STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF		
THE FACT FINDING BETWEEN	:	
	:	**CASE NO. 2020 – MED- 07-0715**
AMALGAMATED TRANSIT UNION,	:	
LOCAL 627	:	
Union ,	:	
	:	**FACT FINDING REPORT**
and	:	**Submitted by John F. Lenehan,**
	:	**Fact Finder, December 31, 2021**
SOUTHWEST OHIO REGIONAL.	:	**(Via Email)**
TRANSIT AUTHORITY	:	
	:	
Employer.	:	

Union Representatives:

Joseph S. Pass, Esq.
Jubelirer, Pass & Intrieri, P.C.
219 Fort Pitt Blvd.
Pittsburgh, Pennsylvania 15222
Phone: (412) 281-3850
Email: jsp@jpilaw.com

Employer Representatives:

Kirk M. Wall, Esq.
Jacqueline N. Rau, Esq.
Dinsmore & Shohl LLP
191 W. Nationwide Blvd., Suite 300
Columbus, Ohio 43215
Phone: (614) 628-6905
Email: kirk.wall@dinsmore.com
jacqueline.rau@dinsmore.com

SERB:
EMAIL: Mary.Laurent@serb.state.oh.us , med@serb.state.oh.us

FINDING AND RECOMMENDATION

I. BACKGROUND

On June 7, 2021, the State Employment Relations Board (SERB) appointed the undersigned, to serve as the Fact Finder in the case of the Amalgamated Transit Union Local 627, Union, and the Southwest Ohio Regional Transit Authority, Employer (Case No. 2020 - MED-07-0715).

On December 13, 2021, a fact finding hearing was held at 10:00 A.M. at the Quality Hotel Conference Center, 5901 Pfeiffer Road, Cincinnati, Ohio 45242. The Amalgamated Transit Union Local 627 ("ATU 627" or "Union") was represented by Joseph S. Pass, Esq. of Jubelirer, Pass & Intrieri, P.C. The Southwest Ohio Regional Transit Authority ("SORTA" or "Employer") was represented by Kirk M. Wall, Esq. and Jacqueline N. Rau, Esq. of Dinsmore & Shohl LLP. Also, in attendance were the members of ATU Local 627's Executive Board and representatives from management on behalf of the Employer.

A. Description of the Bargaining Unit

The bargaining unit is specified in the recognition clause of the previous collective bargaining agreement. The Union is the exclusive bargaining representative of all employees in the following job categories: Operators, Mechanics, Maintenance, Division and Board Clerks, and Fare Box Pullers. The Operators and Mechanics comprise the majority of bargaining unit members.

B. Description of the Employer

SORTA provides mass transit service in the Greater Cincinnati area under the operational name of Metro. It has approximately 973 employees, of whom 781 are in the bargaining unit.

C. History of Bargaining

The Employer and the Union were parties to a collective bargaining agreement that expired on October 31, 2020. The parties commenced bargaining on July 9, 2020 and met in multiple

sessions throughout the balance of 2020 and into the late spring/early summer of 2021. During this time, the parties reached tentative agreements on multiple issues. By agreement of the parties, these issues are incorporated into the Fact Finder's Recommendations and are listed below:

- Section 2(a), Union Shop and Checkoff (Tentative Agreement #2)
- Section 5(h), Wage Rates, Division Clerks and Board Clerks (Tentative Agreement #17)
- Section 5(k), Transportation New Hire Progression (Tentative Agreement #5)
- Section 6(f), Banking Vacation (Tentative Agreement #4)
- Section 7(g), Holidays Defined (Tentative Agreement #3)
- Section 10(b), Sick Leave, Retirement Payout (Tentative Agreement #12)
- Section 10(f), Benefits Paid (Tentative Agreement #14)
- Section 14(e), Day Shift Employees Hours (Tentative Agreement #7)
- Section 16(a)(1), Picking Runs (Tentative Agreement #15)
- Section 19(b), Show-Up Time for Extra Operators (Tentative Agreement #6)
- Section 22(a)(8), System Seniority, ASE Certification (Tentative Agreement #9)
- Section 22(c), System Seniority, Seniority in Other Departments (Tentative Agreement #1)
- Section 23(c), Tool Allowance (Tentative Agreement #16)
- Section 23(d), Maintenance Uniforms (Tentative Agreement #10)
- Section 32, Call Center Agreement (Tentative Agreement #1)
- Appendix B: Maintenance Training Agreement (Tentative Agreement #11)
- Appendix ___: Part-Time Operators (Tentative Agreement #13)

The parties were unable to reach agreement on the remaining issues. On May 21, 2021, pursuant to Ohio Revised Code Section 4117.14, ATU 627 requested fact finding. The parties scheduled fact finding hearings for August 10 and 11, 2021, but continued to meet in an effort to resolve the remaining issues in dispute. On August 2, 2021, the parties reached a comprehensive Tentative Agreement on all issues in dispute, including the aforementioned issues. As a result of the comprehensive Tentative Agreement reached August 2, 2021, the parties postponed the fact finding

hearing to allow their respective bodies to vote on the tentative agreement. On August 9, 2021, ATU 627's membership voted and rejected the comprehensive tentative agreement.

