BEFORE THE BOARD OF ARBITRATION

In the Matter of the Arbitration of a Dispute Between

THE SUBURBAN BUS DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, d/b/a PACE FOX VALLEY SUBDIVISION

and

AMALGAMATED TRANSIT UNION, LOCAL 1028[1]

Appearances:

Schuyler, Roche, & Crisham, P.C, Attorneys at Law, by **Joseph J. Stevens** and **Peggy J. Osterman**, on behalf of Pace

Jacobs, Burns, Orlove & Hernandez, Attorneys at Law by **Joseph M. Burns** and **Brandon M. Anderson**, appeared on behalf of the Union.

SUPPLEMENTAL INTEREST ARBITRATION AWARD

The award in the above matter was rendered in the above matter and executed by both parties with each party concurring on some issues and dissenting on others. A majority executed the award on each issue, the last concurrence having occurred on August 26, 2010. Pace submitted the award to ratification by its Board of Directors which rejected the award on the following bases:

REJECTION1:

Statement Re: Ruling on Ex Parte Submission: The Interest Arbitration Award incorporates the Chairman's July 21, 2010, ruling on Pace Fox Valley's Motion to Produce to Pace Fox Valley the written submission by the Union to the Chairman *ex parte*. This issue/term is rejected because it is not supported by the record, the decision was based on a misapprehension of applicable law, and the Chairman acknowledged that the *ex parte* submission influenced the Interest Arbitration Award.

REJECTION2:

[1] Local 1028 succeeded Local 215 which was signatory to the prior agreement.

Issue 1: Term. This issue/term is rejected because the duration of the successor Collective Bargaining Agreement is inextricably tied to the wages issue, which is unreasonable, unsupported by the record, and represents the product of irregular process.

REJECTION 3:

Issue 8: Dental. This issue/term is rejected because it is vague and ambiguous fails to address each of the proposals, improperly retains jurisdiction, and is not supported by the record.

REJECTION 4:

Issue 10: Wages. The issue/term establishing wages is unreasonable under current economic conditions; is not supported by the wage trends in the transit industry, as evidenced by the recent agreement with Pace Southwest; is not supported by the record; and is tainted by irregular process. The Board rejects the Chairman's conclusion that a "catch-up" is necessary, as this ignores the historical wage relationships between and among the operating divisions and is based upon faulty conclusions.

REJECTION 5:

Issue 21: Relief Vehicle Pull Out Time. The issue/term is rejected because it is not supported by the record; it is incorrect and is internally inconsistent.

REJECTION 6:

Issue 32: Part-Time Operators. The issue/term is rejected because it is contrary to Illinois statute, is not supported by the record and not within the jurisdiction of the Chairman.

A hearing on rejection was held, on October 20, 2010, after which each party filed briefs, the last of which was received November 30, 2010.

DISCUSSION

The arbitration panel consisting of Pace's long time chief labor counsel and the Union's chief labor counsel and a neutral outside labor arbitrator issued the award for the parties' December 1, 2007, to November 30, 2010 agreement. The process started near the end of the term of the agreement. Pace has rejected the award on some minor benefit issues and some other items, but the main issue is Pace's rejection of the wage portion of the award because in its view the wage "lift" (increase at the end of the term) is too high. In this regard it seeks to keep the grant of its request for an unusually large increase in employee contributions to the HMO

premiums while it rejects the wage increases necessary to bring operators to a comparable wage rate to those of the transit industry.

1. STANDARDS FOR REVIEW OF REJECTION[2]

The parties have agreed to submit their disputes concerning the interpretation, application of the express terms of the last expired agreement to arbitration pursuant to Article 24. For reasons of judicial economy and technical expertise expressly contemplated in Section 25 C, the interpretation and application of the administration of Section 25 C in order to discharge the panel's duties during the interest arbitration process is properly exercised by the designated arbitration panel. The arguments raised on rejection require the interpretation of Section 25 C. Section 25 C of the parties' expired agreement provides in relevant part:

> If no agreement is reached within the sixty (60) day period or such further time as both parties may agree upon, the issues in dispute shall be submitted to a Board of Arbitration consisting of an arbitrator designated by Pace Fox Valley Division, an arbitrator designated by Local 215 of the Amalgamated Transit Union, and an Impartial Chairman. Within seven (7) working days after their selection, the parties' arbitrators shall meet to select the Impartial Chairman of the Board. Should the two (2) arbitrators be unable to agree upon the appointment of the third arbitrator, then either party may request the American Arbitration Association to furnish a list of five (5) arbitrators who are experienced in interest arbitration in the transportation industry. Within seven (7) days after receipt of the list, the arbitrator shall be selected from the panel by each party alternately striking a name form the panel until only one (1) name remains.
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> The Board of Directors of Pace shall have the opportunity to review the decision of the Arbitration Board on each issue. If the Board of Directors fails to reject one or more items of the Award by a two-thirds vote within twenty (20) days of the issuance of the Award, such term or terms adopted by a majority of the Arbitration Board shall be final, binding and conclusive upon the Union and Pace.
>
> If the Board of Directors of Pace rejects any terms of the Award, it must provide a written statement of the reasons for such rejection with respect to each term so rejected within twenty (20) days of rejection. The parties will return to the Arbitration Board within thirty (30) days for further proceedings.

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[2] The Union made a number of evidentiary objections at the rejection phase. The Chairman concludes that the objections are better addressed by the standard of review than evidentiary rulings.

Section 25 C is ambiguous in some respects. First, it is ambiguous as to precisely what matters may be subject to rejection and the proper scope of rejection of interrelated issues. Second, it is ambiguous as to the standards upon which the arbitration panel may sustain or reject the issues raised. Third, it is ambiguous as to under what circumstances, if any, the Chairman with one concurrence may order Pace to implement the award. The Chairman addresses these as necessary in the following discussion. In making this decision he applies the long accepted rules of contract construction applied by arbitrators and courts. The issue as to what is the proper scope of rejection is discussed below with respect to rejection issue 1 and rejection issue 4. The issue as to the scope of the authority of the Chairman to order Pace to comply with the award as amended herein is discussed after the rejection issues are considered. I now address standards for determining a rejection issue.

Some standards can be inferred from Illinois law. Illinois law permits courts to vacate, modify and correct awards for certain reasons. It also allows courts to remand arbitration awards back to the arbitrators under certain circumstances. Rejection is limited by Section 25 C to specific "terms . . . adopted by a majority of the arbitration panel." It makes sense that the Chairman may decide a specific rejection issue based upon grounds which might cause a court to vacate, modify, correct or remand the specific rejection issue to the arbitration panel. The Illinois version of the Uniform Arbitration Act, 710 ILS 5 provides in relevant part that an award may be vacated where the arbitrators exceeded their authority. It provides for remand to the arbitrators or modification of the award where there is a miscalculation of figures, or it makes an award on a matter not submitted or the award is imperfect as a matter of form.

Some standards may be inferred from the fact that rejection is available only to Pace. It is apparent that the rejection process is designed to protect Pace because of its fundamentally different role as both the administrator of the agreement and the provider of the wages and benefits. It is apparent that the parties intended that the rejection and further proceedings process involve something different than the limited authority of a court under the Uniform Arbitration Act. The matters which Section 25 C indicates are to be submitted to arbitration are "terms" which word is used in the labor relations field and in this context to mean subjects which are to be included in the next collective bargaining agreement. The sentence: "The Board of Directors of Pace shall have the opportunity to review the decision of the Arbitration Board on each issue" is important because it limits the authority of the Board to review only issues to be included in the collective bargaining agreement. In this context, the use of the word "term" is essentially synonymous with "issue." The use of the different word may have some implications, but those potential implications do not affect the matters in dispute herein.

This provision also requires that Pace submit its "written statement of the reasons" for its rejection of each term it rejects. These reasons are then to be submitted to the arbitration panel for "further proceedings." The process would be useless if the arbitration panel had no authority to consider them and make a decision. Similarly, if the process were to be a *de novo* consideration of the merits of the award or the issues originally submitted there would be no

reason for Pace to be required to submit its reasons at all. I conclude from the foregoing, that grounds for rejection can include:

1. Whether an order with respect to a disputed issue produces an extreme hardship on Pace in the administration of the agreement.

2. Whether the award as to the disputed issue was the product of a manifest error.

3. Whether the order with respect to a disputed issue produces an extreme economic hardship on Pace.

4. Whether the award is ambiguous in relevant part as to a disputed issue.

5. Whether the award is incomplete as to a disputed issue.

I also note that significant inferences are available from the parties' choice of impasse procedure. The parties adopted their impasse resolution procedure during the Healy arbitration proceeding. They chose to use an arbitration panel which allows the arbitration panel broad authority over the issues, compromising as the panel sees fit. In so doing, the parties rejected other arbitration processes which restrict the authority of the arbitrator such as final offer arbitration, or arbitration of final offers issue by issue. Because this is a tri-partite process, review should be very narrow.

2. REJECTION ISSUE DETERMINATIONS

REJECTION ISSUE 1: ARBITRAL RULING

The foregoing relates to a procedural ruling made by the Chairman pursuant to the parties' and party-appointed arbitrators' agreement as to the internal workings of the arbitration panel. The foregoing is not a "term" subject to rejection of Pace or proper subject of review of the award.

The first sentence of Section 25 C provides:

> If no agreement is reached within the sixty (60) day period or such further time as both parties may agree upon, the issues in dispute shall be submitted to a Board of Arbitration.

As noted above, the word "term" refers to items which could be part of a collective bargaining agreement and which are subjects over which the parties have bargained to impasse or alternatives thereof. Accordingly, rejection issue one is denied.

REJECTION ISSUE 2: TERM

Pace concedes that the parties agreed on the term of the agreement in dispute, from December 1, 2007, to November 30, 2010; however, the Pace Board has determined that the term should be rejected because it is inextricably tied to wages and it is not in any party's interest

to have the agreement expire before it is signed. Pace Fox Valley proposes that the term be extended by two years without any increase in wages. The Union argues that the length of the agreement is an item settled by the parties and is not appropriately subject to rejection. Pace offered no evidence to support this and this has not been subject to collective bargaining.

The parties have agreed to the term and the Chairman concludes that it is not appropriate to change the agreed-upon term. This is essentially an entirely new issue which has not been vetted through the collective bargaining process.

REJECTION ISSUE 3: DENTAL[3]

Pace's rejection is based upon three things. First, Pace contends that the award is incomplete in that Pace proposed reducing the Major Service benefit from 80% to 50% of costs and there is no award on the subject. The Union takes the view that the award denies Pace's proposal on the Major Service benefit and that the Chairman had intended to adopt it. Pace is correct that the award is incomplete on the Major Service benefit and the Chairman orders that the Major Service benefit be reduced from 80% to 50%. This clarifies the award.

Pace's second reason for rejection of this term is that the award increasing Pace's share of the family contribution to full is not warranted. Pace argues that the parties have a long standing practice of employee contribution to the family portion of dental. It argues that the Chairman treated it differently by not requiring the Union to show changed circumstances or a *quid pro quo* for this proposal. The Union argues that this is part of the award is supported by the evidence.

The fact that there was a general change in relevant economic circumstances requiring some economic adjustment was not a matter and dispute and, therefore, did not need discussion. The parties only disagreed as to how those circumstances should affect the result herein. Both Pace and unit employees faced an increase in the cost of living as a result of inflation during the relevant periods. For example, the national CPI-U index rose 3.8 in 2008, with the medical care component rising 3.7%. It went down .4% in 2009, but the medical care component of that index went up 3.2% in the same period. This is a common changed circumstance which warrants general wage and benefit increases for employees or adjustments to health plans. Pace rebuttal exhibit 22 at page 18 of the July 2009 release shows that for the year ending in June, 2008, employment costs for the transportation industry nationally rose 2.2%, and the year ending June, 2009, rose 1.8% including both wages and benefits. Pace itself recognized that those circumstances had changed and some increases were in order.

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[3] The Chairman's language in the following sentence at page 25 of the award is not a reservation of jurisdiction for this arbitration panel, but a reservation to future bargaining and arbitration panels: "The Chairman determines to reserve this issue to another time when there are part-time employees."

This item if instituted as part of an adjustment to benefits over the three year term of this agreement is well within an appropriate general total package increase granted in response to those changed circumstances. I note that it will not be implemented until after the agreement expires. This makes it even more appropriate.

I also note that the reduction in the Major Service Benefit is at least a partial *quid pro quo* for this change and the increase of dependent age limit discussed immediately below.

Pace's third reason is that the extension on the issue of the provision for dependents to that age limit specified in the policy of health insurance rather than 19 is not justified by changes in circumstances. The award shows changed circumstances occurring during the pendency of the dispute in state and national efforts to increase dependent health coverage. No law requires an employer to provide dental insurance. The parties have voluntarily chosen to do so. While these changes do not regulate dental insurance, powerful policy arguments supporting those legislative pronouncements properly apply by analogy. Additionally, the evidence indicates that the parties never mutually agreed to an age 19 limit for those dependents that go to college. The matter was a subject of a grievance.[4]

I note that the issue presented by the Union is within the range of a reasonable alternative to Pace's proposal and need not be a separate issue.

The award at page 25 made an estimate that this was likely to be a minimal cost to Pace which remains the judgment of the Chairman. Pace has argued that this statement is "nonsensical" and "confuses the burden of persuasion." In most, but not all situations, an employer is uniquely in a position to provide cost information. It is a fair expectation to expect an employer to come forward with cost evidence available to it if cost is a serious issue. The ruling that it is of minimal cost is warranted on this record. Thus, this minor change is also part of a general total package adjustment and will remain as originally ordered.

REJECTION ISSUE 4 WAGES

Pace Fox Valley incorrectly re-characterizes the wage rates set by the award for top operators and, based upon that characterization, attempts to characterize the entire wage rate award as unwarranted. The award provides different reasons for different amounts of wage increase and for the timing of those increases. The Chairman addresses them separately because they are based upon different reasoning. The Union sought an additional adjustment of $1.00 per hour in addition to any general wage increase for the top operator rate only to bring it to the level which it believed was the appropriate wage rate. The award concludes that the top operator rate should be adjusted by $.75 in addition to the general increase at the beginning of the agreement and that the additional $.25 sought by the Union is appropriate if it is financed from the rest of

[4] March 22, 2010 tr. p. 115

the total package increase and set at the end of the term of the agreement.[5] Pace sought an extensive increase in the employees' contribution to their health insurance (both the PPO plan premium and the HMO plan premium)[6]implemented retroactively and decreases in various benefits. The award requires Pace to pay an equivalent *quid pro quo* for the changes in health insurance of 2.5%, the implementation of which is staggered to offset costs. The Chairman imposed a *quid pro quo* for the increase of insurance costs on unit employees of 1% effective June 1, 2010, and 1.5% effective November 1, 2010 (near the end of the agreement). The award also grants general increases for all unit employees of 3.5% for the period commencing December 1, 2007, but reduces the cost thereof by staggering its effective dates as follows. The effective date of the first 2.5% is June 1, 2008 and the effective date for the second 1% effective June 1, 2009. The Chairman awarded a general increase for the next agreement year of 1.5% effective at the start of that year, December 1, 2008. The Chairman awarded a 2% general increase for the next year effective at the start of the year, December 1, 2009.

The wage adjustment of $.75 is clearly supported by the evidence including the evidence presented at the supplemental stage. The award concludes that Pace Fox Valley was underpaid by comparison to the external comparisons as of November 2007. In so doing, it discredits the relevance and credibility of Pace's argument that these employees' services are worth less because, among other things, the property is smaller, their work is much easier, and these employees are guaranteed Sundays off.[7]

On rejection, Pace alleged that the Union has misled the Chairman during the original hearings by incorrectly alleging that Arbitrator Larney had started a process of catching unit employees' wages up to that average in his award. It argues that neither Arbitrator Healy, nor Arbitrator Larney did so, but, instead established Pace Fox Valley at approximately 87% and 88% of the average of all Pace operating divisions' to operators' rate. In its view, employees' services here are worth less than similar employees elsewhere, because, inter alia, they have a guarantee of Sundays off, the property is small with few routes, and their work is easier. Next, it argues that the award on this point violates a twenty year past practice of having Pace Fox Valley rank lowest among all Pace properties and about 93% of the average of Pace properties.

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[5] Pace asserted at page 18 of its rejection hearing brief that there was no record of the Union seeking the additional $.25. The Union's principle wage rate argument which it made at the outset of the hearing (see, for example, March 10 hearing tr. p. 16) was based on the assumption that Pace Fox Valley operators were entitled to a "catch-up" increase to the average of other Pace properties' top operator rates. The assumption equates to $.96 per hour based upon the comparison at page 18 of the award. However, the Union's main brief suggests that it was seeking to disregard some of the lower wage rates, including, for example, Pace Heritage, thus, increasing the average.

[6] Virtually all of the bargaining unit is in the HMO plan and, therefore, the changes to the HMO premium are the focus of the discussion herein and in the original award.

[7] Pace also justified this on the basis that Aurora is more distant from Chicago and, also, that this is a smaller unit. Obviously, the external comparisons are even more distant from Chicago. Size of the unit was adequately discussed in the award.

