

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

**Amalgamated Transit Union
Local 1005
Union**

and

BMS Case No. 11-PA-0093

**Metropolitan Transit
Employer**

NAME OF ARBITRATOR: George Latimer

DATE AND PLACE OF HEARING: February 24, 2011
Minneapolis, Minnesota

BRIEFS RECEIVED: None

DATE OF AWARD: March 24 , 2011

APPEARANCES

FOR THE UNION:
Roger A. Jensen, Attorney
Michelle Sommers, Union President
Gary Bier, Transit Information Center Rep
and Union Officer

FOR THE EMPLOYER:
Andrew Parker, Attorney
John Howley, Transit Information Manager
Pam Steffens, Customer Relations Supervisor

INTRODUCTION

This is a grievance arbitration between the amalgamated Transit Union, Local 1005 (ATU or Union) and Metropolitan Council/Metro Transit (Metro Transit or Employer). ATU and Metro Transit are parties to a collective bargaining agreement effective August 1, 2008 through July 31, 2010 (CBA or contract). The grievance was processed through the contractual grievance procedure and appealed to arbitration pursuant to that procedure. The hearing was held February 24, 2011. Both parties had full opportunity to submit documentary evidence and examine witnesses. The parties chose to make oral closing arguments in lieu of written briefs and the record was closed on February 24.

STATEMENT OF THE ISSUE

Did the Employer violate the contract when it assigned Transit Information Center Representatives to receive and record certain customer complaint information by phone, during periods of time when Customer Service is closed? If so, what shall the remedy be?

RELEVANT CONTRACT PROVISIONS

ARTICLE 4

MANAGEMENT PREROGATIVES

The ATU recognizes that all matters pertaining to the conduct and operation of the business are vested in Metro Transit and agrees that the following matters specifically mentioned are a function of the management of the business, including, without intent to exclude things of a similar nature not specified, the type and amount of equipment, machinery and other facilities to be used; the number of employees required on any work in any department; the routes and schedules of its buses; the standard of ability, performance and physical fitness of its employees and rules and regulations requisite to safety. Metro Transit shall not be required to submit such matters to the Board of Arbitration provided by Article 13.

As to the standard of ability, performance and physical fitness of its employees above mentioned Metro Transit agrees to submit to the Board of Arbitration only the claim by the ATU of discrimination against employees in the same group in the application of these standards. It is understood and agreed, however, that in all such matters Metro Transit will consider, insofar as practicable, the convenience and comfort of its employees.

ARTICLE 5 GRIEVANCE PROCEDURE

Section 3. Any dispute or controversy, between Metro Transit and an employee covered by this Agreement, or between Metro Transit and the ATU, regarding the application, interpretation or enforcement of any of the provisions of this Agreement, shall constitute a grievance.

Section 4. A grievance as defined herein may be presented for settlement by the aggrieved employee, the ATU or both. The ATU must begin acting for such member within seven (7) days after the ATU or its members have knowledge of the facts giving rise to said grievance, in the following manner:

1st Step. Take up such grievance with the appropriate Metro Transit management representative in writing, who will answer within five (5) days in writing. First step grievances will be held at the employee's current work location. If no mutually satisfactory adjustment can be reached, then

2nd Step. Within seven (7) days the ATU shall notify the applicable department head, who will answer same in writing within seven (7) days after hearing the grievance. Discharge answers will be given in writing within five (5) days. If no mutually satisfactory adjustment can be reached, then

3rd Step. Within seven (7) days the ATU shall notify the General Manager of Metro Transit or his appointee who will answer in writing within seven (7) days after hearing same. Discharge answers will be given in writing within five (5) days. If no adjustment satisfactory to the ATU is reached within seven (7) days thereafter or within such additional time as may be mutually agreed upon, then the dispute may be submitted to a board of arbitration in accordance with Article 13 hereof, at the written request of either party to the Agreement, provided that the ATU shall first notify Metro Transit in writing of its intention to recommend to its membership, at the next regular meeting or at any special meeting it may wish to call for that purpose, that arbitration be requested, and provided further that it shall advise Metro Transit in writing of the decision by the membership within forty-eight (48) hours after the conclusion of such meeting.