The parties agreed at fact finding that not all of the issues in the August 2, 2021 Tentative Agreement are at issue. The August 2, 2021, tentative agreements that are not at issue are incorporated into the Fact Finder's Recommendation, which are:

- Section 5(s)(1) Night Shift Allowance;
- Section 6(a) Vacation Time and Pay: insert new subsection (6);
- Section 10(g) Sick Leave;
- Section 14(d)(2) Employees Working On Off Day
- Section 22(c) Seniority In Other Departments
- Section 23(a) Operator Uniforms
- Appendix E: Absent Rate Calculation Method For the Purposes of Section 10(g)

In addition to the issues outlined above, during the hearing, the parties reached agreement on three issues:

- Section 5(k) Transportation New Hire Progression (Tentative Agreement #5)
- Section 9(a) and (b) Group Life Insurance (Tentative Agreement #8)
- Side Letter: Clerks Sick Leave Accruals (Tentative Agreement #18)

These additional tentative agreements are incorporated into and made a part of the Fact Finder's recommendation. All Sections or issues tentatively agreed upon or not in dispute are hereby incorporated into this Fact-Finding Report and Recommendation and if accepted by the parties shall be made a part of any successor collective bargaining agreement.

D. Unresolved Issues

The parties proceeded to hearing on seven (7) issues:

Issue No. 1 Section 5(a) Wage Rates

Issue No. 2 Section 5(s)(2) Extra Board Premium

Issue No. 3 Section 5(s)(3) Premium Routes

Issue No. 4 Section 11 Health Insurance (plan design)

Issue No. 5 Section 16 Work Day and Work Week (d) Operators Trading Runs

Issue No. 6 Section 32 Term of Agreement

Issue No. 7 Side Letter: Board Rule revisions regarding Extra Operators and Rotation

II. CRITERIA

Pursuant to Ohio Revised Code Section 4117.14(G)(7) and Ohio Administrative Code Section 4117-95-05(J), the Fact Finder considered the following criteria in making the recommendation contained in this Report:

1) Past collectively bargained agreements between the parties;
2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees in comparable work, given consideration to factors peculiar to the area and the classifications involved;
3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
4) The lawful authority of the public employer;
5) Stipulations of the parties; and,
6) Such factors as not confined to those stated above which are normally and traditionally taken into consideration.

III. ISSUES

ISSUE NO. 1. SECTION 5(a) WAGE RATES

Immediately preceding bargaining and throughout bargaining, SORTA's funding structure changed and dramatically improved SORTA's financial position. Both parties agreed that the change in SORTA's funding is important to framing the resolution of the outstanding

issues. Historically, SORTA was funded primarily through (1) the transit share of the City of Cincinnati Earnings Tax, (2) fares paid by passengers, (3) funds from the Federal Government, (4) funds from the State of Ohio, and (5) funds from the Hamilton County Commissioners. SORTA's primary funding source was the City of Cincinnati, which accounted for over half of its overall funding.

On May 14, 2020, Hamilton County voters passed Issue 7. Issue 7 changed SORTA's funding for the first time in 40 years from the .3 percent City of Cincinnati earnings tax to an .8 percent countywide sales tax. Additionally, the new levy dedicated 75 percent of the revenue from the sales tax to expanding and operating Metro and 25 percent to supporting transit infrastructure across Hamilton County.

The August 2, 2021 Tentative Agreement included wage increases effective January 3, 2021. The wage increase was 2.5% each January and July for each of the three years of the contract, which amounted to a 15% overall increase or 15.97% compounded. (SORTA Ex. 4).

ATU 627's Position:

ATU 627 proposed an increase of 6% to the base hourly rate of all members, effective and retroactive to November 1, 2020; a 6% increase to the base hourly rate of all members, effective and retroactive to November 1, 2021; and a 6% increase to the base hourly rate of all members effective November 1, 2022.

ATU 627 sought a 6% wage increase per year, arguing that SORTA is "being infused with cash at an unprecedented level." The Union contended that SORTA had: 1) an operating surplus of $22,000,000; 2) received federal stimulus fund under CARES Act in the amount of $45,389,982; 3) received $33,381,422 in funding Coronavirus Response and Relief Supplemental Appropriations Act (CRRSSA); and 4) received an unspecified portion of some

$75,613,260 as part of the American Rescue Plan Act of 2021 (ARP).[1] In comparison, the Union relied upon Cleveland and Columbus transit systems to compare the top operator wages. The top operator rates in those cities were presented as follows:

Columbus	$31.52/hour
Cleveland	$31.35/hour
Cincinnati	$27.93/hour

ATU Local 627 also presented evidence from outside of Ohio, using comparable transit agencies from Allentown, PA, Kansas City, MO, Providence, RI, Rochester, NY, and Worcester, MA. These comparables, like those used from within Ohio, were advanced to demonstrate that ATU's proposed wage increase will bring Metro operators in parity with operators in their peer cities. ATU Local 627 emphasized that SORTA is a public sector nonprofit transit agency with a $22 million dollar surplus. According to the Union's calculations, if the Fact Finder recommends its wage increase, SORTA would will have over a $19 million dollar surplus.