The Union responded as follows. Pace never argued inability to pay. The evidence supports the conclusion that an inequity existed and a full $1.00 wage adjustment was warranted. The Union never attempted to mislead the arbitration panel on the nature of the past arbitration awards between the parties, but only surmised what it believed happened from the records in those cases. In any event, it was undisputed that Pace Fox Valley was underpaid at the time of the Healy award and there is no evidence that Arbitrator Healy ever viewed Pace Fox Valley relative rank to other Pace properties as relevant. Indeed, Arbitrator Healy greatly increased the relative position of Pace Fox Valley from 81% to 90% of Pace divisions. A similar result was true for external comparisons as well. Similarly, Arbitrator Larney granted raises which continued to improve the relative position of this unit. Pace's comparisons offered at the rejection hearing are misleading because they involve expired contracts and do not account for supplemental increases or *quid pro quo's* given to other units.

I conclude that the $.75 adjustment is appropriate. A wage adjustment to correct inequities by definition is an increase which is not included in a general wage increase. In this case a wage adjustment was awarded to the top operator wage rate, but none was awarded to the mechanics who all parties agreed were properly compensated. Economic circumstances other than ability to pay are usually of little relevance because this is effectively a determination of a minimum wage in the industry.

The circumstance which changed dramatically from prior settlements over the last twenty years is that as of November, 2007, what is an appropriate minimum wage rate for top operators in the transportation industry in Illinois[8] has risen dramatically *vis a vis* the comparison to Pace as a whole. Thus, the circumstances which might have justified Pace's theory in preserving the past disparity have changed dramatically. The evidence supports the conclusion that Pace's arguments "that we have always done it that way" and "the employees are worth less" are both without merit.

The evidence presented by Pace at the rejection hearing establishes that the wage rate disparity for operators at Pace Fox Valley were the result of actions by the City of Aurora when it owned the property and not the result of any judgment by Pace or the City of Aurora of the relative value of Fox Valley operators to other operators in Pace or comparable operators elsewhere in Illinois. There is no dispute that the wage rate of Pace Fox Valley top operators was low when Pace took over the property from the City of Aurora in 1990. The preponderance of the evidence indicates that the operators at what became Pace Fox Valley were not always paid less than all of operators of what became the Pace operating divisions. As of 1970, the City of Aurora [now Pace Fox Valley] paid its operators 12% more than the City of Joliet (now Pace Heritage) paid its operators. This declined to virtually the same in 1976. In 1976[9], the City of Aurora paid its top operators about the same as the City of Oak Lawn (now Pace Southwest).

[8] As evidenced by the external comparisons to comparable employees of comparable work

[9] The data submitted by Pace for Oak Lawn (exhibit 13) started in 1976.

Between 1976 and 1982, there was a massive decline in the relative relationship between Aurora and both of the other two properties. There are no other comparisons available for that period. Based on the available evidence the better conclusion is that the historical differences which were then created were not related to differences in the day-to-day duties or working conditions of top operators. It is not likely that economic conditions played a role. Pace did not own these properties and never was part of the decision to create those differences.

The decline specified above continued through 1987, the last year of the last collective bargaining agreement between Aurora and this union. From 1987, until Pace received the Aurora property in 1990 and Arbitrator Healy issued his award in 1990, unit employees at Pace Fox Valley did not receive a wage increase while others continued to do so. This was not related to differences in the value of services or economic condition.

Arbitrator Stevens who was then, and is now, Pace's chief labor counsel testified as to his understanding of the situation the parties faced in the Healy case. In that case the parties faced a serious problem of converting the pension of unit employees to Pace's 401(k). He testified that the Aurora operators were by far the lowest paid among those of the Pace properties. Pace sought a larger increase for unit employees than ultimately was granted to correct the problem.[10]

The reason which arguably supported the wage disparity with other Pace properties in the past is no longer true. In 1990, the operators of Pace properties as a whole were well-paid in comparison to the industry in Illinois as a whole with notable exceptions for Pace Fox Valley and Pace Heritage. The higher-paid Pace properties were the wage leaders in the transportation industry nationally.[11] Pace sought to eliminate the wage leadership position of its higher-paid properties over the years. The operators of Pace Properties as a whole are no longer well-paid in comparison to the industry in Illinois as a whole. Thus, the circumstance which changed dramatically in this period, from 1990 to November, 2007, was that the appropriate minimum wage rate for top operators in the industry in Illinois[12] has dramatically increased *vis a vis* the comparison to Pace as a whole. The focus has shifted from the internal Pace comparisons to the external Illinois comparisons. The following is a summary of what the available evidence showed:

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[10] See rejection hearing tr. p.96-8, 147-9. The Chairman also notes that there is evidence in the Healy award that he was trying to adjust wage rates to reduce the disparity. It is a common mediator proposal to propose cutting the difference between comparables by one-half to start the trend toward eliminating a perceived disparity between them. See, rejection hearing tr. p. 139. As discussed below, the Chairman used a variant of this technique with the $.25 adjustment. I also note that Arbitrator Healy did award an increase beyond that which would have been a general increase.

[11] See, rejection hearing tr. p. 138. Thus, using Pace's method of analysis, Pace Fox Valley was at 77% of Pace West as 1990. If that ratio had been applied in November, 2007, Pace Fox Valley top operators would have been earning $5.17 less than they actually were. By contrast, if Pace Fox Valley top operators were kept at the 96% ratio of the average of the three external comparisons used herein in 1990, they would have been at $20.27 or $.52 higher than they were at.

[12] As evidenced by the external comparisons to comparable employees of comparable work

Percentage of Available External Top Operator Comparables in 1990[13]

		Peoria	Springfield	Rockford
		$12.35	$12.48	$12.78
P. Fox Valley	$10.80	1.14%	1.16%	$1.18
P. Southwest	$13.10	.94	.95	.98
Pace North	$13.00	.95	.96	.98
Pace Heritage	$11.96	1.03	1.04	1.07
Pace River	$12.70	.97	.98	1.01
Pace South	$13.25	.93	.94	.96
Pace West	$14.05	.88	.89	.91
P. Northwest	$13.50	.91	.92	.95

[Pace rejection hearing exhibit 17]

Percentage of Available Historical Top Operator Comparables as of November, 2007

		Peoria	Springfield	Rockford
		$21.91	$20.20	$21.21
P. Fox Valley	$19.75	1.11	1.02	1.07
P. Southwest	$21.45	1.02	.94	.99
Pace North	$20.73	1.06	.97	1.02
Pace Heritage	$18.50	1.18	1.09	1.15
Pace River	$20.50	1.07	.99	1.03
Pace South	$20.50	1.07	.99	1.03
Pace West	$22.49	.97	.90	.94
P. Northwest	$20.50	1.07	.99	1.03
P. North Sh.	$20.97	1.04	.96	1.01

[13] Pace North Shore was not included in Pace rejection hearing exhibit 17

After Fox Valley adjustment to $20.50

P. Fox Valley $20.50 1.07 .99 1.03

[Sources, Union original hearing exhibit 55, award, p. 18]

The award correctly finds that as to the $.75 adjustment, the external comparisons outweighed the arguments of Pace as to historical wage rates, distance from Chicago, size of the unit, and the comparative value of services. The use of historical ratios is not warranted where they have not been consistent and the reason for them has changed.[14]

The evidence offered by Pace at the rejection hearing also supports the general wage increases awarded therein. Pace offered the following comparisons from the BLS Employment Cost Index:[15]

	2008	2009	2010
Transit Industry	2.7%	1.92%	1.37%
Civilian worker	3.2%	1.92%	1.37%
Private Industry	3.1%	1.8%	1.6%
Government	3.4%	3.0%	1.4%
Pace Fox Valley (award)	3.5%	1.5%	2.0%

[The foregoing is for periods ending in June of the stated year.] The wage rates awarded herein are within the range of the BLS statistics. The figures offered by Pace are somewhat misleading. I note, for example, from the same 2010 BLS report that union private sector service employees (including transit) employees' wages rose 2.7%, while state and local government service occupations (including transit) rose 2.1%. In the same 2009 BLS report, those same comparisons were for private sector union service workers 3.0% and state and local government service worker 3.8%. I conclude that the general wage increases awarded in the award are appropriate, if not conservative, in comparison to these numbers for the other reasons set forth in the award.

Pace has addressed the *quid pro quo* determination herein by ignoring it while implying elsewhere in its brief that it was irrationally applied. This part of the wage package was granted because Pace sought health insurance changes, most importantly as to the HMO contribution,

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[14] See, University of Chicago Hospitals, 63 LA 824, 827-8 (Mueller, 1974), holding that the use of historical ratios was outweighed by other evidence.

[15] Pace rejection hearing exhibit 20

which was by far greater than any change needed to deal with the health costs related to the term of this agreement and was primarily directed at undoing its prior agreements with this unit. The determination of this part of the wage package was part of a compromise of two issues, health insurance and wages. Pace has not "rejected" the health insurance issue so that the compromise could not be completely rescinded. The standard of review of this part of the wage rate determination must necessarily be very narrow because Pace has kept the benefit of this compromise while rejecting its cost in wages. At its core, the determination was that if Pace wanted its extensive changes to increase the employees' cost of health insurance it had to grant an equivalent *quid pro quo* in wages. Thus, the determination which was made in the award indicated that the issue of health insurance and this part of the wage increase are "inextricably" tied. Pace has demonstrated that it understood the concept of interrelated issues in its reasoning for a change in the agreed-upon term of the agreement. The Chairman concludes that the standard of review of this part wage rate changes should be limited solely to whether there is a rational basis for it and whether the amount of the *quid pro quo* is correctly determined.

The fundamental standards espoused by the Chairman underlying the award relate to the stability of the bargaining process and avoiding repetitive interest arbitrations of the same issues.[16] The *quid pro quo* doctrine is a logical concomitant of this reasoning. Obviously, parties in any negotiating situation, including but not limited to collective bargaining, can mutually agree to change any prior ruling or contract provision. The arbitrator in interest arbitration is empowered to require parties to make a change in prior awards and/or prior agreements.[17] Limiting the decision to do so only to situations in which the *quid pro quo* is equivalent encourages voluntary resolutions and stability.

The award properly determined that Pace should be required to pay a *quid pro quo* for the health insurance changes it seeks. While health costs have risen dramatically, the changes sought by Pace far exceed the changes it sought from other Pace properties relating to the term of this agreement and far exceed the amount of increased health costs imposed on employees at other Pace properties relating to the term of this agreement. The main change is the increase in HMO premium contributions which Pace sought. Thus, for example, Pace original hearing exhibit 13 shows that Pace Fox Valley employees at the end of the last agreement in 2007 were paying $15 per bi-weekly pay period for the family HMO contribution while other Pace divisions were paying about $40 per bi-weekly pay period for the family HMO contributions.

Pace never specifically explained its HMO premium proposal as one dealing with changed circumstances. The percentage change in the premium adopted in the award far exceeded any general change in the cost of health benefits as shown by national measures. It is not believable that any other Pace property agreed to similarly steep employee contribution

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[16] See, Ruben, Ed., Elkouri and Elkouri: How Arbitration Works p. 584 (6th Ed., BNA)

[17] There are few analogies to this process in the civil courts. The closest analogy is the power of courts in family law cases.

increases during the relevant terms of their agreements. The award allows an increase in bi-weekly contribution HMO employee from $7.50 to $25 single and $15 to $50 family. By contrast voluntary bargaining in other units to deal with increased health costs came to much lower increases. For example, Pace River went from bi-weekly contributions of $20 to $25 single employee HMO contribution and $40 to $50 family employee HOM contribution.[18] Thus, the changes involved herein are not primarily related to changes in circumstances during the relevant period, but to taking away the advantage that the parties had mutually agreed to give Pace Fox Valley as to HMO premiums over other units' HMO contributions in the past.

The evidence submitted at the rejection hearing supports the same view. In the last interest arbitration award between these parties, Pace Fox Valley rejected the award on the health insurance issue partly on the basis:

> There should be a much larger participation of the cost sharing by employees.

Arbitrator Larney rejected Pace's position. Thus, the award kept the paradigm of lower wages, but a better health insurance package for this unit as compared to essentially all other Pace properties. It appears that the parties continued that paradigm in successive agreements. The parties settled their immediate last agreement with the lower wage rates, but significantly better health insurance than most other Pace properties. It is this practice Pace seeks to undo by keeping that part of the bargain favorable to it, but taking away that part favorable to the employees. Similarly, the national data submitted by Pace at the rejection hearing does not justify the vastly increased costs to unit employees for the relevant period. The Pace River part-time employee settlement contains the same employee contribution to HMO as Pace River operators shown in the award and continues those in effect until July, 2013. The Pace River settlement for operators continues the same contributions shown in the award until January 1, 2013. This supports the conclusion that the awarded increase HMO premium costs to Pace Fox Valley employees is far greater than other Pace employees for the period in dispute and not related to that amount which might be necessary to deal with increased costs for the relevant period.

The *quid pro quo* was set in the award at 1% effective June 1, 2010 and 1.5% effective November 1, 2010. The Chairman now addresses the propriety of the determination of the amount of the *quid pro quo* which was set by the award at pages 24 and 26 of the award. As noted immediately above that part of the HMO premium change which was made by the award from $7.50 bi-weekly employee contribution to $20 for the single contribution and from $15 to $40 relate to periods which were not part of the change in health costs relating to this agreement, but related to the prior agreement. This translates to an hourly wage rate equivalent cost from a low of $.16 per hour for the top operator working 40 hours per week paying for single HMO coverage to a high of $.35 for top operators working 36 hours per week taking the family HMO

[18] It is unclear if this is bi-weekly or semi-monthly

coverage. Because most employees take the family coverage those increased premium contributions are equivalent to about 1.5% of wages. The award correctly notes that health premiums paid by Pace are not taxable while the premiums paid by the employee are. Thus, it correctly notes that the tax effect is an additional .5%. The other .5% awarded is not supported by this analysis.

It is important to note that the fast rise in health insurance costs throughout the country has resulted in parties voluntarily dealing with those changed circumstances in some cases by decreasing benefits, increasing employee contributions, or making other health insurance plan changes. These are judged in interest arbitration on their merits and ordinarily not by imposing a requirement for a *quid pro quo*. Ultimately, the HMO premium contributions were set at $25 single and $50 family. Pace exhibit 13 demonstrates that the difference occurred among the internal comparables during the term of this agreement. Thus, it is likely that this part of the increase of premium was the result of bargaining over changed circumstances common to all Pace bargaining units. Because the distinction made in this paragraph is very important in interest arbitration, the better view is that .5% of the *quid pro quo* which was found in the paragraph above to not be supported by the evidence be eliminated.

Under circumstances not present here, the $.75 adjustment found appropriate above might, in itself, be a *quid pro quo* for the premium changes if there had been bargaining to accept lower wages in exchange for the better HMO and PPO contributions made by Pace. The record supports the judgment that it was not. First, mechanics who have always been adequately paid received the same benefit. Second, it is problematic to argue that the wage disparity and premium benefit were equivalent exchanges. It is arguable that the disparity corrected here was far greater than the difference in health premiums. Third, in any event, as is noted in various parts of the award, the purpose of the $.75 adjustment and other changes in the award for the top operator wage rate were to adjust the wages of unit employees to the wage rate appropriate in the transit industry and to keep the top operator at an appropriate wage rate as much as practical at the end of the agreement. The $.75 adjustment brought the top operator to the $20.50 wage rate in effect November, 2007, at Pace River, Pace South, and Pace Northwest. As of January 1, 2010, Pace River was at $21.50, Pace South $23.25, and Pace Northwest $23.00. The award correctly notes that the *quid pro quo* has to be treated separately from the $.75 adjustment if one of the essential purposes of the exchange is to be achieved insofar as is practical.

As noted above, the award finds that the additional $.25 adjustment is justified only if placed at the end of the agreement and financed "from a re-allocation of the parties' total package settlement." One of the purposes of staggering wage increases until later than they otherwise would have occurred was to finance the $.25 adjustment well into the next agreement. That was not the only purpose of the staggering of those increases. One of the delays as noted above was to delay the 3.5% adjustment from December 1, 2007 to June 1, 2008, for 2.5% and the other 1% to June 1, 2009. The focus of Pace's objection to the wage part of the award was to its lift (the final wage rate at the end of each year and, most particularly, the final wage rate at the

end of the agreement). As noted with the discussion of the possible Healy wage adjustment, part of the arbitration panel's function is to properly position the parties going into the negotiations for the successor agreement. In this case, the award occurred near the end of the agreement in dispute. The Chairman has used a slightly stronger approach to handling this part of the wage adjustment than he has imputed to Arbitrator Healy.[19] The Chairman took this approach because in the Healy situation, Pace recognized that the wage rate of operators was low, but in this situation it did not. This part of the wage award contributes to lift.

There has been a major change of circumstances which is very public in Illinois. The State of Illinois has been forced by its fiscal situation to make an unprecedented increase in its general taxes. This is accompanied by austerity measures. These circumstances are so pronounced that it is questionable as to whether Illinois will have to take severe austerity measures. Similarly, evidence of recent settlements at one Pace property suggest that the union involved was very concerned about maintaining the stability of its existing wages and benefits. Under the circumstances, it may be possible that it would be in the parties' best interests to eliminate this adjustment or delay it to a different point in their successor agreement. The better view is to withdraw the award as to the $.25. Because the Union is no longer financing that additional adjustment, the financing should be undone. Accordingly, the 1% increase schedule June 1, 2009, is ordered moved back to June 1, 2008. The other portion of the staggering of that 3.5% total increase from December 1, 2008, to June 1, 2008, is sufficient to achieve all of the other purposes of staggering. The $.75 adjustment for operators results in a substantial lift. The large percentage lift is necessary even in difficult economic times to deal with an extraordinarily unusual situation to bring operators to an appropriate minimum rate for this industry.

