitute other paid time off to receive pay for “actual sick days.”

The Paid Medical Leave Act, Act 338 of 2018 (“PMLA”), requires employees to accrue paid medical leave at a rate of one hour for every 35 hours worked, up to 40 hours per year. The PMLA permits employees to use paid medical for a variety of reasons, including domestic violence and sexual assault situations. Employers who provide at least 40 hours of paid leave are presumed to be in compliance with the PMLA. For most employees, the PMLA does not impose any additional requirements because CATA provides 40 hours of vacation for employees with one year of employment.

However, employees with less than one year of employment may be entitled to paid leave under the PMLA that they do not receive from CATA. In addition, it is unclear whether CATA permits employees to use “actual sick days” for all the types of leave permitted under the PMLA, including domestic violence and sexual assault. For these reasons, and as a matter of fundamental fairness, the Union proposes that full-time employees should be provided with 40 hours of sick leave per year without having to substitute other paid time off.

9. WAGES AND BONUSES

A. Wages

The Union rejects the recommendation to adopt CATA’s proposed wage increases of 3% on 7/1/2020; 3% on 7/1/2021, 3% on 7/1/2022; and 3% on 7/1/2023.

The Union proposes a contract expiring on 11/30/2022, with wage increases of 4% on 12/1/2019, 4% on 12/1/2020, and 4% on 12/2/2021 (the 2019 and 2020 wage increases to be effective upon ratification).

Following well-established arbitral precedent, the Union compared the CATA top operator wage to the top operator wage rates for each of the comparables. The data clearly establishes that, on average, CATA’s wage rate has fallen behind the comparables, as the comparables’ wage rates have increased more than CATA’s wage rate. For example, in 2003, CATA’s wage rate was 6% higher than Ann Arbor’s wage rate. As of November 2019, the CATA wage rate was 5% less than Ann Arbor’s wage rate. To restore CATA to its average percentage relationship as of December 2019, the month after the agreement expired, requires a 3.91% wage increase. To maintain that relationship going forward requires wages increases of 4.17% in December 2020, and 4.50% in December 2021. The data fully supports the Union’s wage proposal.

The recommendation further erodes CATA’s standing among the comparables and completely ignores the fact that employees have not had a wage increase since July 2018, more than 2.5 years! The recommendation is also insufficient to cover the historical progress that CATA’s wage have made against inflation, resulting in a reduction in employees’ buying power.

B. Bonuses

The Union rejects the recommended bonuses of \$2,000 full-time/\$1,000 part-time on ratification.

The Union proposes bonuses of \$3,500 full-time/\$2,250 part-time on ratification. CATA proposes bonuses of \$1,500 full-time/\$750 part-time on 7/1/2020.

Consistent with arbitral precedent holding that a “lump sum” or “bonus” for the year during which the contract was expired is necessitated by Act 54, the Parties’ Supplemental 13(c) Agreement requires CATA to provide “signing bonuses” to bargaining unit employees in an amount to each employee’s economic loss as a result of Act 54, including but not limited to: “An amount substantially similar but not less than the additional amount the employee would have earned had the negotiated wage increase, if any, had become effective on the date the prior agreement expired.” Neither the Report’s nor CATA’s bonuses are sufficient to satisfy the obligations under the Supplement 13(c) Agreement because they do not make up for the losses had the wage increases been effective on the date of expiration.

10. ZIPPER CLAUSE

The Union accepts the recommendation to maintain the status quo.

CATA's proposes an extremely broad zipper clause that would prohibit the parties from any and all midterm bargaining, even over new issues that arise during the term of the agreement, allowing CATA to take unilateral action and leaving the Union no recourse. The proposed clause would also eliminate any and all past practices that are not reduced to writing, allowing CATA to unilaterally change practices that have been in place for decades and leaving the Union with no recourse.

11. DURATION²

The Union rejects the recommended duration of three years.

The Union's proposal for a two-year contract expiring November 30, 2022, is more appropriate. There is economic uncertainty due to the pandemic and the parties should have the opportunity to get back to the bargaining table sooner rather than later to address any needs that cannot be predicted at this time. Furthermore, the Parties have agreed to fundamental, structural changes to the extra board and extra work procedures and it is possible that there will be unanticipated consequences as a result of these changes. The parties should have the opportunity to address any such issues sooner, rather than later.

DATED: February 22, 2021

Respectfully submitted,

Amalgamated Transit Union, Local 1039

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² CATA proposes deleting the agreement's long-standing "evergreen" provision and to add language that the wages are frozen as of the last pay period prior to expiration. The Union rejects these proposals, which are not addressed in the Report, because they would conflict with the Parties' Supplemental 13(c) Agreement.