SORTA's Position:

SORTA's proposal contained the following wage increases:

1/3/21	1/2/22	1/1/23
6.0%	**3.0%**	**3.0%**

Although SORTA agreed with the Union that recent funding has improved its financial outlook, SORTA disagreed with the Union's calculations. Specifically, SORTA disagreed it had an overall surplus in its operating budget because the Union failed to account for its capital deficit. SORTA's Interim Chief Financial Officer testified at the hearing and

[1] ATU 627 also contended that SORTA would receive funding by virtue of the recently passed Infrastructure Investment and Jobs Act. The amount, if any, SORTA will receive is unknown.

explained that financial budgeting must consider both an operating budget and a capital budget.

Prior to passage of Issue 7, SORTA projected that its funding was barely sufficient for operating—scarcely covering wages and benefits—while leaving nothing for capital. SORTA in fact projected the funding was likely insufficient over ten years to cover operating expenses. On top of the funding problem, SORTA also experienced a two (2) percent annual decline in ridership. Additionally, SORTA had a capital deficit of $180 million and projected a $300 million deficit at the end of ten years.

The myriad of financial problems led the parties and local public officials to propose a change in funding to the Hamilton County voters. The parties' campaign for Issue 7 promised to resolve SORTA's deficit, as well as expand services and ridership. SORTA developed the Reinventing Metro Plan, which promised to use the Issue 7 funding to implement: (1) shorter wait times on major bus routes; (2) acquire new capital amenities (buses, benches, shelters and transit centers); (3) extend service on major bus corridors to 24-hour service; and (4) make overall service improvements.[2] The Reinventing Metro Plan also projected an increase in bargaining unit employees.

Issue 7 was passed in the midst of the COVID-19 pandemic, which caused SORTA to lose 100 percent of its student ridership and its fixed revenue routes to drop 60 percent. SORTA's ridership remains down and it is unknown when ridership will return to pre-

[2] The Reinventing Metro Plan is designed to create the following improvements: (1) 26 routes with more frequent service; (2) routes with longer service hours; (3) 8 new routes; (4) 8 route alignment changes; (5) 7 routes with 24-hour service on major corridors; (6) service every 20 minutes or better on major routes; (7) crosstown service every 30 minutes or better every day; (8) more weekend service; (9) access service improvements; (10) additional new transit centers and park and ride locations; (11) more new buses with free Wi-Fi, charging ports and other amenities; (12) more suburban job connectivity with new demand-response service; and (13) Bus Rapid Transit corridors offering faster travel through limited-stop service.

pandemic levels. The impact of COVID-19 dampened the financial gain from the passage of Issue 7, and has caused a projected lost revenue of approximately $65 million.

Moreover, SORTA presented evidence that it received less funding than identified by the Union. For example, SORTA received $34.1 million from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, $24 million from Coronavirus Response and Relief Supplemental Appropriations (*CRRSA*) *Act*, and $44 million from the American Rescue Plan (ARP). SORTA has already allocated and spent the funds from CARES Act and CRRSA, primarily on wages and benefits. These funds ensured no bargaining unit members were laid off and all continued to be paid at least 40 hours pay per week during the peak of the pandemic. SORTA has similarly allocated the ARP funds, and projected the ARP funds will be spent by September 2023.

Consequently, while SORTA received significant one-time stimulus funds from the federal government, it occurred at a time when revenues from ridership and the Issue 7 decreased. Further, although SORTA was able to retire a portion of its capital deficit, it still has a capital deficit of approximately $75 million. SORTA's five year projection, taking into account its proposed wage increase, allows it to make its commitment to voters under the Reinventing Metro Plan, including retiring its deficit over five years and meeting its commitments for service, ridership, and route expansion and capital upgrades.

In support of its wage proposal, SORTA offered comparable wage rates in local transit authorities. SORTA specifically noted local transit authorities reached settlements of 2 percent in Indianapolis; 3 percent in Columbus (COTA); 2 percent in Akron (*See Metro Regional Transit Authority*, SERB No. 2020-MED-05-0606 [Hetric Fact Finder awarding 2%, 2%, 2% increases]); and 3.5/3.0/3.0 percent in Northern Kentucky (TANK).

SORTA also argued that its wage proposal is consistent with its historic wage rates. The highest wage rate increase SORTA has negotiated was 3.5 percent in 2010. Since 2005, SORTA's average wage increase has been 2.16. At 12%, SORTA's proposed wage increase is the largest 3-year increase in the history of this relationship.