REJECTION ISSUE 5: RELIEF VEHICLE-PULL OUT TIME

The award provides that Section E.1 would be amended to memorialize the current practice of paying for the time operators are required to make relief. It ordered:

E.1 is amended to read:

> ". . . . Operators being required to relieve on the road shall be allowed five (5) minutes to prepare the relief vehicle and sufficient travel time from and to his/her garage/terminal."

The position of both of the parties is that the award on this issue is ambiguous. Pace contends that the current practice was only to pay for relief made "at the start of the day."[20] Pace proposes to have the arbitrator correct the award to clarify this issue. The Union agrees that the award should be corrected on this issue. It argues that Pace's testimony and subsequent brief in its

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[19] See note 10, above.

[20] This is based on the testimony of Pace Fox Valley Superintendent Darlene Portillo at the March 22, 2010, tr. pp 159-160 and award footnote 32.

case-in-chief stated: ". . . operators who pull out a relief vehicle are already being paid 5 minutes at the garage and 5 minutes report time on the street."[21] Either Pace did not understand its current practice or it misled the arbitrators into believing that it was doing what the Union was proposing. The award is consistent with the Union's proposal and the language "to memorialize the current practice" should be stricken.

The award is not intended to create a new paid time requirement. Accordingly, the award at page 43 will be amended to read:

Article 5, Section E.1. shall have the following sentence added:

"An Operator who makes road relief at the start of his or her workday shall be allowed five (5) minutes to prepare the relief vehicle."

REJECTION ISSUE 6: PART TIME OPERATORS

In 2004, Pace entered into a side letter with the Union that it would not hire part-time employees. It provides:

> Pace Fox Valley agrees not to hire part-time employees during the term of this agreement. Further, within two weeks of ratification by both parties, Pace will move present part-time employees to a full-time position whose work week will be a minimum of thirty-six (36) hours over four (4) or five (5) days per week with at least two (2) days off per week.

The parties have always treated this side letter as continuing in effect. At hearing in the case-in-chief, Pace Fox Valley proposed to obtain an order from the arbitration panel vacating the side letter for two reasons. First, the use of part-time employees provides it with a more efficient work force. Second, it argued that the side letter violates the enabling documents of the RTA. Specifically, 70 ILCS 3615/3A.14 provides:

> The collective bargaining agreement may not include a prohibition on the use of part-time operators on any service operated by the Suburban Bus Board except where prohibited by federal law.

Pace alleged at hearing that the letter has continued in effect all of these years because it has opted to not challenge the lawfulness of the letter even though it may be unlawful.

The award ordered a compromise as follows:

[21] Pace Fox Valley brief, p. 31 and March 22, 2010 tr. p. 157

The side-letter is deleted. Article 6 is amended to read in relevant part: "The maximum number of part-time employees shall not exceed one (1)." Article 6, Section (b) 2 is amended to read:

> Part-time employees, who have completed six (6) calendar months of continuous service, will be eligible to received HMO (Health Maintenance Organization) single and family coverage on the same basis as full-time employees.

Pace has rejected the award on this issue for two reasons. First, the limit specified therein to one part-time employee violates the same statutory provision. Second, the parties allegedly were in agreement during the hearing that the award on this subject would be withdrawn and that the parties would continue the existing provision in effect. The Union responded that the argument that the award violates the RTA enabling statute is without merit. It denies any agreement to withdraw the award on this subject exits.

At the hearing on rejection Pace took the position that ". . . Pace is not going to raise the issue [about lawfulness]."[22] Based upon Pace's representation that it will not raise the issue of lawfulness and the fact that the side letter continues in effect until the parties negotiate a successor agreement, there is no need for any change in the past agreement. The order as to this subject is withdrawn in favor of continuing the side letter and practice.

3. AUTHORITY TO ORDER ADOPTION

The parties sharply disagree over whether the Chairman with the concurrence of one member of the panel may order Pace to implement the award as modified. Pace contends that under Section 25 C no decision of the Arbitration Board is final and binding unless and until the Pace Board has been granted its right to reject each term. Any supplemental decision of the Arbitration Board is thus subject to review and rejection. It notes that the Union has attempted to rely upon an interest arbitration award between Pace West and ATU, Local 1028 as precedent. However, the Pace West interest arbitration agreement provides that any supplemental award by the Pace West Arbitration Board is final and binding. Section 25 C of the parties' agreement does not contain similar language. The Union contends that there is binding precedent for doing so. Arbitrator Larney in the 1994 arbitration involving Pace Fox Valley and the Union issued an award on rejection by Pace requiring Pace to accept items it had previously rejected. I conclude that I have the authority to do so with the concurrence of one member of the panel.

Unlike a statutory procedure, this procedure is founded upon the agreement of the parties. The parties have agreed to "arbitrate" their differences. In a definition well known to both parties, it is a mutual commitment to <u>resolve</u> their disputes by a final and binding decision

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[22]Compare this to Pace's testimony at the March 22, 2010, pp. 125-130.

(arbitration) whether that resolution comes easily or not so easily. Like every other provision of a collective bargaining agreement, it is founded upon the parties' mutual commitment to honestly abide by the terms of their agreement even in difficult circumstances rather than by the imposition of a duty to do so from outside. Because the parties chose "arbitration," exceptions to the principle of finality must be viewed narrowly.

The bargaining history of this provision also supports the conclusion that the Chairman has authority with the concurrence of one member to order Pace to abide by the award under appropriate circumstances. Arbitrator Stevens testified that the "rejection" concept was a compromise suggestion made by Arbitrator Healy during that process which ended in December 1990[23] The concept of unilateral rejection only by the public employer is unique to the Illinois interest arbitration process in the Illinois Public Labor Relations Act, 5ILCS 315/14. While the terms of Section 25 C are not identical to those of the statute, the parties included some of the fundamental concepts and some of the wordings, such as returning to the arbitration panel for "further proceedings" rather than further "hearing." The "rejection" concept and procedures of the Illinois statute had been interpreted four years before the parties adopted it by Arbitrator Sinicropi in Peoria County and Council 31, AFSCME, AFL-CIO and AFSCME Local 2861, Case no. S-MA-10 (February, 1986). He held that the public employer therein did not have an unlimited right to reject the terms of an award. In part, he reasoned to allow rejection absent "extraordinary hardship" or "manifest error" would effect render the system unable to function as a dispute resolution system at all The reasoning is as applicable to this procedure as it was to the statutory interest arbitration procedure. Pace was on notice when it agreed to this procedure that it might be interpreted as the Chairman concludes it should be interpreted. Subsequent arbitrators who have been called upon to make similar interpretations have reached similar results.[24] Even though they have reached similar results and Arbitrator Larney made the ruling described in the paragraph below, Pace has never successfully obtained a change in the language Section 25 C in subsequent settlements.

The parties' history under this provision also supports the conclusion that the Chairman has authority with the concurrence of one member to order Pace to abide by the award under appropriate circumstances. The issue of the authority of the arbitrator was a subject of a prior award between the parties. On June 17, 1994, Arbitrator Larney issued an interest arbitration award between these same parties under identical terms of Section 25 C. One of the issues therein was that Pace Fox Valley had sought increases in negotiations in the per person and per family major medical deductibles, annual in-patient deductible, change the employee's co-payment for a doctor visit to 10% and the annual in-patient deductible in the preferred provider option. There is no evidence that the employee's share of the health premium for insurance was

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[23] Rejection hearing tr. pp. 112-114

[24] Village of Westchester and Illiois Fraternal Order of Police, ISLB No. S-MA-90-167 (Briggs, 12/4/1991); Village of Fox Lake and Illinois Fraternal Order of Police Labor Council, ISLB No. S-MA-98-122 (Malin, 10/18/99)

in issue. His award provided for changes which were less than those sought by Pace and ordered them to be effective January 1, 1995. It also established a revised paid personal leave policy and instructed the parties to agree on how it should be administered.[25] The Pace Board of Directors rejected the arbitration award as to the insurance issue partly on the basis that there should be a "much larger participation of the cost sharing by employees" and that the "benefits should be adjusted to reflect current trends in the industry." The arbitration board addressed the matter in executive session including the implementation of the paid personal leave benefit. On or about May 31, 1995, Arbitrator Larney issued a supplemental arbitration award which partly ordered:

> ". . . , the Impartial Chairman of the Board orders the Parties to implement both the Insurance Clause and Paid Personal Leave provisions."

The award delayed the effective date of the insurance changes to January 1, 1996, but otherwise retained the same change as to benefits in the prior award.[26] In the context of these parties and their history, the foregoing is strong evidence of Pace's recognition of the chairman or the arbitration panel's authority to order compliance with an award after "further proceedings" over the objection of Pace. Under the circumstances of issues presented on rejection herein it is appropriate to order Pace to implement the award as modified.

SUPPLEMENTAL AWARD

Except as modified here, the award shall remain as previously issued. Rejection issues 1 and 2 are overruled. Rejection Issue 3 is sustained in part and overruled in part. The Major Services benefit shall be reduced to 50% effective with the other changes previously approved. Pace shall pay the full family premium as previously awarded. The prior award as to the dental insurance for dependents that go to college shall remain as previously awarded. Rejection issue 4 is sustained in part and overruled in part. The award as to issue 10, wages is adjusted as follows:

	Operator	**Non Operator (Mechanic, Bld. Maint. Service Wkr.)**
12/1/2007		
6/1/2008	3.5%	3.5%
12/1/2008	1.5%	1.5%

[25] Union rejection exhibit 4, Employer rejection hearing exhibit 16
[26] Employer rejection hearing exhibit 25(5)

6/1/2009	$.50	
12/1/2009	2.0%	2.0%
6/1/2010	1.0%	1.0%
	$0.25	
11/01/2010	1.0%	1.0%

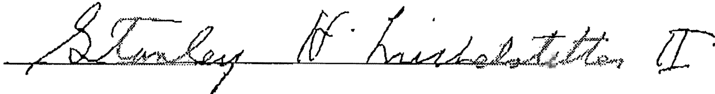
Rejection issue 5 is sustained. The award at page 43 will be amended to read:

> Article 5, Section E.1. shall have the following sentence added:
>
> "An Operator who makes road relief at the start of his or her workday shall be allowed five (5) minutes to prepare the relief vehicle."

Rejection issue 6 is sustained in part. Based upon the representation of Pace, the order on the subject of part time operators is withdrawn in favor of the existing continuing memorandum of understanding.

The parties are ordered to implement the award as amended herein. While the parties did not agree on all of the rejection issues, a majority of the panel has agreed on each of the rejection issues and the order to abide by the terms of the amended award.

Dated this 27th day of January, 2011,



Stanley H. Michelstetter II, Impartial Chairman

BEFORE THE BOARD OF ARBITRATION

In the Matter of the Arbitration of a Dispute Between

THE SUBURBAN BUS DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, d/b/a PACE FOX VALLEY SUBDIVISION

and

AMALGAMATED TRANSIT UNION, LOCAL 1028[1]

Appearances:

Schuyler, Roche, & Crisham, P.C, Attorneys at Law, by **Joseph J. Stevens** and **Peggy J. Osterman,** on behalf of the Employer.

Jacobs, Burns, Orlove & Hernandez, Attorneys at Law by **Joseph M. Burns** and **Brandon M. Anderson,** appeared on behalf of the Union.

INTEREST ARBITRATION AWARD

Amalgamated Transit Union, Local 1028, herein referred to as the "Union," and Suburban Bus Division of the Regional Transportation Authority d/b/a Pace Fox Valley, herein referred to as the "Employer,"[2] each respectively designated Joseph M. Burns and Joseph J. Stevens as members of a Board of Arbitration under the interest arbitration provision of Article 25 of the parties August 1, 2002, through November 30, 2007 collective bargaining agreement and the two members jointly selected Stanley H. Michelstetter II, as the neutral chairman thereof. The Board of Arbitration held a hearing in Chicago, Illinois, on March 9, 10 and 22, 2010, to hear and decide the terms to be included in a successor to that agreement. The parties each made oral argument and filed a post-hearing brief, the last of which was received June 21, 2010. At the conclusion of the hearing, the arbitrators agreed that the Chairman could communicate and meet separately with each of the other arbitrators during the deliberations as to this award. The purpose of this was to allow a full and frank discussion of the issues. An issue arose as to the scope of that agreement. The issue was raised by motion and decided by the Chairman by e-mail on July 21, 2010. That decision is incorporated by reference herein. The Union complied with the order made therein.

ISSUES

The parties identified the issues in the exhibits presented in this proceeding. The Chairman has combined related issues and numbered them in order of their appearance herein.[3] They are:

[1] Local 1028 succeeded Local 215 which was signatory to the prior agreement.
[2] The Regional Transportation Authority as a whole is referred to as "RTA." The Chicago Transit Authority subdivision is referred to as the "CTA." The Suburban Bus Division of the Regional Transportation Authority is referred to as "Pace" and its various subdivisions as, for example, "Pace Fox Valley
[3] Exhibits are identified as "J" for joint exhibits, "E" for Employer exhibits and "U" for Union exhibits.

1 TERM
2 PRESCRIPTION DRUG
3 HMO AND PPO CONTRITIBUTIONS
4 OUT-OF-NETWORK MAXIMUM
5 LIFETIME MAXIMUM
6 PRE-ADMISSION TESTING
7 SHORT TERM DISABILITY
8 DENTAL
9 VISION
10 WAGES AND BASIC ECONOMIC PACKAGE ALLOCATION
11 TOOL ALLOWANCES
12 UNIFORM ALLOWANCE
13 SHIFT RESPONSIBLE, LINE INSTRUCTOR, AND RELIEF DISPATCHER
14 SICK LEAVE DAYS FOR SUBPOENAS
15 WORK PICKS
16 PERSONAL LEAE DAYS AS TIME WORKED
17 EMPLOYEES' HOLIDAYS AND SICK DAYS
18 VACATION
19 FAMILY AND MEDICAL LEAVE ACT
20 SIXTY MINUTE MAXIMUM LUNCH BREAK
21 RELIEF VEHICLE PULL OUT TIME
22 CALL-IN PAY
23 CREATE OFFICIAL TIME CLOCK AND TWO-MINUTE LEEWAY
24 NO MORE THAN THREE REPORT TIMES
25 THIRTY-SIX HOUR WORK WEEK
26 MAINTENANCE EMPLOYEES GET NIGHT SHIFT PREMIUM AFTER 3:00 P.M.
27 ELIMINATE CHOOSING DAYS OFF
28 DAILY OVERTIME
29 SHUTTLE BUS OPERATORS
30 TRANSPORTATION TO AND FROM PHYSICAL EXAM
31 TWO EXTRA BOARD EMPLOYEES DESIGNATED AS VACATION RELIEF
32 PART-TIME OPERATORS

BACKGROUND

Pace Fox Valley is an operating division of the Suburban Bus Division of the Regional Transportation Authority ("Pace"). The Regional Transportation Authority (herein "RTA") was created by the Illinois Legislature in December, 1973. Pace was created by acquiring nine various bus systems, under a requirement to maintain the existing collective bargaining relationships of the acquired properties. It is divided into nine operating divisions representing each of the acquired bus systems. Each is a separate bargaining unit. Some are represented by the ATU and others are represented as noted below. The history of each is listed below with the current representative and size by ridership.

NAME	SIZE (Bargaining Unit?) Per Pace Slides	UNION
Pace North	74	ATU 900
Pace West	296	ATU 241
Pace South	239	ATU 1028
Pace Southwest	107	ATU 1561
Pace Fox Valley	57	ATU 1028
Pace Heritage	47	IBT
Pace River	59	IBT
Pace Northwest	226	IBT 731
Pace North Shore	77	ATU 1759

Pace Fox Valley primarily services Kane County including but not limited to the City of Aurora. Kane County is a rapidly growing part of the Chicago metropolitan area. The operators and mechanics are the most numerous of the classifications in the Pace Fox Valley bargaining unit. Pace Fox Valley does not operate Sundays and holidays. It has fewer hours of operations than most of the Pace divisions.

POSITIONS OF THE PARTIES[4]

UNION:

The fundamental concept of "equal pay for equal work" or "comparability" warrants a significant wage increase for all Pace Fox Valley operators and maintenance employees. The principle of comparability is a factor upon which arbitrators have historically heavily relied. With regard to the transit industry, wages paid to transit operators across the country are particularly relevant in interest arbitration. When arbitrators are faced with wage rates that are substandard as evidenced by wage rates paid to employees doing the same work for similar employers, they award substantial pay increases. Under the circumstances, all Pace operating divisions are appropriate points of comparison. The comparisons are to employees performing the same work for the same employer. These properties are all in the same general geographic area, suburban Chicago. It is undisputed that Pace, not the individual operating divisions, is the employer because each division is ultimately controlled by Pace's central management and receives funding from Pace. There is a substantial overlap in the divisions. Pace's regional managers are responsible for more than one division. The labor relations, employee benefits and legal functions are all conducted out of Pace's central headquarters. Certain routes in some divisions connect with routes in other divisions. Pace presented no evidence to prove that any actual job duties are different between divisions. Pace's service area is so integrated that its employees live and work throughout the Chicago metropolitan area.