As a pilot program restricted to the duration of this contract, mediation will be a choice, if mutually agreed upon, in place of step three (3) in the grievance procedure.

Failure to comply with procedures and time limits above outlined shall be deemed an abandonment or settlement of the grievance and shall terminate the matter. Saturdays, Sundays and Holidays shall be excluded in calculating the time limits herein specified.

Section 5. When an employee's grievance is sustained in whole, all negative narratives related to the incident, shall be removed from all records.

ARTICLE 11 WORK RULES AND PRACTICES

All practices and agreements governing employees enforced by Metro Transit or its predecessors on or after November 1, 1957, not in conflict with nor changed by the provisions of this Agreement, may be changed subject to the following conditions:

- (a) Work rules and/or practices may not be in conflict with the contract;
- (b) Metro Transit must meet and confer with the ATU prior to making any such changes or new work rules;
- (c) New work rules and/or practices must be reasonable;
- (d) The Metro Transit will furnish the ATU with a copy of all bulletins or orders changing any such rules, regulations and practices;
- (e) Work rules and/or practices are subject to the Grievance Procedure.

ARTICLE 13
ARBITRATION PROCEDURES

In the event a dispute or controversy arises under this Agreement which cannot be settled by the parties within thirty (30) days after the dispute or controversy first arises, then Metro Transit or the ATU, whichever is applicable, in accordance with Article 2 or 5 hereof, may request in writing that the dispute or controversy be submitted to arbitration. Upon such request, each party shall, within ten (10) days, appoint one member of the Board of Arbitration and the two members thus appointed shall select a third member. Should the two members be unable to agree upon the selection of a third member within ten (10) days, either party may request the State Bureau of Mediation Services to furnish a list containing the names of seven (7) persons from which the third member shall be selected. Within five (5) days after receipt of such list, the parties shall determine by lot the order of elimination and thereafter each shall in the order alternately eliminate one name from the list until only one name remains. The person whose name remains shall be the third member and shall serve as Chairman of the Board of Arbitration. The arbitration hearing shall be held within forty-five (45) days from the date the chairman is selected.

In making such submission the issue to be arbitrated shall be clearly set forth in writing...

FACTUAL BACKGROUND

Metro Transit employs about 35 Transit Information Center Representatives in the TIC department. These employees answer calls from the public, providing information about Metro Transit services including routes, policies, fares, lost and found etc. These employees have a pay range of \$14.53-\$20.76 per hour. There are five Customer Service Representatives employed in the Customer Service (or 'Customer Relations') department. These employees have a pay range of \$15.20-21.71 per hour. These employees take customer complaints and conduct investigations of the complaints. The Customer Service and Transit Information Center functions were once part of one work unit, but for many years have been separate departments both within the Marketing and Customer Services Division. (Union Exhibits 1 and 2)

The Customer Service Representatives are on duty the approximate hours of 7:30 am to 5:30 pm, Monday-Friday, closed on holidays. The Transit Information Center has more extended hours. In the past, when a customer called wanting to make a complaint during the hours Customer Service is closed, the caller was encouraged to call back during open hours, or to register his/her complaint online. If neither of these options was acceptable or possible, the call was routed to a supervisor on duty, who took the complaint information from the caller and

filled out a complaint form. Over the ten year period prior to the assignment change at issue here, TIC supervisors filled out approximately 60 of these forms per month. These forms were passed on to Customer Service Reps during their duty hours for follow-up and investigation. (Employer Exhibit 2, testimony of John Howley)

In spring of 2010, the Employer made a change in the above procedure. A complaining customer who calls when Customer Service is closed is still directed to call when Customer Service is open, and to file a complaint online. However if neither of those is acceptable to the customer, instead of routing the call to a supervisor, the information is taken by the TIC Rep who receives the call. That TIC Rep fills out the complaint form, which is later passed on to Customer Service for follow-up. This assignment change led to the dispute in question here. The Union grieved this policy change on May 28, 2010. The parties agreed to waive first step and it was heard at the second step on May 28. As a response to the second step, the Employer agreed to discontinue the new policy and to meet and confer with the Union about the change. After the meet and confer process, the policy was put in place. The grievance then continued to the third step on July 14, 2010, and was denied. The grievance was appealed to arbitration which was held February 24, 2011. (Joint Exhibits 2, 3, 4, and Employer Ex 4)