In support of its argument, SORTA offered the following wage comparison chart:

Operator Pay Rate	2020	Difference		2021	Difference		2022	Difference		2023	Difference	
		Per hour	% comparison		Per hour	% comparison		Per hour	% comparison		Per hour	% comparison
SORTA	$ 27.93			$ 29.61			$ 30.49			$ 31.41		
[redacted]												

Recommendation:

The Fact Finder agrees with the Union that SORTA's financial picture has improved with the passage of Issue 7. However, many of its funding sources have already been allocated and/or distributed, including for the benefit of employees during the pandemic. Moreover, SORTA committed to the Reinventing METRO Plan to expand services and make capital improvements. Both parties agree that employee wage increases have lagged compared to other local transit authorities in recent years because of past funding issues and as a result must be enhanced to address these shortcomings. However, the Union's proposal of 6%, 6%, 6% cannot be justified under the factors the fact finder must consider, among which are SORTA's budget, wage increases of comparable employers, the one-time nature of the funding sources, and future uncertainties that continue as a result of the pandemic. Moreover, the Union's proposed increases are not in line with any other local transit authorities, or with what the parties have historically agreed upon.

United Healthcare, Inc. for health insurance beginning on January 1, 2021, which provided a 3-year rate lock.

Furthermore, SORTA argued that pursuant to Ohio Revised Code 306.43(A), it is required to competitively bid for services in excess of $100,000.[3] SORTA claimed that if it entered into the Teamsters Local 261 Health and Welfare Fund it would circumvent SORTA's statutory obligations.

SORTA claimed that it would suffer potential problems associated with switching carriers and plans. For example, SORTA argued that such a recommendation would require SORTA to breach its contract with United Healthcare.

SORTA contended that the Teamsters plan would not provide SORTA any specific claims data. The lack of specific claims data is significant because it could prevent SORTA from leaving the plan as subsequent carriers are reluctant to competitively bid without claims data. SORTA also objected to the Teamsters' plan because the fund will not provide any runout stop loss protection for large claimant's costs that might be incurred by the runout claims during the transition, which puts SORTA at significant risk.

Recommendation:

The Fact Finder recommends no change in plan design. The Fact Finder recommends the following language for Section 11:

[3] O.R.C. 306.43 (A) that provides that "[t]he board of trustees of a regional transit authority or any officer or employee designated by such board may make any contract for the purchase of goods or services, the cost of which does not exceed one hundred thousand dollars. * * * When an expenditure, other than for the acquisition of real estate, the discharge of claims, or the acquisition of goods or services under the circumstances described in division (H) of this section, is expected to exceed one hundred thousand dollars, such expenditure shall be made through full and open competition by the use of competitive procedures."

Amend Section 11(a) as follows (all other language in Section 11 remains unchanged):

(a) The Authority will share in the cost and expense of health insurance coverage for each employee covered by this Agreement, including the President**,** Secretary-Treasurer, and any additional local officer of the Union. Such benefits shall provide either single or family coverage depending upon the employee's status. If both husband and wife are employees, either one family plan or individual single plans must be chosen.

Throughout this Section, "domestic partner" is synonymous with "spouse."

Commencing February 1, 2016, the Authority will offer two health insurance plans to all employees eligible for health care coverage under this Agreement. These plans shall include the following levels of benefits.

Preferred Provider Option (PPO)

Coverage Level	Deductible	Co-Insurance	HRA eligibility	HRA maximum Amount
Single	$3000	100%	After $700 in deductible expenses	$2300
Family	$6000	100%	After $1400 in deductible expenses	$4600

High Deductible Health Plan (HDHP)

Coverage Level	Deductible	Co-Insurance	HSA-eligible
Single	$2000	90%	Yes
Family	$4000	90%	Yes

Health Savings Account

Employees who enroll in a High Deductible Health Plan may be eligible for a Health Savings Account (HSA) that allows employees to pay for qualified deductible and medical expenses on a pre-tax basis. However, participation in the HSA will be completely voluntary.

Employees wishing to participate must sign up during open enrollment. A monthly fee may be required for the administration of the HSA account and will be payroll deducted on a pre-tax basis.

The Authority will contribute certain amounts ("seed money") to each employee's HSA in order to partially defray the annual HDHP deductible. In addition, the Authority will provide additional amounts ("hardship amount") to employees who

have exhausted their seed money on qualified medical expenses that go to the deductible. The seed money and available hardship amounts are set forth below:

Seed Money - 2021

	Jan 2021	Apr 2021	Jul 2021	Oct 2021
Single Plan	$ 187.50	$187.50	$187.50	$187.50
Family Plan	$ 375.00	$375.00	$375.00	$375.00

Seed Money - 2022

	Jan 2022	Apr 2022	Jul 2022	Oct 2022
Single Plan	$ 187.50	$187.50	$187.50	$187.50
Family Plan	$ 375.00	$375.00	$375.00	$375.00

Seed Money - 2023

	Jan 2023	Apr 2023	Jul 2023	Oct 2023
Single Plan	$ 187.50	$187.50	$187.50	$187.50
Family Plan	$ 375.00	$375.00	$375.00	$375.00

Hardship	**2021**	**2022**	**2023**
	1/1/21-12/31/21	1/1/22-12/31/22	1/1/23-12/31/23
Single Plan	$200.00	$200.00	$200.00
Family Plan	$300.00	$300.00	$300.00

Wellness Program and Health Insurance Contributions

The Authority will continue to offer annual Biometric Screening and Nicotine Screening. The cost of the Screening will be fully paid by the Authority. The Authority may arrange with any vendor of its choice to provide Biometric Screening. The Authority will establish the testing period for both the Biometric and Nicotine Screenings.