The wage rates of the top operators at the other ATU-Pace operating divisions support substantial increases by the end of the contract term. As of January 1, 2008, shortly after this agreement expired, Pace Fox Valley top operators at an hourly rate of $19.75 became the lowest paid ATU-represented transit bus operators in the entire six-county metropolitan area. The CTA, whose bus operators are represented by ATU Local 241, are the "wage leaders". As of January 1, 2008, the CTA top operator rate was $26.87, approximately $7.00 per hour more than Pace Fox Valley top operators. Pace West, the "intra-Pace" wage leader whose routes overlap with Pace Fox Valley had a top operator rate of about $3.50 per hour more than the Pace Fox Valley operators. Pace West is contiguous to Pace Fox Valley. The Employer emphasizes Pace North, which is more than 50

[4] This section deals with the parties' positions as to the overall considerations about wages and benefits.

miles from Chicago. Yet, as of January, 2008, Pace North's wage rate was $21.00, nearly 6% greater than Pace Fox Valley's top operator rate. Further, other operators' wages from around Illinois were closer to the CTA operator than Pace Fox Valley operators.

Unit employees deserve to have the $7.00 differential eliminated. Arbitrators Healy and Larney began the process of reducing the differentials between Pace Fox Valley and CTA and others in 1992 and 1995 respectively. While there is no reason to perpetuate those wage inequities, the Union recognizes that it is not likely to be eliminated in a mere three-year period. Indeed, the Union's wage proposal of $25.00 by the end of the contract term seeks parity with the Pace wage leader, Pace West. In fact, excluding the wage leader, all of the rates hover around $21. Therefore, a fair and equitable wage increase must be between $21.00 and $21.51, the average Pace wage rate.

Pace Fox Valley has fallen ever further behind over the years. Pace South operators were the second lowest paid in January 2008, and became the second highest by January, 2009. The average Pace rate as of January, 2009, even including the Pace North contract which expired December 31, 2008, rose to $22.20, an increase of $.69 or 3.2% in one year. While Pace North's contract is expired, its expired rate of $21.60 is an appropriate floor for operators here.

As of March 2010, with the exception of the expired Pace North and Southwest contracts, the median wage rate rose to $23.35, a 5.7% increase, which is 17.7% greater than Pace Fox Valley's expired rate. The total increase should be $3.50 per hour or 17.7% greater than the current rate. That increase assumes that HMO and PPO premiums remain the same for unit employees throughout the term of the contract. If the premiums are increased as proposed by Pace, Pace Fox Valley employees will be diverting more of their wages to cover health care on a percentage basis than any other similar employee working at any other facility. There is no valid reason for that type of disparate impact.

Pace's selection of Pace River, an IBT property, Pace Heritage, an IBT property, and Pace North as the only comparables is specious. Pace used comparisons to all other divisions in the Pace West arbitration. Pace relies upon service for "comparably sized" communities. It relied upon Aurora, but not the entire Pace Fox Valley service area which includes North Aurora, Batavia, Geneva, and St. Charles. It failed to provide information relating to the six other operating divisions which divisions it alleges are not comparable.

Further, Pace offered no evidence as to why 2009 ridership statistics, number of routes, size of the bargaining unit, should justify disparate wage rates. For example, at the expiration of the previous Pace Fox Valley contract on November 30, 2007, Pace Fox Valley's mechanics were virtually identical to Pace West and Pace River. This contradicts their trial theory. Similarly, Pace Southwest's ridership was approximately 45% of Pace South's unit and had about half of the routes of Pace South. Nonetheless, in 2009, their top operator rates were virtually identical.

The Employer has not established an "inability to pay." The Employer cited a report that Illinois sales tax revenue was down in the 4th quarter of 2009, but the Employer failed to connect that report to any facts as they exist with regard to Pace and transit services rendered in Kane County. It also noted a decrease in ridership and advertising revenue but did not show that these are the only revenues received by Pace Fox Valley. Pace did not introduce its budget or a single piece of financial revenue material on revenues to Pace or amounts which must by law be spent in Kane County.[5] Pace did not show that it is defaulting on any loans or having difficulty obtaining financing. Pace has failed to explain how its decrease in revenue system-wide allows it to pay operators in other divisions substantially higher rates while denying those same rates to those here.

[5] This was done after the Union submitted its reply brief.

The Union relies on the testimony and exhibits produced at hearing as to its other non-wage working conditions and benefits. The Union is relying on the same benefits other employees at other operating divisions already enjoy. Inflation has eroded benefits of fixed dollar amounts and should be adjusted. Some of the Union's proposals regarding the maintenance department were addressed by Arbitrator Cox, including the shoe allowance, tool allowance, and the shift responsible foreman allowance. He awarded the "market value." The arbitrator should take the same approach.

EMPLOYER:

The current economic calamity facing the nation is the most significant factor which should be considered. In County of Boone and Boone County Sheriff and FOP, S-MA-08-010 (2009) and again in City of Chicago and FOP Chicago Lodge No. 7, Arb. Ref. 09.281 (2010), Arbitrator Benn found that the Illinois statutory interest arbitration criteria were inadequate to establish economic provisions in collective bargaining agreements. He found particular difficulty with past, heavy emphasis on economic settlements in comparable communities because the contracts in many of those communities were negotiated before the economic crisis. See, also, City of Lockport and Metropolitan Alliance of Police Chapter #75, S-MA-08-277 (2010) in which Arbitrator Wolf rejected the union's wage proposal based on the economy and the unlikelihood that the cost of living would rise substantially during the period of that agreement.

Pace Fox Valley's largest source of funding is sales tax revenue. The State of Illinois' Commission on Government Forecasting and Accountability reported that "sales tax receipts are off a **disastrous $461 million,**" in its year-to-date comparison of fiscal year 2009 to 2010. The State's ability to provide funding already budgeted is seriously in question. The American Public Transportation Association recently published a report documenting how public transportation agencies across the U.S. have been hard hit by the downturn. Almost half of public transportation agencies are conducting layoffs or are considering layoffs. 23% of the agencies reported salary freezes and reductions. Seventeen percent reported reductions in benefits for bargained for employees. 11% reported implementing furlough days for employees.

The Union ignores the current economy when it urges the Chairman to place a market value on labor. The current market value must take into consideration the reality that a significant percentage of the bargaining units' agreements were settled before the downturn. The current market value must take into consideration the reality that a significant percentage of public transit agencies have implemented salary freezes or other reductions. Unlike a significant number of public transportation agencies, Pace Fox Valley has not laid off employees, has not frozen or reduced wages and has not instituted furlough days. Instead, it has proposed fair and reasonable wage and benefit increases, which should be adopted.

The lawful authority of the employer criterion supports the Employer's position. Pace has no authority to levy taxes and, instead is reliant on the State of Illinois allocation of sales tax revenues which the record shows are dwindling. Pace's fare structure has tracked inflation and its ridership is fare sensitive.

The criterion of the interests and welfare of the public and the financial ability of the employer to meet the costs support the Employer's position. The Union has argued that the Employer should cut services and lay off employees rather than not meeting its demands. Pace Fox Valley cannot be run for the benefit of the employees. Pace Fox Valley has proposed wage and benefit increases, which are the only responsible increases.

As a public body with a statutory purpose of providing public transportation, Pace Fox Valley cannot and should not cut service in order to grant wage increases of up to 45.35% as sought by the Union. If Pace Fox Valley were to cut service while simultaneously granting such a significant wage increase, it would virtually guarantee further cuts in public funding from the State and RTA. Acceding to the Union's demands would cripple Pace Fox Valley's ability to compete for public funds.

The appropriate comparables are Pace North, Pace Heritage and Pace River. It is well known that wage levels in larger metropolitan areas are significantly higher than in other areas. Arbitrators arbitrating protective services contracts in the public sector in Illinois have recognized that the comparables for the City of Aurora are the cities of Elgin, Waukegan and Joliet. The most appropriate comparables are these operating divisions of Pace. These are supported by the factors of population, size of the bargaining unit, geographic proximity, and similarity of revenue and sources. The nature of the work is affected by the number of routes an operator may be required to operate, the urban density, and number of riders. By contrast, the only comparable suggested by the Union, Pace West is in-appropriate because it is nearly four times the size of Pace Fox Valley and has nearly double the routes as Pace Fox Valley. Union Counsel argued exactly the opposite in arbitration with Pace West. The City of Aurora and Kane County have grown, but they are still less than 10% of the population of the City of Chicago and Cook County. Ridership has still declined 37% in the last ten years in spite of the growth.

The Chairman should retain the historical wage relationships. The Union has tried to "whipsaw" the different units against each other in arbitrations in different units. The circumstances are now dire. Still Pace Fox Valley's proposal is justified by the comparables and historical wage relationships.

The cost of living factor requires the Chairman to deny the Union's wage proposal. First, the RTA Act states that the Agreement "may not include a provision requiring the payment of wage increases based on changes in the Consumer Price Index." Second, given the significant downturn and RTA's severe funding crisis, the overall stability Pace Fox Valley employees enjoy in their employment, there can be no justification for any wage increases above the cost-of-living. There was a decline in the cost of living index for 2008. This justifies the Employer's proposal for a wage freeze.

UNION REPLY

The wage inequality created by Pace paying certain bus operators $25 per hour while other similar Pace bus operators are being paid $19.75 is the single most important factor in this case. Three retroactive 8% annual increases are warranted based on this evidence alone.

The parties submitted their post arbitration briefs in this matter on May 11, 2010. A copy of the Union's brief was sent to Pace's counsel by e-mail on May 12, 2010. On May 17, 2010, Union counsel received Pace's brief by ordinary mail and found that Pace attached a significant amount of evidence to its brief that it did not submit at hearing. The Chairman allowed the Union to submit a supplemental brief. The Union asks that the evidence submitted with the Employer's brief be disregarded. Much of this "evidence" is irrelevant. The reason it was submitted was to avoid the hearing process. This dispute has dragged on too long and the Employer's actions have unreasonably delayed this award.

Alternatively, Pace's attached evidence demonstrates that its operating divisions are different than any single employer situation. Pursuant to the RTA Act, Pace receives its funding from the RTA. There is no reference to Pace Fox Valley in the Act. Therefore, any alleged inability to pay argument must be judged on the basis of Pace as a whole.

That Pace operates nine separate divisions with different working conditions is truly a unique situation in public transit nationally. The wage inequities here are solely based upon the fact that these were nine separately owned properties. Through its proposals, the Union merely seeks parity with the other Pace properties' operators.

Pace's evidence and argument regarding the "current economic calamity" as the "most significant factor" is specious. Pace has not demonstrated how the national economy has directly affected it. It has not demonstrated an inability to pay. Pace's evidence regarding it financial health was almost non-existent

especially considering the wealth of information publicly available. Where is the evidence of Pace's substantial service cuts, cuts in management administrative budgets, delays in capital improvements, cost containment measures, searches for less expensive fuel suppliers, etc.? In effect, Pace Fox Valley is subsidizing the operations of other divisions. Instead, it submitted a solitary page from its budget. That page shows that Pace is budgeting for an increase of 2.4% over 2009 levels for 2010.

Additionally, Pace failed to further support its inability to pay argument with the post- hearing evidence. The documents submitted are hearsay and should not be accepted. It is significant that the RTA is supported by a dedicated sales tax collected in the six-county area and which must be spent for transit in the six-county area. It is not supported by the state sales tax. Pace's submission of reports was not subject to cross-examination. Cross-examination would have shown that the State's sales tax receipt revenues increased between March and April, 2010. Further, the Union would have had a chance to ask Pace how this affects its budget when it has a dedicated local sales tax. Pace's use of Arbitrator Benn's City of Chicago[6] award should be disregarded because this information was available to it at the time of hearing. In any event, it is irrelevant.

Because Pace failed to make a case for its inability to pay, or that the health of the national economy or that of the City of Chicago is irrelevant. Attachment 6 to its brief and many of the arbitration decisions it submitted are irrelevant because in those cases, the employers therein made and substantiated inability to pay arguments. The American Association of Public Trans Agencies report is irrelevant because Pace fails to establish that it is "in the midst of *unprecedented budgetary challenges* as reported in the report. It is a trade group publication which has every incentive to paint a dire picture. The report states that 90% of the transit agencies across the nation are facing revenue declines. Despite these declines the evidence presented by the Union at the hearing herein shows that nationally the ATU locals have negotiated healthy increase at most of these same agencies.

In Arbitrator Benn's City of Chicago award, he awarded increases of 12.9% over a three year period, more than 4% per year. With a "final offer" choice, Arbitrator Benn selected this over that employer's inability to pay argument. In Arbitrator Benn's other award cited, he awarded a 10% wage increase over five years. Arbitrator Wolf rejected the Union's proposal of increases of 19% to 28% in favor of the employer's proposal therein of a three year contract averaging increases of over 7% per year. Further, many of those awards are distinguishable because the arbitrator was required to adopt the final offer of one party or the other on economic issues.

Pace's arguments regarding "loss of service" and "comparability" are faulty. Pace's loss of service argument is really a disguised inability to pay argument. The awards from other properties citing that factor were really cases where the arbitrator found an inability to pay. Even so, in those cases, the arbitrators therein awarded significant wage increases. The two City of Aurora arbitration cited by Pace for comparability are specious. Aurora is not the only city served by Pace Fox Valley. Pace's funding is not limited to Aurora.

EMPLOYER REPLY

The Employer has used established arbitral standards in establishing its comparables. The Union, by contrast, has asked the Chairman to ignore those standards. The Employer's wage proposals equal or exceed the wage increases warranted by the arbitral and statutory factors. The Employer has not alleged inability to pay. Instead, the Employer asks the Chairman to consider the economy as a significant factor in this arbitration. By contrast, the Union ignores the arbitral and statutory factors.

The Union's brief misrepresents the history of Pace in that it alleges that wage inequities were due solely to the nine properties were separately privately owned. Pace Fox Valley was publicly owned. Four

[6] This is referenced in more detail in the Discussion.

others were publicly owned. The Union then shifts arguments and alleges that the wage inequities were due to geography and the fact that Fox Valley was city-owned. Geography is particularly significant for bus operators because it impacts the nature of their duties and the labor market from which they are drawn.

The mere existence of internal comparables does not establish that those bargaining units are appropriate comparables. The standards must be applied to determine if they are comparable. Absent a showing of a clear pattern of use of internal comparables, arbitrators give far less weight to internal comparables. The Union has not made that showing, but instead relies upon the Cox award for its proposition of using all nine properties. However, Arbitrator Cox kept the historical relationship among the properties. Pace West operates more than double the routes of Pace Fox Valley and carries almost eight times the number of passengers.

The historical wage differentials, recognized and perpetuated by Arbitrator Cox are significant because they have been maintained by the parties throughout their twenty-one years of collective bargaining. The Union has argued in some situations to maintain those differentials.

The Union refers to Pace as a "six-county integrated transit system." Yet it failed to define this term. It did not offer any comparison of the number of bus routes, the number of stops per route, the number of passengers carried, hours of operation, traffic pattern, or any other factual basis to support that assertion. The Union states: "indeed, there is no reference to 'Pace Fox Valley' or any other operating division in the RTA Act." The RTA Act specifically requires continuation of the separate collective bargaining agreements. It also divides the Suburban Bus Division into six operating regions. There is no evidence of any legislative intent to create one, integrated transit system.

Pace Fox Valley is funded primarily through sales tax receipts. Sales tax receipts for the State of Illinois dropped dramatically. The Union failed to rebut that argument. The Employer also depends on farebox revenues. Pace Fox Valley has demonstrated that Pace Fox Valley has experienced a 37% decrease in ridership. The Union simply dismissed these arguments and did not address them.

The Union misrepresented fact when it stated that Pace Fox Valley is subsidizing other divisions. The Union offered no evidence to support this outrageous allegation. Pace Fox Valley has the second lowest farebox recovery of all Pace divisions. The evidence demonstrates that decreased ridership results in decreased revenues and increased costs per rider. If, as the Union argues, the Chairman should look at the level of subsidy as a factor in granting wage increases, then Pace Fox valley's decrease in farebox recovery should be a factor in wage determinations and wages should decrease.

The Employer has proposed fair and equitable wage increases, and the well-established arbitral and statutory factors support the Employer's proposals. The Union's entire case rests upon comparisons to the other operating divisions; however, the Union offers no evidence or argument as to why these operating divisions are comparable.

DISCUSSION

1. Standards of Decision

This arbitration is conducted pursuant to Article 25, Section C of the parties' expiring agreement. It provides in relevant part:

> If no agreement is reached within the sixty (60) day period or such further time as both parties may agree upon, the issues in dispute shall be submitted to a Board of Arbitration consisting of an arbitrator designated by Pace Fox Valley Division, an arbitrator designated by Local 215 of the Amalgamated Transit Union, and an Impartial Chairman. Within seven (7) working days

after their selection, the parties' arbitrators shall meet to select the Impartial Chairman of the Board. Should the two (2) arbitrators be unable to agree upon the appointment of the third arbitrator, then either party may request the American Arbitration Association to furnish a list of five (5) arbitrators who are experienced in interest arbitration in the transportation industry. Within seven (7) days after receipt of the list, the arbitrator shall be selected from the panel by each party alternately striking a name form the panel until only one (1) name remains.

The Board of Directors of Pace shall have the opportunity to review the decision of the Arbitration Board on each issue. If the Board of Directors fails to reject one or more items of the Award by a two-thirds vote within twenty (20) days of the issuance of the Award, such term or terms adopted by a majority of the Arbitration Board shall be final, binding and conclusive upon the Union and Pace.

If the Board of Directors of Pace rejects any terms of the Award, it must provide a written statement of the reasons for such rejection with respect to each term so rejected within twenty (20) days of rejection. The parties will return to the Arbitration Board within thirty (30) days for further proceedings.