UNION POSITION

The Union argues that the Employer's decision to make this new assignment was a unilateral change in its policies and procedures which is grievable under Article 11(e). Article 11(c) states that work rules must be reasonable. This policy fails the reasonableness standard because it: 1)takes bargaining unit work away from Customer Service Representatives; 2)Transit Information Center Representatives are not adequately trained to perform this duty; 3)this procedure may mean a complaint is not appropriately investigated before being forwarded to other divisions of Metro Transit; and 3)although this may be a small amount of work, employees are being assigned to do duties for which they are not compensated at the contractual rate.

Because work assignments are not specifically excluded from matters which are grievable under the contract, the Union maintains this issue is properly before the Arbitrator.

Both Union President Michelle Sommers and TIC Rep Gary Bier testified that the TIC Reps lack access to information they would need to properly respond to common customer complaints. Often these complaints involve busses being early or late, or failing to pick up riders. The TIC Reps do not have access to the GPS system which shows exactly where a bus is, where it was, and how long it stopped at a given stop. This information is available to Customer Service Reps, and to supervisors. This information allows the Customer Service Reps to investigate the complaint and find necessary background information to evaluate its validity. Since the TIC Reps do not have this access, they record the customer's complaint on a form without any verification. Mr. Bier testified that based on a conversation with Customer Relations Supervisor Pam Steffens, he believed the complaint forms filled out by TIC Reps were being sent directly to the Garages, without the background investigation. This was a concern to Mr. Bier and to the Union, because it would mean that Metro Transit bus operators would be called upon to defend themselves in cases where there may or may not be a legitimate complaint, and appropriate investigation had not been done.

Mr. Bier testified that TIC Reps are trained in basic 'call handling', but are not able to provide remedies to problems presented by complaining customers. In addition, Customer Service Reps are required to have better typing skills than TIC Reps. Although he is capable of doing the necessary keyboarding, Mr. Bier stated he is not a fast typist. Depending on the extent of the customer's complaint, taking down the information could be time consuming.

Mr. Bier also testified that in the 1990s, TIC and Customer Relations/Service Reps were part of one department. The Customer Relations jobs were subject to a periodic 'pick' process by bargaining unit members, so usually these jobs were occupied by a few of the most senior employees. These jobs were paid more than TIC Reps, as is true today. When the two functions were divided in the late 1990s, the protocol was that when Customer Service Reps were not on duty, customers were encouraged to call back during the hours when those

employees were there. In instances where the customer insisted on making their complaint right away, the calls were transferred to a supervisor.

Since the recent change in policy, Mr. Bier believes TIC Reps are being asked to do more work, without adequate training, and without additional pay.

EMPLOYER POSITION

The Employer argues the decision to make this assignment is clearly within its management prerogative. The language in Article 4 echoes the language in PELRA:

A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel... (M.S. 179A.07 Subd. 1)

Since the job assignment at issue falls clearly within the contractual parameters, the Employer argues this grievance is not arbitrable at all. According to the language in Article 11(e), work bhv rules are grievable, and the parties went through the grievance procedure on this matter. However, the Employer argues that since this assignment change falls within its management rights, the matter at hand is not arbitrable under Article 13.

Further, even if the Arbitrator reaches the question of reasonableness set forth in Article 11, the Employer argues this assignment was completely reasonable: 1)The additional duty occurs only during hours when Customer Service Reps are not working, and only after offering the customer other ways of submitting their complaints. Recording information on this small number of complaints is a very minor addition to the TIC Reps' regular duties; 2)The type of work involved in filling out these complaint forms is very much within the scope of the TIC Reps' regular duties; 3)no work has been taken away from bargaining unit members; and 4)the aim of this slight change of assignment is eminently reasonable, that is to improve responsiveness to customers.