An employee's monthly health insurance contribution in a plan year will be determined by whether or not the employee has fulfilled the required Wellness Program elements in the prior plan year, listed below.

- Biometric Screen through the Authority's vendor
- Nicotine Screen through the Authority's vendor
- Primary Care Physician visit with annual physical

If an employee enrolls a spouse on an Authority health insurance plan, then the spouse must also complete all of the applicable annual Wellness Program elements, as listed above, in order for the employee to qualify for the Wellness contribution rates. If all required Wellness Program elements have been met, the employee qualifies for the Wellness contribution rates.

	Wellness Rate*	Non-wellness Rate*
Single	10%	17%
Family	10%	17%

* Nicotine Use: If employees (and/or covered spouses) do not a) verify that they are Nicotine Free through the Authority's provided Nicotine Screening, or b) do not participate in the Authority's provided Nicotine Screening, then the employee will pay the applicable Nicotine Use surcharge of an additional $50/month. The Authority's provided Biometric Screening will also include the Nicotine Screening.

Employee monthly health insurance contributions are defined as a percentage of the total cost of the premium charges if fully insured or the premium equivalent rate defined each year by the Authority if self-funded.

Employees enrolled in coverage by another source who then experience a qualifying event, and timely enroll in the Authority's health insurance plan will be afforded the opportunity to take a Biometric Screening from an Authority approved provider. The applicable Wellness Program elements and monthly premium contribution will be applied in accordance with this Section.

All elements of the Wellness Plan shall comply with the Health Insurance Portability and Accountability Act ("HIPAA"), as amended, and all other applicable statutes and regulations.

Metro's maximum monthly health insurance contributions shall not exceed those being paid as of December 31, 2023. After the 2023 plan year, the parties agree to continue to abide by the terms of Section 11 until a successor agreement is reached.

If the monthly premium renewal rates exceed 12% for the 2015 plan year, the parties have agreed to open Section 11 of the contract for the sole purpose of negotiating a different health insurance plan design and/or carrier in an effort to reduce the premium increase. If the parties do not agree on a plan that does not exceed 12%, then any increase beyond 12% shall be paid 50% by the Authority and 50% by the employees.

ISSUE NO. 5 SECTION 16 WORK DAY AND WORK WEEK (d) OPERATORS TRADING RUNS

SORTA's Position:

SORTA sought two proposals to modify Section 16:

Section 16: PICKING RUNS

(a)(3) A weekly pick will be conducted as outlined in The Board Rules to determine work assignments for sub-board operators. This pick will consist of assignment slots equal to the number of operators on the sub-board and will include any run which is expected to be open for the full week of the pick. Sub-board operators will pick their weekly assignment by seniority, **and as set forth in the parties' Side Letter regarding Board Rules.**

Section 16(d): Operators Trading Runs

- Revise part #5: of the May 2008 Run Trade agreement
- 5. Run trades can be requested by the two operators in the following time parameters:

- A maximum period of up to the end of the current **pay period.**

SORTA's contention is that 16 (a)(3) should be modified in order to reference the Side Letter regarding the Board Rules.

SORTA also argued that run trades need to be paid back within the same pay period because of administrative difficulty in tracking the trades. Both of the proposals were agreed to in the August 2 Tentative Agreement.

ATU 627's Position:

ATU 627 opposed the Side Letter concerning the Board Rules. *See Issue 7 Infra.* The Union did not offer argument or evidence against Section 16(a) or (d) changes.

Recommendation:

The Fact Finder recommends that Section 16 shall be modified as follows:

Section 16: PICKING RUNS

(a)(3) A weekly pick will be conducted as outlined in The Board Rules to determine work assignments for sub-board operators. This pick will consist of assignment slots equal to the number of operators on the sub-board and will include any run which is expected to be open for the full week of the pick. Sub-board operators will pick their weekly assignment by seniority, **and as set forth in the parties' Side Letter regarding Board Rules.**

Section 16(d): Operators Trading Runs

- Revise part #5: of the May 2008 Run Trade agreement
- 5. Run trades can be requested by the two operators in the following time parameters:

- A maximum period of up to the end of the current **pay period.**

ISSUE NO. 6 SECTION 32 TERM OF AGREEMENT

SORTA's Position:

SORTA sought to amend Section 32 as follows:

> (a) This Agreement and the provisions thereof shall take the place of all prior contracts and continue in force and bind the respective parties hereunto from 12:01 A.M., November 1, 2020 to midnight, September 30, 2023, and from year-to-year thereafter, unless changed by the parties.
>
> (b) Either of the parties hereunto desiring a change in any Section or Sections of this Agreement shall notify the other party in writing of the desired changes at least sixty (60) days prior to the thirtieth (30th) day of September, 2023. If neither party gives such notice, the Agreement shall continue on from year to year. If such notice is given by either party, the Agreement shall then be opened for consideration of the change or changes desired.