The Employer is subject to the Illinois Public Labor Relations Act. Although it is subject to that Act, it is not subject to the arbitration provisions. It is important to note, however, that the rejection feature reflects the relatively similar feature of the Illinois Public Labor Relations Act's interest arbitration[7] which is unique in the interest arbitration field.

The use of neutral decision makers to resolve disputes over the creation of a collective bargaining agreement or the terms to be included in a successor collective bargaining agreement has a long history in the United States. This process is herein referred to as "interest arbitration." As noted by Arbitrator Graham:[8]

> Interest arbitration . . . has a very long history in the United States. It was widely adopted in World War I in the private sector. Many industries including coal mining, men's and women's clothing manufacture and mass transit resorted to arbitration of new contract disputes. After World War II, mass transit continued to utilize interest arbitration when parties were unable to reach agreement on the terms of new contracts. More recently, interest arbitration has become common in the public sector in states north of the Mason-Dixon Line. . . .

Arbitration in transit owes its origin to William D. Mahon who served as the Amalgamated Transit Union's President for over 50 years commencing in 1893. Under his direction, the concept was written into the Union's constitution. The large number of public sector jurisdictions employing interest arbitration has led to a wide variety of systems of interest arbitration and the large volume of cases in those states has led to the creation of a large body of case law. At its core, interest arbitration by neutrals is intended to substitute reason for the use of unbalanced power. It also tends to equalize the power of the competing parties.

There is general agreement among arbitrators that there is a burden of persuasion upon a party proposing to change a provision of an expired agreement and elements which that party must show. These are different than the standards by which proposals are evaluated. Arbitrators may tend to disagree what that burden of persuasion is and what the elements are specifically. I phrase them as follows. The party proposing to change an existing provision, including an economic one, must show by a preponderance of the evidence:

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[7] 5 ILCA 315/14n.

[8] Amalgamated Transit Union and First Student, unpublished, (January, 2010), p. 2.

1. The party seeking to change an existing provision must show that circumstances underlying the provision have significantly changed such that there is a problem or a need for change.

2. It must then show that its proposal is both necessary and reasonable to meet that need or correct that problem.

3. While there is some dispute by commentators, the better view is that as an alternative to 1 or 2, a party may offer a quid pro quo to make a change in the agreement. It must then show that its proposed quid pro quo is a reasonable and appropriate exchange.

Arbitrators in the private transit industry have always struggled with the objective of arbitration. On the one hand, arbitrators have sought to adopt solutions to issues which are acceptable to the parties taking into account their relative bargaining strength. This is described as seeking what is "fair" and "acceptable." On the other hand, as stated by Herman Sternstein in the 1972 Proceedings of the National Academy of Arbitrators, "Arbitration of New Contract Terms in Local Transit" p. 17:

> Second, acceptability cannot be applied to situations where, for whatever reasons, wages and working conditions have been substandard: that is, below minimum wage levels for the community or out of line with living levels generally acceptable in the industry and the community. The existence of patent injustice cannot be justified by practice or acceptance. It is a prime function of arbitration to correct inequities, not to perpetuate them.

In the transit industry, one arbitrator stated his concept of the burden of proof in certain situations as follows:

> We believe that an unusual demand, that is, one that has not found substantial acceptance in other properties, casts upon the union the burden of showing that, because of its minor character or its inherent reasonableness, the negotiators should, as reasonable men, have voluntarily agreed to it. We would not deny such a demand merely because it had not found substantial acceptance, but it would take clear evidence to persuade us that the negotiators were unreasonable in rejecting it. We do not conceive it to be our function to impose on the parties' contract terms merely because they embody our own individual economic or social theories. To repeat, our endeavor will be to decide the issues as, upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take process of bargaining. We agree with the company that the interests of stockholders and public must be considered, and consideration of their interest will enter into our conclusions as to what the parties should reasonably have agreed on.[9]

As to the issues in this dispute, the Chairman applies the above concepts.

From the beginning, arbitrators began to look at standards for evaluating the evidence. Early on arbitrators began to use the prevailing practices in the industry (later termed "comparability"). The concept is deceptively simple. While parties ordinarily agree that comparability is an appropriate method of evaluating evidence, they often disagree as to what are the appropriate comparables and how they should be applied. However, other standards of evaluating the evidence have emerged. Among the other factors commonly considered which are appropriate to consider herein are the past contracts and history of the parties[10] and comparisons among employees of the same employer doing the same or different work (often referred to as "internal comparability").

[9] Twin City Rapid Transit, 7 LA 845, 848 (McCoy, Freeman and Goldie, 1947)
[10] Cf. Sec. 20.9, Iowa Code.

The State of Illinois has adopted standards for use in public safety arbitration. They are:

. . . .the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer
(2) Stipulations of the parties
(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs
(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
    (A) In public employment in comparable communities
    (B) In private employment in comparable communities
(5) The average consumer prices for goods and services, commonly known as the cost of living.
(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.[11]

It is appropriate to consider the standards of the Illinois Statute because the Employer is an Illinois public sector employer and receives funding from the State of Illinois.

2. Basic Economic Package

a. Economic Circumstances and the Ability to Pay

In late fall, 2008, the U.S. economy went into a deep recession which some say is the worst since the great depression. This resulted in a freezing of the credit markets, collapse of the housing market, a major contraction of consumer spending, and soaring unemployment and underemployment. By November, 2009, unemployment had risen nationally to 10.2% and that rate of unemployment persisted through March of 2010.

The Employer contends that the economic downturn affects the resolution of the issues in this case because:

1. There has been a downturn in the revenue of Pace.

2. The State has been delaying forwarding funds due Pace, affecting the cash flow of Pace.

3. The downturn has reduced the rate of economic settlements generally and the Employer should receive the benefit of the change in market conditions.

[11] 5 ILSCS 315/14(h).

4. It is so unseemly for employees to receive increases in benefits that the RTA will not be able to receive public funding if the employees in this unit receive any economic increase beyond that offered by the Employer.

The Chairman will address 1, 2 and 4 first. Point 3 relates to market conditions and is governed by different standards than the other points. Public employees are not responsible to fund public services. Neither party is saying that they are. The choice of levels of service and funding are public choices. Be that as it may, public employees' wages and benefits here are slightly more than half of the Employer's budget. There are legitimate reasons why employees may be called upon to participate in assisting a public employer in difficult budget times. They include without limitation:

1. Employees may be rewarded with non-economic benefits or later economic benefits. They may have been rewarded in the past by wages and benefits higher than others.

2. Employees may, as indicated by the employees' representative, want to avoid a loss of jobs which might otherwise occur.

3. It may be difficult for a public employer to make needed changes in service levels or efficiency in prompt order.

4. Other funding sources may not be available or so impractical to use that an impact on employees' wages and benefits is the only practical resort.

5. An employer through any other means may not be able to maintain the minimum level of service required by law (strict inability to pay)

An employer seeking to force public employees to be involved in its finances must demonstrate that its position is consistent with one or more from the above list.

There are also times when public employees may choose through voluntary bargaining to be involved because:

1. Public employees generally have pride in the services they provide and participation may preserve the quality of services.

2. Public employees are often the residents of the communities they serve or similar communities. They share many citizen concerns.

Pace's revenue from services and advertising has never been sufficient to fund Pace entirely. Pace receives about two-thirds of its funding from public sources. Pace unlike municipal employers does not have any authority to levy taxes and must deal with public bodies to maintain its dedicated sales tax and otherwise obtain public funds. The Chairman notes, that, as a practical matter, there is little that this small bargaining unit could do to affect the funding of Pace as a whole, or Pace Fox Valley. If they worked without pay, Pace would still have public funding. The focus must be on the specific changes in circumstances in funding which have occurred from the last agreement.

There is a dispute as to how Pace and, specifically, Pace Fox Valley, has been affected by the downturn. Pace's public funding is from federal mass transit subsidies passed through the State of Illinois, and sales taxes collected by the State from local areas served by Pace and distributed according to a formula. The federal funds primarily support capital expenditures.

The evidence submitted by the Employer[12] indicates that the revenues from the State of Illinois' three main sources of revenue, personal income tax, sales tax, and corporate income tax, began to decline sharply starting in the last quarter of 2008. The decline continued sharply through 2009. Illinois declined 6.9% in the last quarter of 2009 over the similar quarter of the year before with sales tax revenues leading the decline (down 12%).[13] The net total decline is similar to all Great Lakes states except Wisconsin, which posted an increase. However, the decline in Illinois occurred primarily but not solely, in the sales tax. Personal income tax declined 3.3% and corporate income tax declined 1.8%. The decline as to those taxes was less than all other Great Lakes states, except Wisconsin. The impact on the budget of the State of Illinois has been devastating and Illinois has not been able to adjust easily. The report goes on to state the outlook as:

> . . . conditions remain weak. Nonetheless, retail sales and consumption have stabilized and we expect more states to begin seeing year-over-year growth in some revenue sources, particularly the sales tax. However, even with growth, tax revenue is likely to remain below its prerecession peak for some time. . . .

The decline in revenue has caused the State of Illinois to inordinately delay funds transfers. Because RTA is heavily dependent on these transfers, this seriously affects RTA's cash flow from the State of Illinois.

The Chairman also takes judicial notice of the Mass Transit Reform Act, Public Act 95-0708, passed January 18, 2008, and amended by veto. This was intended to provide substantial additional funding for the RTA. Among the noteworthy features of this law, without limitation, were:

1. one-quarter percent sales tax increase across the region;

2. an additional one-quarter percent sales tax increase in DuPage, Kane, Lake, Mc Henry, and Will counties controlled by each county board for public safety, roads, and public transit; and

3. raised from 25% to 30% the portion of RTA revenues matched by the State Public Fund Transfer Tax-free rides for seniors

The purpose of the foregoing legislation was to increase the overall public funding of the RTA, including Pace. Pace intended to, and did, start new service initiatives, facility improvements and purchasing new rolling stock. However, the national economic crisis resulted in Pace not receiving the expected benefits of the increase. Instead, it received less than expected under the new legislation and was forced to use those funds to help offset an unexpected and sharp decline in sales taxes, rising fuel costs, unexpected failure to receive discretionary funds from the RTA, and newly imposed program costs which were later under-funded.

Pace's budget documents, shown on the next page, show the following:

[12] The Nelson A. Rockefeller Institute of Government, "State Revenue Flash Report" for all states' revenue dated February 23, 2010.
[13] The Employer also asserted at page Tr. 3, p. 15 that income tax collections were down 10% and supported this with an earlier Rockefeller report. However, the report cited in note 2 above shows the decline to be 3.3%.

Pace Budget History

Budget Document	Pace 2009 Budget p.28	Pace 2009 Budget nte 1	Pace 2010 Budget p. 28	Pace 2010 Budget nte 2		
Budget Year	2007 actual	2008 estimated	2008 actual	2009 Est	2010 budget	2011 Plan
OPERATING REVENUE						
Farebox	$28,249	$28,973	$28,400	$34,235	$35,511	$36,295
Local Share Other	$14,397	$15,744	$14,571	$13,697	$14,474	$16,120
Advertising Revenue	$4,572	$4,713	$4,666	$3,050	$2,450	$2,450
Investment Income	$2,230	$1,361	$1,236	$264	$219	$430
Reduced Fare Reimbursement	$2,704	$1,291	$3,089	$2,600	$2,390	$2,390
RTA Pass Reimbursement	$4,000	$0	$0	$0	$0	$0
New Initiative/Fare Changes	$0	$0	$0	$0	$0	$0
TOTAL REVENUE	**$56,153**	**$52,082**	**$51,962**	**$53,746**	**$55,043**	**$57,685**
OPERATING EXPENSES						
Labor/Fringes	$80,895	$84,769	$82,408	$87,140	$90,522	$93,422
Health Care	$14,737	$14,780	$13,837	$15,656	$16,283	$18,074
Fuel	$16,108	$26,319	$21,969	$13,065	$16,385	$17,596
All Other Summary	$61,397	$58,283	$53,742	$61,461	$67,698	$70,061
TOTAL EXPENSES	**$162,510**	**$184,151**	**$171,956**	**$177,322**	**$190,888**	**$199,153**
FUNDING REQUIREMENT	**$106,357**	**$132,069**	**$119,994**	**$123,576**	**$129,347**	**$130,356**
Recovery Ratio	36%	36%	36%	36%	36%	36%
PUBLIC FUNDING						
Sales Tax (85% Formula)	$81,232	$82,889	$78,240	$68,850	$69,883	$71,909
Sales Tax and PTF (PA95-0708)	$0	$15,413	$13,380	$29,361	$29,812	$30,685
RTA Discretionary Funds	$6,960	$4,139	$0	$2,267	$0	$175
Suburban Comm. Mobility	$0	$20,000	$20,000	$17,794	$18,061	$18,585
South Suburban Job Access Fund	$0	$3,750	$3,750	$7,500	$7,500	$7,500
CMAQJARC New Freedom	$1,645	$2,459	$3,357	$3,100	$3,105	$1,163
Federal 5307 Funds	$22,585	$0				
RTA ICE Funding			$0	$175	$986	$339
TOTAL PUBLIC FUNDING	**$112,422**	**$128,650**	**$118,727**	**$129,047**	**$129,347**	**$130,356**
Net Funding Available	**$6,065**	**-$3,419**	**-$1,267**	**$5,471**	**$0**	**$0**
Unrestricted Net Assets (Fund Bal)	$24,080	$17,477	$19,882	$23,727	$18,977	$18,727

in Thousands

1 Pace 2009 Budget dated November, 2008 estimated budget results would be until the end of the year for 2008

2 Pace 2010 Budget dated November, 2009 estimated budget results to the end of the year 2009 and expected for 2010

Pace's budget documents and the foregoing illustrate what occurred and what is continuing to occur.

The Pace 2009 budget document published late in the 2008 budget year (November, 2008), showed that as late as that date Pace expected about $98 million in combined sales tax revenue over the 2008 budget year. It showed that Pace's fuel costs had risen by about $5.7 million from their previous level, from $16.1 million to over $21 million. Its labor costs had rise by about 4.5% Pace expected as of the 2009 budget that the ADA Paratransit and free and reduced ride programs would be fully funded by additional funds.[14]

Pace like practically everyone else was blind-sided by the quick and extensive impact of the national financial crisis. Pace's 2010 budget filed in November, 2009, gave the final numbers of 2008, which speak loudly for themselves. For 2008, Pace, in fact received $91.5 million in combined sales tax revenue. It did not receive any discretionary funds from the RTA. Further, by that time Pace had recognized that the changed circumstances would impact them beyond 2011. The Paratransit program was underfunded.[15] The result is that as of the date of the 2010 budget, Pace was under pressure to divert funds from the suburban service budget to the Paratransit program.

Pace offset its 2009 budget shortfall by raising fares for 2009, and delaying service improvements.[16] It was substantially aided by falling fuel prices.

For 2010, Pace identifies flat overall enterprise revenue with farebox increases being offset by advertising and other declines. The farebox increase was largely the result of the fare increase. Pace identified a funding gap of $6.5 million. This included flat sales tax revenue from the prior year and a decision by the RTA to not provide discretionary funds (a loss of $2.2 million). Pace made budget adjustments to offset the projected 2010 $6.5 million budget shortfall.[17] This included $2.7 million in non service reductions. Part of that was achieved by requiring non-union personnel to take a five day furlough during 2010 and increased transfer of health insurance costs to non union employees. Others savings were achieved such as further fuel savings and marketing cost reductions. Pace sought to maintain as much service as possible, but did achieve the remaining savings from reducing infrequently used services, including many Saturday services in Pace Fox Valley.

The 2010 budget summarizes this as follows:[18]

> Despite the economic downturn, there are positive things going on at Pace. We have a fully funded capital program which allows for the purchase of new vehicles for both fixed route and paratransit service. With these new vehicles, we will see reduced fuel costs thanks to improved mileage, cleaner emissions, and reduced maintenance costs. We saw the General Assembly pass two capital bills, which allows Pace to continue a program of replacing older vehicles and updating garages and passenger facilities, and includes the first dedicated investment of capital funding for ADA paratransit in the region's history. Federal stimulus funds further aid our capital program. Multiple phases of service improvements were implemented in South Cook and Will counties to modernize service there to meet existing demands.
>
> As we move forward to 2010, Pace Faces challenges common to all governmental bodies supported by sales taxes. The weak economy has significantly undermined the gains achieved by the passage of new transit funding in 2008 and forces us to balance our 2010 budget with less

[14] Pace 2009 Budget, page 35.

[15] The Paratransit program for both the suburbs and City of Chicago was added to the Pace area of responsibility recently. While it was funded by the legislature at $100 million in 2008, that funding shrank to $89 million in 2009 and was expected to be $90 million, far less than the expected $108 million cost. It is unclear how this affects the funding for suburban bus service. See, for example, Pace 2010 budget, p. 2.

[16] Pace 2010 budget, p. .

[17] Pace 2010 budget, page 210, et seq.