Transit Information Manager John Howley testified that the number of Customer Service Reps (5), and the hours they work, has remained the same for many years. He described a range of responsibilities Customer Service Reps have in connection with investigating customer complaints, and a range of technological tools available to them. He stated the Customer Service Reps continue to perform all those duties to the present. The only change which occurred since last spring is that instead of going to a supervisor, the TIC Rep fills out the complaint form him or herself. Since the Customer Service Reps never performed this task during hours when they were closed, no work was taken away from them. Customer Service Reps continue to perform all follow-up investigation duties. This procedure was made clear to employees when the assignment change occurred (Emp. Ex 4). Mr. Howley submitted data indicating that the complaint calls taken by TIC Reps constitute about 50 calls per month, out of 80,000-100,000 total calls handled, or approximately half of one percent of their work. (Emp. Ex 2)

Mr. Howley testified that the idea for this change originally came from some TIC Reps themselves. The aim is to reduce frustration for some customers who don't want to call back or file a complaint online, and allows TIC Reps to respond more directly by taking the information on the spot. He testified the skills needed to key in the required information on the complaint form are the same as skills required of TIC Reps, including keyboarding as indicated on the TIC Rep position description (Union Ex 1). The task requires no additional training. Both Mr. Howley and Customer Relations Supervisor Pam Steffens testified that Customer Service Reps conduct the usual investigation of all customer complaints before they are forwarded to any other departments, and that this part of the process has not changed.

ARBITRATOR ANALYSIS

The central issue in this case is the following: Under this collective bargaining agreement, what are the limitations to the Employer's right to assign? Article 11 sets forth these limits on the Employer's right to change work rules and practices:

a) Work rules and/or practices may not be in conflict with the contract; The Union has not argued that the assignment change violates other parts of the contract.

b) Metro Transit must meet and confer with the ATU prior to making any such changes or new work rules; The record shows that the Employer initially failed to meet and confer with the Union about this assignment change, but corrected this deficiency by temporarily suspending the practice while meet and confer occurred.

c) New work rules and/or practices must be reasonable; (emphasis added) The Arbitrator finds the Employer's actions were reasonable for the following reasons. The evidence shows the additional assignment is very similar in nature to the TIC Reps' regular duties. The Employer's data about the tiny percentage of time spent on this additional duty, is essentially undisputed. It is also undisputed that CR Reps are not working less than they were before, and that these employees are in the ATU bargaining unit. The only change that occurred is a task changing hands from employees in the supervisory unit to ATU employees. In addition the Employer had a legitimate and sensible reason for the change, that is serving the public in a more responsive way. There is no evidence the Employer's decision was arbitrary, capricious or discriminatory. These facts add up to a reasonable decision on the Employer's part.

One of the Union's arguments that the Employer's action was unreasonable, related to whether complaints taken by TIC Reps would continue to be investigated by Customer Service Reps before being passed on to other departments. Both Ms. Steffens and Mr. Bier testified credibly. Their memories differed concerning their brief conversation about how investigations would be handled. However Mr. Howley and Ms. Steffens both testified that in fact the investigation chain of events has not changed, the investigation still occurs prior to complaints being passed on. This testimony about the practice is unrebutted. The Arbitrator concludes there was a misunderstanding between the Union and Employer on this point, which may have contributed to the Union's objection to the assignment change.

d) The Metro Transit will furnish the ATU with a copy of all bulletins or orders changing any such rules, regulations and practices; There were no arguments in this case regarding inadequate notice.

e) Work rules and/or practices are subject to the Grievance Procedure. (emphasis added) The Arbitrator finds that the Employer retains the right to assign as set forth in both contract and PELRA, subject to any limitations bargained by the parties. In this case, the parties have negotiated the limitations found in Article 11. A straight forward reading of the language in subpart e, is that the question of whether the Employer's actions comply with these bargained limitations is grievable. Since no limitation to the words 'subject to the Grievance Procedure' appears here, that right extends up to and including arbitration. The question of whether in fact the Employer complied with the enumerated limitations, is properly before the Arbitrator.

In this case the sum of the evidence shows this policy change was a small additional job assignment, well within the parameters of the Employer's management rights. The right to make reasonable job assignments is recognized in the contract. It is also a generally accepted principle of labor management relations. Grievance is denied.

George Latimer, Arbitrator

Dated: March 24, 2011