The parties are in agreement as to the term of the contract, except that SORTA sought an expiration of September 30 instead of October 31 for administrative reasons. SORTA presented evidence that the parties have modified the expiration date of the contract on previous occasions to coincide with open enrollment for health insurance.

ATU Local 627's Position:

The Union proposed a contract term of 3 years continuing from the previous expiration date.

The Union did not present any specific evidence opposing an expiration date of September 30.

Recommendation:

The Fact Finder finds that Section 32 shall be modified as follows:

> (a) This Agreement and the provisions thereof shall take the place of all prior contracts and continue in force and bind the respective parties hereunto from 12:01 A.M., November 1, 2020 to midnight, October 31, 2023, and from year-to-year thereafter, unless changed by the parties.
>
> (b) Either of the parties hereunto desiring a change in any Section or Sections of this Agreement shall notify the other party in writing of the desired changes at least sixty (60) days prior to the thirty first (31th) day of October, 2023. If neither party gives such notice, the Agreement shall continue on from year to year. If such notice is given by either party, the Agreement shall then be opened for consideration of the change or changes desired.

ISSUE NO. 7 SIDE LETTER: BOARD RULE REVISIONS REGARDING EXTRA OPERATORS AND ROTATION

SORTA's Position:

SORTA proposed the following side letter:

SORTA and ATU Local 627
Side Letter: Board Rule revisions regarding Extra Operators and Rotation
Date: Upon Ratification

Goals:

The Authority seeks revisions to the Board Rules regarding the scheduling and rotation procedures of full-time Extra Board Operators. The goal is to establish specific Show-Up Boards, as part of the Division Picks and System Pick, and for the duration of each pick. Operators would either pick a specific Show-Up Board or be assigned these specific Show-Up Boards, by seniority and in accord with our Picking Rules. Also, in order to accommodate twenty-four hour service, some of the board rules need to be modified in order to provide around the clock coverage for filling all work not being performed by regular operators.

To accomplish these goals, the parties agree to the following:

General Provisions:

- Operators may pick a specific Show-Up Board, or be assigned a specific Show-Up

Board, by seniority and in accordance with our Picking Rules. These Extra Board Operators will stay in their specific Show-Up Board for the duration of the Pick.

- Management will determine the number of slots and Off Days offered for each Show-Up Board according to service needs and the economy of operation.
- The Board Line Up will remain in effect, but the Line Up method will be applied within each specific Show-Up Board.
- We will end the practice of marking-up PM Show-Up Operators at 2 pm. Instead, these Operators will remain on duty and serve the functions of Show-Up Operators.
    - Otherwise, the Board Rules for marking-up Show-Up Operators will remain in effect.

Show-Up times and Rotation:

- The rotation of Subs or Extra Operators is defined as "rotating daily through all Show-Up times within their specifically picked or assigned Show-Up Board."
- For the purposes and functions of the Board Rules, the revised Show-Up times and Boards are:
    - AM Show-Up (Show-Up times before 12pm):
        - 3:00am – 8:30am
        - 4:00am – 9:30am
        - 5:00am – 10:30am
    - PM Show-Up (12pm and 1pm Show-Up)
        - 12:00pm – 5:30pm
        - 1:00pm – 6:30pm
    - Evening Show-Up (6:30pm, 8:00pm, and 11:00pm Show Up)
        - 6:30pm – 12:00am
        - 8:00pm – 1:30am
        - 11:00pm – 4:30am

Additional Board Rules for Evening Show-Up times:

- Evening Show-Up Operators (6:30pm – 4:30am) may be assigned to PM Extras that plug after 12:00 pm.
- Evening Show-Up (6:30 pm – 4:30 am) will not serve as the "Top" of the AM Extra Board. Rather, the primary purpose of Evening Show-Up is to protect the service that plugged prior to midnight and prior to when AM Show-Up begins. Evening Show-Up Operators cannot be used to cover work after the day's AM Show-Up has been exhausted, and they cannot be assigned to AM Extras for the same day as their Evening Night Show-Up.

Hold Downs and Off Day selection:

- The weekly Hold Down and Off Day pick will continue. Extra Operators not on a Hold Down will revert to their default Show-Up Boards that were picked or assigned.

Filling Open Runs from the Extra Board:

- When filling Open Runs for the following day, Open Runs will be assigned to the Show-Up Board, based on the plug time of the Run. For example, Open Runs that plug between 3:00am and 11:59am will be assigned to the top of the Extra Board Operators within the AM Show-Up Board in the following order:
    - Day Runs from the highest paying to the lowest paying, then
    - Split Runs from the highest paying to the lowest paying, then
    - Late Runs from the highest paying to the lowest paying, then
    - Overnight Runs from the highest paying to the lowest paying.
        - Overnight Runs are those that plug after 6:30pm.
- This method will be applied to each Open Run and its applicable Show-Up Board, based on the Run's plug time.
- Operators on the PM Show-Up Board may be assigned to an Open Run that plugs before 12:00 PM, according to service needs and the economy of operation. For example, a run that plugs in the 11:00 AM hour may be assigned to the PM Show-Up Board.
- Extra Board Operators that are not assigned an Open Run as described above will be placed on Show-up, at 3pm the day prior, within their Show-Up Board, according to the Board Line Up method.
- The completed Daily AM and PM Boards will continue to be posted by 3pm. The completed Evening Board will be posted by 9am.