[18] Pace 210 budget, "Chairman's Message."

than adequate funds. Pace is facing the outlook for no growth in funding for 2010 while costs for fuel, labor and contracted services continue to rise. As a result, Pace's suburban services budget faces a $6.5 million shortfall for 2010. In the years prior to the 2008 new funding package, Pace relied on the conversion of federal capital funds to support operating shortfalls. We do not believe this is a viable strategy for 2010, as the shortfall caused by economic downturn appears to be pervasive over the three-year plan horizon. In our view it is best to tackle the problem head-on while it is manageable. To that end, we have identified $6.5 million in budget balancing actions which are fully explained in this budget document. We have made every effort to mitigate the impact on our customers and, as a result, have identified $2.7 million in non-service related reductions that help close the funding gap. After these efforts are in place we still need to achieve $3.8 million in savings from direct services. We have identified where these savings can be achieved with a minimal impact on our ridership. The services proposed for reduction and elimination are included in this document. As fares were raised earlier in 2009, we do not believe a further fare increase is warranted at this time. We will, therefore, rely on the identified expense reductions to balance the 2010 budget within available funding as indicated by the RTA.

In summary, the RTA as a whole has had a funding crisis. This occurred because it was surprised by not receiving the substantial increase in funds it expected to start in 2008. It continued because its enterprise revenues were relatively flat and sales tax collection remained relatively modest. It approached this with adept management. It was able to offset this in 2009 by reduced fuel costs and delaying planned improvements. It has dealt with this for 2010 with non service reductions and modest service reductions.

The evidence received in this matter indicates that there is an on-going public dispute between the RTA and the State of Illinois over delayed payments. This continues to present a serious financial issue for the RTA as a whole and, at the least, has forced Pace to borrow the funds. At the worst, it may affect RTA operations negatively.

The Chairman will address item 4 which may be the most difficult of the Employer's arguments to address. RTA has, among its many responsibilities, the responsibility to be a good steward of public funds. The Employer is correct that granting significant increases in pay and benefits to any of its employees at this time is going to "look unseemly" to many of its constituencies. It would do little good to explain to a laid off CTA operator about funding formulae. It would be impossible to explain to someone without a job or public employees on furlough that these employees were not merely lucky to have a job. Similarly, those who have to go further to take a bus or have to wait longer for a bus may not be at all sympathetic to the news of increases. Additionally, those who fund these services have every right to question every economic decision made by the RTA. However, the purpose of interest arbitration is to substitute reason for emotions and sound personnel practice for labor strife.

The criterion which applies to this situation is the "public interest" criterion which is separate from the "ability to pay." While the criterion appears hopelessly amorphous, it embodies some sound fixed values. For example, the public interest is always in compensating public employees "appropriately."[19] What is appropriate is usually determined by the facts and circumstances, sound personnel policy, and, of course, ultimately under the other criteria used in arbitration.

By holding the parties to the process of reason and the established standards of judgment in interest arbitration, the long-term result for everyone is a more efficient public transportation system marked by stable labor relations, a stable workforce, and consistent personnel policies and practices. The following discussion applies those principles.

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[19] This is true in both good and bad times.

b. ISSUE 1: TERM OF AGREEMENT

The parties have agreed that the term of this agreement shall be from the expiration of the last agreement, December 1, 2007, to November 30, 2010. Obviously, this agreement is about to expire.

The parties disagree about retroactivity. Employer witnesses testified that under the previous agreement, they had difficulty and great expense trying to locate former employees to give them the back pay to which they were entitled. They requested a provision that would exclude those employees who were discharged from back pay. The Chairman agrees that those employees who were discharged for misconduct without reinstatement by the Employer with back pay are not entitled to retroactive benefits under this agreement. The Chairman also notes that former employees who cannot be located with due diligence are not entitled to retroactive benefits under this agreement.

c. Comparisons

The comparison factor is universally used in interest arbitration. Although it is one of many factors, it is often given the heaviest weight. The factor is creatively used by arbitrators in a number of ways. Among other ways, it is used to determine wage rates for similar jobs, wage or total package increases (or decreases), fairness among employees of the same employer[20] and the impact of economic conditions on the labor market in an area. Comparisons are essentially a form of analogy and, therefore, the closeness of the analogy heavily impacts the strength of the comparisons.

Pace has nine bargaining units with employees doing essentially identical work in the same relevant classifications in all of them. All of these employees are generally part of the Chicago area economy and are generally affected by the same national and regional economic circumstances. Moreover, the differences in wages and benefits among these units are as much historical as it is a result of variances in the local economic conditions of each unit and local working conditions. Because the analogy here is very strong the comparison factor must be seriously considered.

The Employer wishes to confine the comparison factor to the three smaller properties. It chose this approach for several reasons. First, the Employer's argument is based upon the size of the work force and property. While size of the Employer is a serious consideration among comparisons among separate employers, it is not convincing here. The funding of Pace is complex, but is essentially funded from the same sources with conditions for local use. Pace centrally administers labor relations. It combines the administrations of subunits, although each subunit has its own managers as well. It has an interest in the uniformity of benefits and central administration of benefits. Second, the sampling offered by the Employer is too small and not very useful. Neither Pace Heritage nor Pace North has reached a settlement covering the period in dispute. Third, arbitrators who have dealt with these parties have used the entire comparison group. Fourth, the Union's main argument is "catch-up" to the others' wage rates for operators and a good general increase for Mechanics. Those issues are better addressed by the manner in which the comparisons are applied than in excluding comparisons. Fifth, national comparisons throughout the transit industry in the U.S. indicate that size or location of the property do not necessarily directly correlate to differences in wage rates. This indicates that it is likely that this industry is different than most.

Similarly, the Union has failed to show any reason why units represented by the Teamsters should not be treated as comparable. They still do the same work as employees in this unit.

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[20] "Internal comparability" in Arbitrator Feuille's award in Macon County Board and AFSCME, Council 31, I SLRB No. S-mA-94-0, p. 13.

The Union has included the CTA Operators and mechanics in its comparisons. The available evidence of the history of the parties indicates that the parties have never mutually used the CTA Operators and mechanics as comparables. CTA is managed separately from the RTA. CTA rates are substantially different on all of the other Pace comparisons. CTA has experienced a substantial reduction in services and a layoff of employees. It is not practical to use them in the comparisons for this case.

A base comparison is the last comparison when all of the comparable units were settled and covers wage rates for the same period. The best available base comparison is as follows:

Base Comparisons Union Exhibit 46 Wage rates as of November, 2007

	Top Operator	Rank	Mechanic	Rank
Pace Heritage	$18.50	9	$19.72	9
Pace River	$20.50	6	$23.99	1
Pace North	$20.73	4	$22.81	4
Average of Heritage, River and North proposed by Pace	$19.91		$22.17	
Pace North Shore	$20.97	3	$21.63	6
Pace West	$22.49	1	$23.97	2
Pace Northwest	$20.50	5	$22.27	5
Pace Southwest	$21.45	2	$21.45	7
Pace South	$20.50	7	$20.50	8
Sub Average of North Shore, West, Northwest, Southwest, and South	$21.18		$21.96	
Average of All Pace	$20.71		$22.04	
Pace Fox Valley	$19.75	8	$23.84	3

The result is that Pace Fox Valley operators were even then the second lowest paid of all Pace operators and that they lag substantially behind the average of all of Pace divisions without Fox Valley included in the average. Curiously, Mechanics are among the highest paid in comparison to other units.

A comparison to top operator rates around the state also suggests that operators in this unit are significantly underpaid.

Rockford	$21.21
Rock Island	$20.18
Peoria	$21.91
Bloomington	$22.49
Champaign	$24.45
Quincy	$17.38
Springfield	$20.20
Decatur	$17.52
Danville	$14.96
Average	$20.03
Average – Less Danville	$20.67

Source: Union 55

Service workers are paid $16.13 per hour.[21] They clean busses. This is substantially more than Danville operators. The Chairman concludes that the Danville figure is aberrant in this list and does not consider it. The highest figure in this group, Champaign is higher than all Pace wage rates, but less than the CTA rate. The Chairman concludes it is high but worthy of consideration as are the other low rates. The resulting average is $20.67 which is close to the average of Pace. Even with Champaign reduced to the next lowest figure, the average is $20.42.

As noted above, one of the functions of interest arbitration is to correct obvious inequities. Pace Fox Valley Operators are the second lowest paid at Pace and are lower than all but Danville, Decatur, and Quincy. The next higher around the state is Rock Island at $20.18. The next higher at Pace is $20.50. At a minimum, Pace Fox Valley Operators should have been entitled to an adjustment at the beginning of the agreement (December 1, 2007) of $.75 per hour to adjust to the $20.50. How this is to be accomplished within the practices of the parties is discussed in the section entitled "Basic Economic Package Allocation."

The Union seeks an even greater adjustment of $1.00 per hour over the life of this agreement. The Chairman concludes that any such adjustment should be financed from a re-allocation of the parties' total package settlement.

The following is the evidence of wage rate changes which have occurred among the Pace properties to date:

	Settled 1 Union 47		**Settled 2 Un 48**		**Settled 3 Un 49**	
	1/1/08		**1/1/09**		**1/1/10**	
Property	**Operator**	**% incr.**	**Operator**	**% incr.**	**Operator**	**% incr.**
Pace Heritage						
Pace River	$20.70	1.00%	$21.15	2.20%	$21.50	1.70%
Pace North	$21.00	1.30%				
Pace North Shore	$21.10	0.10%	$21.26	0.80%	$21.75	2.30%
Pace West	$23.27	3.50%	$24.09	3.50%	$24.93	3.50%
Pace Northwest	$22.00	7.30%	$22.50	2.30%	$23.00	2.20%
Pace Southwest	$21.70	1.20%	$22.00	1.40%		
Pace South	$20.50	0.00%	$22.05	7.70%	$23.25	5.40%
Settled Contract Average	$21.47	2.06%	$22.18	2.98%	$22.89	3.02%

Note: It appears that Pace Southwest received an increase of another $.25 during the last year 2009-10 or another 1.1%,

There is no evidence in the record as to whether these settlements were voluntary or imposed, or when they occurred. There were no comparisons offered as to increases relating to the mechanics. The foregoing comparisons demonstrate that there were a wide range of settlements for the disputed periods. The Chairman also notes that the January 1, 2008, increase is over the November 1, 2007, rates rather than the January 1, 2007, rates. The parties have a history of mid-contract year increases and, therefore, the foregoing may be understated as an annual increase.

The range of settlements above is very broad. This reflects a number of factors. First, the parties negotiate individually and have settled based upon different objectives among the units. Second, the parties have historically used "back loading." This is a process in which the union accepts a lower wage settlement at

[21] Appendix A of the expired Collective Bargaining Agreement.

the beginning of the contract to use the savings of the delayed payment to pay for a higher settlement near the end of the agreement. Pace Fox Valley and the Union extensively used back loading in the expired agreement. A summary of that history is in the chart below this paragraph. However, for January 1, 2008, all but Pace Heritage and Pace Fox Valley are settled. The change in the average wage rate from November 2007, to January 1, 2008, with the two unsettled contracts factored out, is $.35 and 2.14%.[22] Pace North is not settled for the following years. The average increase without Pace North and the others for January 1, 2009 is $.63 per hour or 2.92%. For January 1, 2010, it is $.60 per hour and 2.78%.

History of Back Loading Fox Valley 8/1/02-11/30/07 Agreement

		Top Operator		Mechanic		Service Worker	
4/1/2004		$17.50		$21.12		$14.29	
7/1/2004		$17.80		$21.49		$14.53	
	percent change		101.71%		101.75%		101.68%
1/1/2006		$18.00		$21.73		$14.70	
	percent change		101.12%		101.12%		101.17%
7/1/2005		$18.20		$21.97		$14.86	
	percent change		101.11%		101.10%		101.09%
1/1/2006		$18.50		$22.33		$15.10	
	percent change		101.65%		101.64%		101.62%
7/1/2006		$18.75		$22.63		$15.31	
	percent change		101.35%		101.34%		101.39%
1/1/2007		$19.00		$22.93		$15.51	
	percent change		101.33%		101.33%		101.31%
7/1/2007		$19.25		$23.24		$15.72	
	percent change		101.32%		101.35%		101.35%
11/1/2007		$19.75		$23.84		$16.13	
	percent change		102.60%		102.58%		102.61%

It is difficult to account for back loading and mid-year increases in this data. The Employer has argued that no increase is warranted for January 1, 2008, because the parties negotiated a 2.6% increase effective November 1, 2007, in the last agreement. This argument is without merit. The parties' last agreement was from August 1, 2002, to November 30, 2007. They used a one-time signing bonus to cover the first year and a half of the agreement. That bonus was not added to the wage rate. The next year's increase was relatively low. It is more likely than not that the November 1, 2007, increase was intended to compensate for the early years of the agreement. It would be highly unusual to set a wage rate near the end of the agreement for the succeeding year in that the parties would not have the security of an agreement for the successor year.

It appears that the Pace South agreement was back loaded and its inclusion in the January 1, 2008, average inordinately reduces the average increase. The Chairman also notes that Pace North Shore is inordinately low for January 1, 2008.

d. Cost of Living

The cost of living is often a factor in voluntary negotiations and interest arbitration, but it rarely is the sole determinate of wage increases. The Employer has objected to the consideration of the cost of living as measured by the Bureau of Labor Statistics indices because it noted that the RTA enabling statute forbids the inclusion of cost-of-living clauses in its collective bargaining agreements. The Chairman does not agree. There is substantial difference between cost-of-living-clauses and considering it as a factor in negotiations. First, the

[22] The average wage rate of the units is $21.47. The average rate of the same units for November 1, 2007, is $21.02. The change between the two average figures (affected somewhat by rounding) is 2.14%.

inclusion of cost-of-living clauses together with a legal duty to maintain the *status quo*, gives the benefiting union all of the essential economic changes before the parties bargain. This leaves the employer in that case in a very weak bargaining position. This is not true with the "factor" approach. Second, the administration of the common cost-of-living provision may not accurately adjust the wage portion of an economic package. Health insurance has risen much faster than the other components of the BLS cost-of-living and, if not factored out, may inordinately increase wages. Employers and unions have historically fought over how accurate these indices are. The use of the "factor" approach gives the parties an opportunity to reach agreement on these factors in each year of a voluntary settlement. Third, on a macroeconomic basis the widespread use of cost-of-living clauses is a cause of inflation.

The Employer provided cost-of-living data from the Bureau of Labor Statistics for the year beginning January 1, 2008 over the prior year, 2009, and the first part of 2010. The following is the Chairman's summary from that data:

Consumer Price Index Changes From Prior Year January 1 of Each Year

	2008	2009	May, 2010
CPI-U	3.8%	-0.4%	2.0%
less medical	3.8%	-0.6%	
CPI-W	4.1%	-0.7%	2.6%
less medical	4.1%	-0.9%	
Chicago CPI	4.0%	-1.4%	

The 2010 CPI is "unadjusted." The adjusted figure is about 0%.
The factor accounting for the difference is the cost of energy.

The figures for 2010 are not seasonally adjusted. The seasonal adjustment related to fuel costs and would have resulted in reducing the change to practically nothing.

e. Effect of Down Turn on Settlements Generally

The Union submitted evidence of the average annual increases nationally from its national database.[23] Settlements occurring for 2008 averaged 3.24% over the year; however, the trend over the year was to significantly lower settlements. In 2009, the average settlements declined to 3.11% and the number of settlements was substantially lower. None were in Illinois. As of January 2010, there were seven settlements nationally, none in Illinois. The average settlement at that time was 2.8%

The Employer relied upon the events with the CTA layoff and CTA's reduction in service and Arbitrator Benn's recitation of what occurred in bargaining in his award with employees of the City of Chicago. Both events were based upon huge budget shortfalls. The CTA laid off more than 1,000 bargained-for employees and reduced City of Chicago bus and rail service. The layoff resulted from the shortfall in CTA funding which in no small part resulted from the "free-rides-for-seniors" program of the Blagojevich administration. It is unclear how this played out in bargaining between the parties there. There have been reductions in some Pace services, but these have been on a much smaller scale. The Employer's actions in response to its budget shortfall are detailed above.

The Employer also relied upon what has occurred in voluntary bargaining between the City of Chicago and its employees, relying on Arbitrator Benn's statement of the economic context in which that bargaining

[23] U 50, 51, 52.

occurred both in Chicago and in other parts of Illinois.[24] It also relied upon Arbitrator Benn's statement of what happened to the budget of the City of Chicago and in bargaining among its various bargaining units.[25] In short summary, during the period of 2008-2010, the City of Chicago's budget was devastated. It took a variety of austerity measures which were not limited to affecting employee wages and benefits. In 2008, it eliminated wage increases for its non-represented employees and required them to take 2 or 3 unpaid "furlough" days. Starting in late 2008 and continuing into 2009, it instituted six government shutdown days in which employees were effectively furloughed without pay. It laid off 433 non protective employees. It also required highly paid employees to take seven furlough days. For 2009, non-represented employees were required to take 15 unpaid furlough days which resulted in them losing about 6% to 10% of their wages for the year. For the period of July 2009 to July 2011, some organized employees agreed to reduce their regular work week by two hours which was equivalent to 25 unpaid days in exchange for a no-layoff guarantee. AFSCME and Teamster units did not agree and suffered layoffs instead. For 2010 unrepresented employees were required to take 12 unpaid holidays and 12 furlough days.

Arbitrator Benn, starting at page 46 of his award, concluded that the City of Chicago did not, and could not claim, inability to pay. It was merely arguing unwillingness to pay given its tight budgetary situation. Under those circumstances, Arbitrator Benn controversially concluded that he would not apply the comparability criterion at all. He, therefore, rejected both internal comparability and external comparability and awarded the annual change based solely on the cost-of-living for the periods in dispute. At page 47, he noted that the employer had not filled 307 jobs in that bargaining unit and it faced a large number of retirements. A fair reading of the award is that he concluded that the employer could reduce its costs through unfilled positions. Arbitrator Benn awarded a 10% wage increase over the life of the five-year (7/1/07 to 6/30/12) agreement which was less than the 16% the employer offered. He increased the wages by 4% for the periods July 2007 through December, 2008. He increased wages by 6% from January 2009 through June 2012.