Other items:

- Extra Operators may be asked to report earlier than their specific Show-Up times in anticipation of an earlier Show-Up time having an insufficient number of Operators, per current practice.
- Show-up times may be changed by mutual agreement of the parties.
- Inactive Operators will be placed on an "Inactive Board" and will not pick or be assigned to a Show-Up Board. Upon returning to active service, they will be allowed to select a Show-Up Board slot for the duration of that current Pick.

Addressing potential conflict or inconsistencies in the Board Rules caused by these revisions:

- The Parties will discuss particular matters that need clarification with respect to the revised definition of "rotation" and the other revisions above.
- The Parties will immediately resume their Board Rules Committee, to meet at least weekly, until such time as the Board Rules have been thoroughly reviewed for all conflicts and inconsistencies and the revisions above have been put into effect.
- In cases of disagreement on how to resolve conflicts and inconsistencies in the Board Rules, the Parties pledge to bargain in good faith in seeking a resolution.

All other functions of Extra Operator rotation in the Board Rules that are not changed by this Side Letter will remain intact. All other existing Board Rules will remain in effect unless otherwise modified by the parties.

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SORTA argued that as it looked more deeply at its operations, it determined that there were significant trends that needed to be corrected in order to remain competitive in the marketplace. SORTA determined that 67.2 percent of all of its Extra Board work is performed by 33 percent of the workforce, all of whom have 5.6 years of experience or less. The workforce with the least experience—2.1 years or less—does 36.6 percent of this work. Significantly, the less experienced operators perform most of the show up work, which is an unpredictable schedule. For example, an operator might be required to report to work at 3:45 a.m. one day, noon the following day, and 4:30 a.m. the third day. This operator could also receive a "Run" that begins anytime between 3:25 a.m. and 9:00 p.m. SORTA's contention is that by giving Extra Board operators more stable work it will help with attrition (currently at a 30-40% rate), recruiting, and the achievement of the Reinventing Metro Plan by increasing the size of the Operator workforce. SORTA's belief is that more regular work periods, achieved through its proposed Board Rules revisions, coupled with the Extra Board Premium, may attract more experienced operators to the Extra Board. More experienced operators have higher rates of performance, and would assist with SORTA meeting its goals under the Reinventing Metro Plan.

SORTA argued that the Extra Board Premium coupled with the changes to the Extra Board will improve the quality of life of all sub operators. SORTA noted that the premium of one dollar an hour is equivalent to a 3.5% increase on the current rate.

ATU 627's Position:

ATU 627 opposed the changes to the Extra Board detailed in SORTA's proposed side letter. ATU 627 argued that the Board Rules are a comprehensive set of rules and parameters that were developed and implemented jointly by the parties in February 1982. The Board Rules address and

govern the specific work assignment procedures for Extra Board operators (i.e., drivers without a set work assignment). These rules have evolved over the past 40 years and in each instance when they were amended, the specific change was always jointly agreed to by the parties. Indeed, any changes that have been made over time have always been reached by and through a joint labor/management committee. Given the complexity and nuance of the Board Rules, only the parties have an intimate and complete understanding of what they are and if/how they need changed. ATU Local 627 argued that Board Rules have never been a subject of or changed by Fact Finding.

In support of their position, ATU 627 presented Frank Harper, Coach Operator and Vice President of the Union. Mr. Harper testified that the Board Rules should not be changed:

> Well, because we don't know if it's going to work. We know for a fact that the Board rules that we have in place right now work. The only reason why they're having problems with it now is, simply because we don't have enough operators to fill some of the work that we have.
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> * * * *
>
> The ones who understands it are the people who live it every single day. Even the ones who actually put out, sat up here and testified, they've never lived it. Some of the changes that they're making, we don't know if they're going to work.

Mr. Harper argued that the change could disrupt the life of the operators and the clerks who must manage the changes. The Union also offered testimony from Kenneth Fox, who presented an alternative proposal to the Board Rules designed to give "some flexibility for the company on seeing that the board can be fluid as far as same day absences and needs of the company that they would be able to build their reserve, show up people how they see fit."

Opinion:

While ATU 627 opposed the changes to the Board Rules, the Union acknowledged the underlying circumstances beyond the change, i.e. the unpredictable nature of less senior operators' schedules and the need to retain and recruit more operators. In this regard, the Union offered its own

alternative proposal that recognized the need to provide predictability in employees' schedules while still retaining management flexibility. By offering this alternative proposal, the Union, through Executive Board Members Harper and Foxx, conceded that changes to the Board Rules are necessary.

SORTA's proposal is essentially the same changes to the Board Rules that were agreed upon in the August 2, 2021 Tentative Agreement. Contrary to the Union's argument, SORTA's proposal does not constitute a wholesale re-write of the Board Rules, but instead streamlines the process for employees who perform this work. Furthermore, SORTA's proposal allows consistency with these rules unless the parties decide to change the rules in subsequent negotiations.

Recommendation:

The Fact Finder finds that the following side letter shall be adopted:

SORTA and ATU Local 627

Side Letter: Board Rule revisions regarding Extra Operators and Rotation

Goals:

The Authority seeks revisions to the Board Rules regarding the scheduling and rotation procedures of full-time Extra Board Operators. The goal is to establish specific Show-Up Boards, as part of the Division Picks and System Pick, and for the duration of each pick. Operators would either pick a specific Show-Up Board or be assigned these specific Show-Up Boards, by seniority and in accord with our Picking Rules. Also, in order to accommodate twenty-four hour service, some of the board rules need to be modified in order to provide around the clock coverage for filling all work not being performed by regular operators.

To accomplish these goals, the parties agree to the following:

General Provisions:

- Operators may pick a specific Show-Up Board, or be assigned a specific Show-Up Board, by seniority and in accordance with our Picking Rules. These Extra Board Operators will stay in their specific Show-Up Board for the duration of the Pick.
- Management will determine the number of slots and Off Days offered for each Show-Up Board according to service needs and the economy of operation.
- The Board Line Up will remain in effect, but the Line Up method will be applied within each specific Show-Up Board.
- We will end the practice of marking-up PM Show-Up Operators at 2pm. Instead, these Operators will remain on duty and serve the functions of Show-Up Operators.

- Otherwise, the Board Rules for marking-up Show-Up Operators will remain in effect.

Show-Up times and Rotation:

- The rotation of Subs or Extra Operators is defined as "rotating daily through all Show-Up times within their specifically picked or assigned Show-Up Board."
- For the purposes and functions of the Board Rules, the revised Show-Up times and Boards are:
  - AM Show-Up (Show-Up times before 12pm):
    - 3:00am – 8:30am
    - 4:00am – 9:30am
    - 5:00am – 10:30am
  - PM Show-Up (12pm and 1pm Show-Up)
    - 12:00pm – 5:30pm
    - 1:00pm – 6:30pm
  - Evening Show-Up (6:30pm, 8:00pm, and 11:00pm Show Up)
    - 6:30pm – 12:00am
    - 8:00pm – 1:30am
    - 11:00pm – 4:30am

Additional Board Rules for Evening Show-Up times:

- Evening Show-Up Operators (6:30pm – 4:30am) may be assigned to PM Extras that plug after 12:00pm.
- Evening Show-Up (6:30pm – 4:30am) will not serve as the "Top" of the AM Extra Board. Rather, the primary purpose of Evening Show-Up is to protect the service that plugged prior to midnight and prior to when AM Show-Up begins. Evening Show-Up Operators cannot be used to cover work after the day's AM Show-Up has been exhausted, and they cannot be assigned to AM Extras for the same day as their Evening Night Show-Up.

Hold Downs and Off Day selection:

- The weekly Hold Down and Off Day pick will continue. Extra Operators not on a Hold Down will revert to their default Show-Up Boards that were picked or assigned.

Filling Open Runs from the Extra Board:

- When filling Open Runs for the following day, Open Runs will be assigned to the Show-Up Board, based on the plug time of the Run. For example, Open Runs that plug between 3:00am and 11:59am will be assigned to the top of the Extra Board Operators within the AM Show-Up Board in the following order:
  - Day Runs from the highest paying to the lowest paying, then
  - Split Runs from the highest paying to the lowest paying, then
  - Late Runs from the highest paying to the lowest paying, then

    - Overnight Runs from the highest paying to the lowest paying.
        - Overnight Runs are those that plug after 6:30pm.
- This method will be applied to each Open Run and its applicable Show-Up Board, based on the Run's plug time.
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All other functions of Extra Operator rotation in the Board Rules that are not changed by this Side Letter will remain intact. All other existing Board Rules will remain in effect unless otherwise modified by the parties.

IV CERTIFICATION

The foregoing fact finding report and recommendations are based on the evidence presented to me through testimony, prehearing statements, written hearing presentations, and exhibits. Recommendations contained herein were developed in conformity to the criteria for a fact

finding found in the Ohio Revised Code 4117 (7) and the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder
December 31, 2021

V. PROOF OF SERVICE

This fact-finding report was electronically transmitted this _____ day of December, 2021 to the persons named below.

Union Representatives:

Joseph S. Pass, Esq.
Jubelirer, Pass & Intrieri, P.C.
219 Fort Pitt Blvd.
Pittsburgh, Pennsylvania 15222
Phone: (412) 281-3850
Email: jsp@jpilaw.com

Employer Representative:

Kirk M. Wall, Esq.
Jacqueline N. Rau, Esq.
Dinsmore & Shohl LLP
191 W. Nationwide Blvd., Suite 300
Columbus, Ohio 43215
Phone: (614) 628-6905
Email: kirk.wall@dinsmore.com
jacqueline.rau@dinsmore.com

SERB:
EMAIL: Mary.Laurent@serb.state.oh.us , med@serb.state.oh.us

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

December 31, 2021