The Employer herein is not claiming, and cannot claim, inability to meet the Union's demands. Even in the absence of direct evidence as to how employers in Illinois similarly situated have dealt with the economic crisis, the inescapable conclusion is that even for employers that are not as hard hit as the CTA and City of Chicago, it is unlikely that employees are receiving wage increases much in excess of the limited wage increase the Employer is offering herein for December 1, 2008, (1%) and December 1, 2009 (2%). What is apparent, however, is that there is no evidence and it is not believable that the City of Chicago also transferred more of its health insurance costs to its employees at that same time.[26] It is highly unlikely that any employer even in this market could substantially shift health insurance costs to employees in collective bargaining and not grant significant increases in wages.

f. Health Insurance

The following are the current health rates among the nine divisions:[27]

	Current HMO monthly Contribution Union rebuttal 6				**Current PPO Contributions**	
	Single	**Family**	**S %**	**F %**	**Single**	**Family**
Pace Heritage	$30.00	$60.00	147%	291%	$90.00	$135.00

[24] City of Chicago and Fraternal Order of Police, Chicago Lodge No. 7, Arb. Ref. 09.281 (Benn, Donahue, and Johnson, April, 2010) pp. 12-13.
[25] City of Chicago, *supra*, pp. 13-19
[26] City of Chicago, *supra*, there was no change in health insurance for active employees, but there were changes to health insurance to those who retire which represented a cost saving to the City.
[27] Union rebuttal exhibit 6.

Pace River	$25.00	$50.00	116%	233%	$85.00	$120.00
Pace North	$20.00	$40.00	93%	185%	$70.00	$107.50
Pace North Shore	$30.00	$60.00	138%	276%	NA	NA
Pace West	$22.15	$44.31	89%	178%	$44.16	$55.85
Pace Northwest	$20.00	$40.00	87%	174%	$75.00	$100.00
Pace Southwest	$20.00	$40.00	90%	180%	$70.00	$125.00
Pace South	$25.00	$50.00	108%	215%	$80.00	$120.00
average	$24.02	$48.04			$73.45	$109.05
Pace Fox Valley	$7.50	$15.00			$45.00	$60.00

i. ISSUE 2: PRESCRIPTION DRUG

The Employer is proposing to increase the current prescription drug co-payment from $3 for generic and $8 for brand name to $10 generic, $15 formulary and $30 brand name, in the HMO and for all drugs in the PPO. Currently, the PPO provides for a $15 co-payment for a thirty-day supply of a generic drug. The PPO requires that if a generic is available, but a brand name is chosen, then the employee will pay the difference between the retail cost of the generic and the prescription drug, except when no generic is available or when certified by a health care provider. The proposed change is essentially the same plan as in Pace Heritage, Pace River and Pace North for their HMO's and in the PPO for maintenance. However, as to the PPO, all of those comparables require that the employee pay 20% of non-maintenance prescriptions with a $5 minimum and $50 maximum. The Chairman concludes that the non-maintenance limitations are appropriate for this unit both for consistency of benefits and limits of costs.

ii. ISSUE 3: HMO AND PPO CONTRIBUTIONS

Pace is self-insured for all of its insurance plans, except the HMO. The Employer is proposing to increase the current per pay period HMO contribution from $7.50 (Single) and $15 (Family) to $25 (Single) and $50 (Family) retroactive to January 1, 2009, and to $30 (Single) and $60 (Family), effective January 1, 2010.[28] The Employer is proposing to eliminate the PPO as a an insurance option or, in the alternative, to increase the per pay period contribution for the PPO plan from its current $45 (Single) and $60 (Family) to $80 (Single) and $115 (Family) effective January 1, 2009, and to $90 (Single) and $135 (Family) effective January 1, 2010. The Union is proposing no change.

The HMO and PPO benefit plans at Pace Fox Valley are essentially the same as all of the other Pace properties. However, there are differences in contribution rates and may be some minor differences in benefits. There is no evidence as to how the Employer's costs have changed over the years for medical insurance. The vast majority of employees are in the HMO plan. The sole argument made by the Employer is that other comparable properties have made the changes it seeks. There is no evidence as to how its costs have changed, although nationally costs for health insurance have risen dramatically. The sole argument made by the Union is that because Pace Fox Valley employees are paid less, these costs are a much larger percentage of their pay than elsewhere.

The factors that have weight as to this issue are the public interest and comparability. The public interest is in having employees of a large employer having access to adequate health insurance and in being able to afford it. The public interest is very strong in making sure that Operators are able adequately to provide for their own medical needs.

[28] Paid every pay period.

The Chairman will turn to the Union's argument first. The evidence indicates that unit mechanics are comparably, if not, well, paid. There is no reason why they cannot be subject to the same rates as other mechanics system-wide, provided that they remain comparably paid. The Union's position with respect to Operators is well taken. They are under-paid. However, the award today remedies the issue and makes Operators at Pace Fox Valley reasonably comparably paid to other Pace units. The Union correctly notes that any increase in premium rates is a substantial decrease in take-home wages.

The Chairman will turn to the Employer's arguments. First, there is a substantial public interest in Pace as a whole being efficient. This is particularly true in the administration of health insurance and other benefit in which Pace obtains the benefit of uniformity of administration and the ability to bargain with insurance carriers.

The vast majority of Pace properties have increased or have higher contributions than Pace Fox Valley. It is also noted that most have substantially similar contributions. The Chairman notes that to the extent there were increases in contributions it is more likely than not that they were a result of total package, *quid pro quo* bargaining in the pre-downturn market. The increase proposed in the next paragraph represents a $.22 per hour wage decrease for top Operators when insurance increases become effective. It is hard to estimate what the benefit decreases equate to in lost wages. That figure depends on the employees' usage of benefits. The best estimate is that this is equivalent to 1% in wages for the top operator. The wide range of wage increases among the comparables suggests some *quid pro quo* bargaining. It is highly unlikely that parties would achieve a voluntary settlement with substantial cost shifting in health insurance and an otherwise low total package settlement.

The comparability data supports HMO premiums at $25 (single) and $50 family. It supports the PPO premiums at $80 (Single) and $110 (Family). Pace West is inordinately low and affects the average dramatically. All others are closely grouped. The foregoing is the approximate average of the others without Pace West.

There are significant reasons why employees may choose to pay extra for a PPO plan. A significant portion of this unit used the PPO plan. Only one unit does not have a PPO plan. The Employer's proposal to eliminate the PPO plan is denied.

The Employer's attempt to charge unit employees retroactively for increases in contributions to health insurance is problematic. Employees have to have a chance to change or cancel insurance. In any event, the Employer has had the benefit of withholding unit employees' wage increases for three years and one of the incentives for prompt settlements for employers is resolving insurance changes. The Chairman will award only a prospective change. Accordingly, the Chairman awards the above and below changes to be effective the first day of the August 2010, or the first day of the month following twenty (20) days after the date of this award.

iii. ISSUE 4: OUT-OF-NETWORK MAXIMUM

The current out-of-network maximums are $1,700 (single) and $3,500 (family). The Employer has proposed to increase this to $2,200 (single) and $4,400 (family) The Union has not responded to this proposal. There are few people in the PPO plan. Most are in the HMO. This change would make this consistent with the other Pace insurance provisions. The Chairman awards this change.

iv. ISSUE 5: LIFETIME MAXIMUM

The Employer is proposing to increase the lifetime medical maximum from $1 million to $2 million. The Union has not objected to this or proposed any change. This is an improvement. The Chairman adopts this proposal.

v. ISSUE 6: PRE-ADMISSION TESTING

The Employer proposes to change the PPO pre-admission testing contribution from 100% for PPO to 90% and for non-PPO from 80% to 70%. The Chairman declines to award this change.

vi. ISSUE 7: SHORT TERM DISABILITY

Currently, the short-term disability benefit of Article 17 is $35 per day. The Employer proposes to increase it to $40. The Union proposes to increase it to $75 per day. The Union has argued for the greater increase based upon employees current take home pay. The better evidence is the Union's evidence of comparability which accounts for the tax effect, if any. The average of settled units Pace-wide is $41. The Chairman awards a benefit of $41 effective the next calendar month twenty days after the date of this award.

vii. ISSUE 8: DENTAL

Article 15, Section C provides dental insurance for full-time employees after 90 days of continuous full-time employment. The Employer pays the full premium for the single plan. It has a maximum benefit of $1,500 per employee per calendar year for preventative, basic, and major services. It pays 100% of preventative, 80% of Basic and Major services and 50% of Orthodontia with a lifetime maximum for Orthodontia at $1,000. It provides for two periodic exams per year. Pace pays one-half the family premium. The employee share is $12.74 per pay period. There is a $35 deductible There are no part-time employees here.

The Union proposes to extend the policy to have the Employer pay the full cost of family coverage. It also proposes to apply the dental plan to all employees, not just fullt-time employees. The Employer proposes to increase the maximum benefit to $2,000 per employee per calendar year, and increase the deductible to $50 per employee or $150 per family per calendar year. It proposes to reduce the Major Service benefit from 80% to 50% of costs and increase the Orthodontia lifetime maximum to $2,000. It limits Orthodontia coverage to age 19.

The comparison criterion heavily supports the Union's position as to extending the dental plan to having the Employer fully pay the premium for the family plan. All other properties have fully paid coverage, except Pace Heritage ($12.74 per pay period) and Pace North Shore at ($25 per month). The cost of the additional coverage for the family should be significantly offset by the higher initial deductible for the family. Additionally, the increase of both the individual deductible to $50 and the establishment of the family deductible at $150 are both heavily supported by moving the range of coverage more toward the range of unexpected costs. This is a self-funded plan and the same reasons which support adopting the Employer's health changes support this change, uniformity of administration. There are no part-time employees now and there is no evidence supporting comparability for this benefit to part-time employees. The Chairman determines to reserve this issue to a time when there are part-time employees and a sufficient practice to determine which, if any, should receive this benefit. The Employer's proposal to set an age limit of 19 for orthodontia coverage is without merit. First, the evidence indicates that the trend in health benefits is to increase the age at which children may remain covered. Second, there is no evidence that the additional coverage is likely to add significantly to the cost of the benefit. The Chairman also concludes that the lifetime orthodontia benefit should be applied per covered participant and not per family. The maximum benefit per year should also be $2,000 per covered participant. Accordingly, the Chairman orders that the Employer pay the full cost of dental both single and family coverage. He orders that the Employer's proposal for a $50 (single) and $150 (family) deductible per year be adopted. The Employer's proposal for an age limit for orthodontia is rejected and the Chairman orders that the orthodontia coverage be applied to any covered family

member as long as they are eligible to be covered. The maximum benefit per year per covered participant is ordered to be set at $2,000.

viii. ISSUE 9: VISION

Article 15, Section B provides for vision benefits which pay $35 toward a vision exam, and specified amounts toward glasses and contacts. The Employer proposes to make extensive changes to the current vision benefits with the primary benefits constituting significant improvements. The plan would pay all but the first $10 for the eye exam and limits the employee's contribution to various eyeglasses and contact options. The Employer's proposal is a significant improvement particularly as to the eye examination. It encourages operators to seek regular vision care and, thus, is supported by the public interest. Accordingly, the Chairman adopts the Employer's proposal as to vision care revisions.

g. ISSUE 10: WAGES AND BASIC ECONOMIC PACKAGE ALLOCATION

For the foregoing reasons, the Chairman concludes a minimum equity adjustment for operators of $.75 per hour is appropriate as noted above. The additional $.25 per hour sought by the Union is appropriate. The Chairman looks to the parties' practice in dealing with the issues presented here. Pace has agreed to substantially increase the Pace South operators' wage rates from among the lowest to nearer the highest paid operators at Pace. It appears that this was partially offset using back loading. That technique is appropriate here. Most of this is financed by delaying the implementation of this and other increases. The adjustment is implemented $.50 on June 1, 2009, $.25 on June 1, 2010, and the final $.25 November 1, 2010.

The Chairman concludes that a *quid pro quo* situation exists with respect to the health insurance changes which the Employer seeks. In ordinary bargaining the Employer would be required to offer an equivalent *quid pro quo* for these changes. The Chairman concludes that the equivalent cost of the changes the Employer has proposed is at least 2%. The wages paid are taxable, but the health benefit is not. The tax effect of this is .5%.. That amount should be included in the wage increase because it is intended to bring this unit into line with other units with higher wage rates who are already paying the higher expenses out of their pockets. This is implemented as 1% effective June 1, 2010. The first amount gives employees some retroactive pay to help offset immediate cost increases. The second amount of 1.5% is implemented November 1, 2010.

The Employer has sought a reduction in the settlement which otherwise would have occurred for December 1, 2008 (equivalent to January 1, 2009, in other agreements) because of the effect of the downturn on settlements generally. It is only fair that the Union is also entitled to the advantage of 20-20 hindsight in negotiating the December 1, 2007 (equivalent to January 1, 2008, in other agreements). Obviously, no union and no reasonable management negotiator would have settled on back loading an agreement on that date if there was a serious prospect that an employer could not pay them or they would otherwise become unwarranted. The Chairman concludes that the increases for December 1, 2007, would have been without back loading and would have been closer to the 4% inflation figure. Indeed, even looking at the average settlements of the following year show that settlements then ranged closer to 3%. This is also consistent with the Pace North settlement pattern of 3.5% per year because this settlement appears to not be back loaded and granted only on a annual basis. The Chairman concludes that a 3.5% adjustment would have been appropriate for December 1, 2007, because most of the unit is operators who have low wage rates. The back loading practice is applicable with respect to this as well to deal with the costs of the adjustment and Pace's budget issues. In this regard, the Chairman orders that the December 1, 2007, wage increase be divided. The first 2.5% of wages increase should be delayed to June 1, 2008, half way into the first year of the agreement. The second 1% should occur at the June 1, 2009. By delaying the payments in this way, the Employer saves a substantial amount of money over paying them as of December 1, 2007.

Employees, particularly the operators, have been without back pay for some time. The impact of the delay has assisted the Employer with its cash flow issues. The impact of the delay can only be estimated. For example, assuming, without deciding, that the health insurance changes should have taken place as far back as December 2007, the employees' advantage in health insurance more than offsets the fact that they did not get the 3.5% increase. It did not offset the operators' underpayment throughout this period represented by the adjustment increases awarded herein. The employees have lost the use of the other wages awarded herein. It is entirely inappropriate to grant lower wage and benefit adjustments to employees based on the budget issues involved herein. The Chairman notes that the Employer addressed those with its unrepresented employees by a furlough in 2010. A furlough does not permanently reduce a wage rate. Similarly, it is inappropriate to grant lower pay increases over cash flow issues because the lower amounts are permanent and the cash flow issues are pernicious, but temporary.

The Chairman has to weigh a number of factors in determining the wage increases for the year commencing December 1, 2008, and the year commencing December 1, 2009. First, by not granting operators a comparable increase to the other increases awarded before the downturn, the Chairman would simply create a later catch-up situation. Balancing those circumstances, the Chairman awards a wage increases a wage increase of 1.5% effective December 1, 2008. The Chairman awards the Employer's proposal of 2% effective for December 1, 2009. Both are consistent with the growth shown in non health wage costs in the Employer's budget. The following is a summary of those increases:

	Operator	Wage Rate	Non Operator	Mechanic	Bld. Maint.	Service Wkr.
12/1/2007		$19.75		$23.84	$22.99	$16.13
6/1/2008	2.5%	$20.24	2.5%	$24.44	$23.56	$16.53
12/1/2008	1.5%	$20.55	1.5%	$24.80	$23.91	$16.78
6/1/2009	1.0%	$20.75	1.0%	$25.05	$24.15	$16.95
	$0.50	$21.25				
12/1/2009	2.0%	$21.68	2.0%	$25.55	$24.63	$17.29
6/1/2010	1.0%	$21.89	1.0%	$25.81	$24.87	$17.46
	$0.25	$22.14				
11/01/2010	1.5%	$22.47	1.5%	$26.19	$25.16	$17.72
	$0.25	$22.73				

[The percentages are controlling, the wage figures are illustrative and may vary with rounding.]

3. Allowances

a. ISSUE 11: TOOL ALLOWANCES

The proposals of the parties have factual complexities which need to be addressed. Under a side letter to the expired 5 year, 2 month agreement, the parties included supplements for benefits specified in Section 19B. Under that side letter Mechanics received a $295 supplement for a total of $1,215 over the life of the agreement.[29] Similarly, Building Maintenance received a $240 supplement for a combined total of $1,000 over the life of the agreement. There is no discussion as to the history or reason for the tool allowance in the record herein. The tool allowances under this agreement are for the one-time payment toward the initial or reoccurring purchase of items, pursuant to the terms of the agreement. This is because the employee must show proof of purchase. Pace Fox Valley has a one-time boot allowance of $80.

Although this is a shorter agreement than the prior agreement, the Union proposed to amend the tool allowance of Article 19 to $1,200 for Mechanics and $1,000 for Building Maintenance. It has not proposed to amend the side letter which would therefore expire. The Union proposes to increase the boot allowance to $100. The Employer proposes to change the allowance to $720 total for Maintenance Employees and $600 for Building Maintenance employees which it contends is an increase annually because this agreement is shorter than the prior agreement. However, the Employer proposes to make it effective on the date of the award. The Employer proposed to eliminate the boot allowance of $80 because none of its proposed comparables have it.[30]

The best evidence of comparability is that presented by the Union in its exhibit 61 which is tool allowances for mechanics system-wide. Union exhibit 62 shows that on a national basis, system allowances are somewhat low. The boot allowance appears unusual and must be considered in taking into account the comparability data. Based upon that data the tool allowance for Mechanics in a three year agreement is best set at $975 for Mechanics and Building Maintenance at $855. The boot allowance is to remain the same, $80. The

[29] There is some ambiguity in Article 19, Section B, but both parties have agreed that the allowance is over the life of the agreement and not annually. Similarly, it is not clear if the extent to which the Employer may decline to allow the purchase of a specific item. The Chairmanl makes no decisions in this area, but assumes that the reimbursement is for any tool purchases which the employee uses on behalf of the Employer. Since this agreement is nearly expired, it is unclear how the parties have handled the tool allowance over the hiatus.

[30] Tr. 3:p. 144, et seq., E29.

increase is retroactive; therefore if an employee purchased an appropriate tool during the term of this Agreement, upon presentation and proof of purchase, the employee shall be reimbursed up to the amount of the tool allowance.

b. ISSUE 12: UNIFORM ALLOWANCE

The uniform allowance issue for shuttle bus drivers is addressed below. Until the Employer recreates the position, it is pre-mature to address it in this agreement because there is no evidence as to what their needs will be. The Union has proposed to increase the current uniform allowance for Operators from $195 per year to $250 and to require the Employer to give Operators a tie or dickey, plus a $100 shoe allowance. The Employer proposed $210 and opposed the shoe allowance. The Union proposed the shoe allowance because Operators' shoes are exposed to debris, oil, etc. in the garage and the elements while helping passengers, etc. Union exhibit 64 and testimony indicates that employees have a number of items which have logos on them. They need to have an outfit for every day and outfits have to be seasonally appropriate. They launder them themselves usually with weekly family wash. The price on these items has risen in the three years of the agreement. The Chairman recognizes that to some extent all employees wear clothes at work and some of the cost of these items represents amounts the Employer ought not to have to reimburse. The Union's evidence also indicates that its proposal is heavily supported by the comparison within Pace and reasonably supported nationally. The proposal appears to be within the likely inflation in the uniform clothing business. The Chairman awards $210 per year for uniform

ISSUE 13: SHIFT RESPONSIBLE, LINE INSTRUCTOR, AND RELIEF DISPATCHER PAY

The current practice and contract provisions provide for unit employees to fill in for an absent foreman (referred to as "shift responsible"), perform on-the-job-training (referred to as "line instructor'), and fill in for the relief dispatcher respectively. These provisions benefit both parties because the Employer gains flexibility to fill in for absent higher paid employees at less than overtime rates and the employee gains experience in new job skills which might lead to career advancement. The line instructor helps train new employees. The work improves the skills of the employee doing the training. There has been no change in any of these positions. The Chairman concludes that there are substantial non-economic incentives in these positions, but that some adjustment is necessary to keep pace with economic conditions. The public interest favors efficiency. It also favors developing the full potential skills of employees in order to have experienced people promoted to those positions. The available data establishes that the shift responsible position needs an adjustment. Accordingly, the Chairman awards a $.15 per hour adjustment to the position of shift responsible foreman. The Chairman awards $.10 per hour increase to the position of line instructor. The Chairman awards no change for the acting relief dispatcher.

4. Time Off/Leaves[31]

a. ISSUE 14: SICK LEAVE DAYS FOR SUBPOENAS

The Union proposes to add the following language to Article 11:

C. Subpoenas
If an employee is subpoenaed in connection with a legal proceeding, the employee shall notify Pace immediately with proof of the subpoena. Such an employee shall not receive an instance of absence. The employee shall be paid for the absence only if the employee elects to use a Sick/Elective or Paid Personal Leave day.

[31] The Employer's proposal for editorial changes as to the sick/elective days was accepted by the Union.

Union witnesses testified that on at least two occasions, employees received a subpoena to attend to hearings involving matters unrelated to work. The employees were charged with an absence against the Employer's attendance policy. Further, employees have six personal leave days and three sick-elective days. The Union is asking that they not have a charged absence and that they may be able to use a personal leave day. The above proposal relates to situations other than work because the Employer currently excuses and pays employees subpoenaed in connection with work.

There are two issues in the above proposal. The first issue is the matter of being excused from work. The second issue is being paid for the time off. The first issue is governed by the public interest criterion. Answering a subpoena is a civic duty. Any action by the Employer to discourage employees from responding to a subpoena impacts the public interest. The use of personal days for this purpose is appropriate. The Chairman does not believe it is appropriate to use sick days for this purpose. The Chairman will add that if an employee does not choose to use personal leave days for this purpose, then he or she, shall receive unpaid leave. The Chairman awards as follows:

C. Subpoenas

If an employee is subpoenaed in connection with a legal proceeding, the employee shall notify Pace immediately with proof of the subpoena. Such an employee shall not receive an instance of absence. The employee shall be paid for the absence only if the employee elects to use a Paid Personal Leave day. If the employee does not elect to use a Paid Personal Leave day, he or she shall receive unpaid leave sufficient to comply with the subpoena. The employee will cooperate to minimize the loss of work time.

b. ISSUE 15: WORK PICKS

The Union has proposed to change the work pick procedure of Article 5 to have potential selections posted from five days to seven days. It also proposes to have the Union's designee rather than the Division Manager pick for those employees who are ill or on vacation at the time vacations are picked. The Union testified that its representatives review the posted assignments for errors. They have found errors and the errors have been routinely corrected. The Union has requested the additional time in order to more effectively carry out its responsibility. The Employer has responded to this part of the proposal in its brief and stated that it is doing this by practice. The Chairman believes the practice should be in the agreement and, therefore, adopts it. The time allotted for the pick is six minutes. Usually, employees call the Union to ask questions about their potential choices. The Union has a delegate present during all selections and is usually better informed. The Employer has objected to this proposal. The Chairman concludes that the purpose of the Union's proposal is well-founded, but that employees should have the right to designate that the Union do so. Unless they do so, it should be done by the Division Manager. Accordingly, the Chairman adopts the following changed language for the selection process:

All Operators must keep in touch with Pace during the process of the pick, and failing to do so, shall have his/her selection made by the Division Manager unless the employee notifies Pace that he or she wishes to have his or her selection made by the Union's designee. Such designation shall be in writing and shall expire in thirty (30) days unless the employee specifies a longer period. If an Operator who is entitled to pick is ill or on vacation, Pace shall notify the Operator of the pick at least twenty-four (24) hours in advance. If the Operator cannot be reached and has not previously designated the Union designee, the Division Manager shall pick for the Operator.

c. ISSUE 16: PERSONAL LEAVE DAYS AS TIME WORKED

The Union has proposed to require that Personal Leave Days and Floating Holidays be counted as time worked. The Chairman agrees this should be adopted.

d. ISSUE 17: EMPLOYEES' HOLIDAYS AND SICK DAYS

There are employees who now work a ten-hour, four-day week. The Union seeks to allow them to take ten hours of sick leave for a day missed due to illness. The Chairman agrees that time off allowed for sick days should be allocated annually in hours and the employee should be allowed to take the time equivalent to his normal straight time shift. The same is true for Personal Leave Days.

e. ISSUE 18: VACATION

The Union made the following proposal relating to vacation. Currently, employees receive vacation on the following schedule:

1 to 5 years	10 days
6 to 14 years	15 days
After 14 years	20 days

The Union proposes to add 25 days after 19 years. It also proposes to add the following language to Article 10:

> There shall be three (3) Operator vacation slots per week throughout the year as long as Pace has employed forty (40) Operators If Pace maintains less than forty (40) Operators, there shall be two (2) Operator vacation slots per week except that in the months of June, July and August there shall be three (3) Operator vacation slots per week. If a problem arises with the vacation pick or vacation slots, Pace and the Union shall work out an alternate solution.
>
> The vacation pick shall be conducted by the Union's Designee. The vacation pick shall be in seniority order and posted one (1) week prior to when the operators are required to pick their vacation.
>
> Each Operator for that day will have fifteen (15) minutes to pick their vacation for the upcoming year. The vacation pick will end each day at the close of the Supervisor's/Dispatcher's work day.
>
> If an Operator is entitled to pick and is ill or on vacation, he/she shall be notified by Pace of the vacation pick. Any Operator that is required to pick and fails to pick will be passed over and will pick from the remaining open slots.
> Operators, upon approval of the Division Manager, may switch vacation weeks with each other.
> ~~Maintenance Personnel shall be allowed to change vacation picks with the approval of the Division Manager or designee.~~
> Maintenance employees who are eligible to pick four (4) complete weeks of vacation, will be allowed to select one (1) week (five days) of non-consecutive vacation days (vacation random days or VRDs). Maintenance employees who are eligible for such days shall notify their Superintendent or designee in writing by October 1 of the preceding vacation year. VRDs shall not carry over from year to year.
>
> (A) Available VRDs will be granted on a first come, first serve basis. VRD requests shall not be accepted prior to January 1 of the vacation year.
>
> (B) Permission for employees to use a VRD may be granted by the Superintendent or designee within the employee's specific work section dependent upon manpower.

(C) VRDs must be requested no less than five (5) calendar days prior to the day requested.

(D) After an employee opts to participate in the VRD program, that employee is not allowed to withdraw from the program during that vacation year.

(E) Under no circumstances will an employee have a right to demand a VRD.

(F) Employees with remaining VRDs as of November 1 of the current vacation year must request the remaining VRDs , in accordance with the above, by November 8, unless otherwise excused by Pace, to ensure that the VRDs are taken prior to the end of the vacation year. An employee who fails to select paid VRDs shall forfeit pay for any remaining VRDs.

(G) No VRD will be lost as a result of discipline; any employee who is disciplined on a scheduled VRD shall reschedule the VRD.

Pace shall provide the Union with a copy of the employee's scheduled vacation pick after the vacation pick in October.

The Union's proposal incorporates a number of changes in the current vacation system. First, it adds a fifth week of vacation. There is no significant comparability within Pace for this change. Few employees are affected by this. The Chairman denies this change.

Second, the Union has sought to incorporate the number of vacation slots per week into the agreement. At present, the number of picks per week is at the discretion of the Employer. The Employer has administered this in a generally consistent manner and has maximized vacation slots available at desirable vacation times. The Chairman awards no change as to the agreement with respect to the number of vacation slots per week.

Third, the Union has proposed to change the amount of time an employee has to make his or her selection and also to have the vacation selection conducted by the Union's designee. The current selection process allows one day while the Union proposes fifteen minutes to select. The evidence indicates that the current method of having employees select over a one day period has resulted in junior employees waiting in line because senior employees wait to select later in the day. The solution proposed by the Union is likely to result in more employees not being present to select. The Chairman orders the following change in the current language:

> Pace shall conduct the vacation pick over a two consecutive day period in October of each year. Each employee in order of seniority will be scheduled to pick vacation. An employee may notify the Employer in advance of his or her proposed selected weeks in order of priority on a form to be agreed to by the Union and the Employer. Alternatively, or in conjunction with the use of the vacation designation form, the employee may authorize the Employer or the Union's designated agent to make his or her selection for him or her.

Fourth, the Union proposes to change the current provision of having vacation taken in one week increments for maintenance employees. There are relatively few maintenance employees who would qualify for this benefit. The purpose of vacation is to allow the employee time off to relax or deal with personal matters. It is in both parties' interests to have senior employees have the flexibility to use vacation in a manner which is efficient. The major hurdle to the use of vacation on a daily rather than weekly basis is that the Employer will have difficulty scheduling replacement employees or will work with insufficient staff. This is particularly difficult in a small operation. The Union's proposed language preserves the right to the Employer to control staffing. Accordingly, the Chairman orders the adoption of the Union's proposed "VRD" provisions.

Fifth the Union proposed that it should obtain a copy of the employees' scheduled vacation pick after the pick is conducted. The Union is entitled to this information. The Chairman orders that it be adopted as follows:

> Pace shall provide the Union with a copy of the employee's scheduled vacation pick after the vacation pick in October

f. ISSUE 19: FAMILY AND MEDICAL LEAVE ACT

Under a side letter to the expired agreement employees have the option to substitute paid leave for Family and Medical Act Leave, at the employee's sole option. The Employer is asking for a change to allow it to require employees to substitute paid leave. The federal Family and Medical Leave Act (herein "FMLA"), provides substantial guaranteed unpaid leave benefits to those who have a serious medical condition or who have to care for a family member with a serious medical leave condition.

There is no change of circumstances underlying this provision. The sole argument made in favor the Employer's position is that it could reduce the amount of time employees could be absent. The argument is essentially premised on increasing efficiency during times when funding is tight and there are general changes in work demands. The Employer is not alleging that it is offering any *quid pro quo* for this change.

When employees are absent for FMLA, vacation, sick leave or otherwise, the Employer experiences difficulty in keeping adequate manning. In some cases, it incurs overtime costs. This agreement is generally strict with respect to attendance. It is precisely those situations which the FMLA was designed to address. While improving efficiency is a worthwhile goal, it is outweighed by the public interest in the FMLA and the public interest in general in having operators who are able to put their full attention to the road. The parties' current agreement shows they have considered this and reached an equitable balance. Thus, the factor of the history of the parties' past agreement supports the Union position. Accordingly, the Chairman concludes that no change in the side letter is appropriate.

5. Hours of Work and Premium Pay

a. ISSUE 20: SIXTY MINUTE MAXIMUM LUNCH BREAK

The Union proposes to change Article 5, Lunch Relief, Section E8 to add the underlined provision:

> A break of as near as possible to thirty (30) minutes, <u>and not more than sixty (60) minutes</u>, will be provided for lunch on all runs scheduled more than six (6) hours.

The Union explained this proposal as follows. Previously, runs were pretty uniform and lunch breaks were all close to 40 minutes. The Employer has lengthened runs and increased the length of lunch breaks. It offered two examples in U18 which involved two runs, one current and one in the past, with lunch breaks consisting of 1 hour and 44 minutes and the other 1 hour and 15 minutes. Layovers are paid and duty-free lunches are not. The first cited run ends at what the Union described as an isolated Metra station. The Union offered some comparison examples.

The Employer opposes this proposal. It offered testimony that the lunch times are for the convenience of the rider more than the employee. It noted that as ridership has declined, lunch breaks have grown. This is necessary in order to be efficient and cost-effective. It also countered the Union's evidence as to whether the Metra station run was isolated by evidence that in that instance the Metra station was close to some restaurants.

The Employer also addressed this issue in its brief. It argued that the Union has failed to show this is a significant problem. It could only show one current example. Even that example was flawed because employees can lock their bus and they are free to go.

The public interest criterion applies in a number of ways as well as the comparability criterion and the practices of the parties. It is important to identify the interests involved. The Employer's interest is in passenger service and cost efficiency. The Union's interest is in having full-time positions and not having large unpaid breaks. The rider's interest is in convenience. The Union has demonstrated that circumstances have changed and that now some lunch breaks are beyond anything needed by employees as a practical matter. The Union's proposal is, however, overbroad. Specifically, it is not in anyone's interest to forbid the Employer from having long lunch breaks entirely. This is a small unit and it is important to have busses available when and where passengers need them without wasted time. However, the Union is correct that at some point, long unpaid lunches are solely in the Employer's interest even if they are duty-free. The disputed testimony is somewhat off point in that regard. The employee still has to be at or around the bus even if he or she can walk to a nearby restaurant or shopping area. It is the parties' practice to pay layovers. The Chairman concludes that a lunch break of 1 hour with 15 minutes for walking back and forth to nearby establishments is the maximum that is in the employee's interest and lunch breaks longer than that are sufficiently in the Employer's interest that they should be paid. The Chairman awards the following change to the above provision:

> A break of as near as possible to thirty (30) minutes will be provided for lunch on all runs scheduled more than six (6) hours. The time on lunch breaks of more than one hour and fifteen minutes will be paid.

b. ISSUE 21: RELIEF VEHICLE PULL OUT TIME

Union witnesses testified that on occasions, drivers have to drive to the relief point in the "relief vehicle" usually one of the Pace's cars kept for that purpose. The relieved driver then drives the vehicle back. More than one person may ride in the relief vehicle. The person who drives the relief vehicle must inspect the vehicle for damage and fill out the pre-trip card (U24) and record the mileage on form similar to U25. The Union's witness testified that this takes about five minutes, but that employees who do this are not paid for the time.

The Fox Valley Division Manager testified that the Employer in practice grants the time credit sought by the Union. There are about 30 runs which guarantee 40 hours per week. Approximately 19 of those runs pay overtime after 8 hours. All 40 of these start their day at the garage. When they start their day at the garage, drivers are allowed 15 minutes for pulling out the bus. If they ride in a relief vehicle or drive the vehicle, they are still allowed the same fifteen minutes. When they get to the relief point, they are allowed 5 minutes to make the relief by the collective bargaining agreement. The relief vehicle driver is only responsible to note any damage on the relief vehicle and does not fill out the rest of U24. The contract requires 15 minutes for a "pull-out." A "pull-out" is only with a bus. There is a practice which is not written in the agreement that drivers making relief get five minutes at the garage and five minutes on the roadway. If there are more than one relief drivers leaving in the relief vehicle, they determine among themselves who drives. The testimony and supporting exhibits shows that the 5 minutes for pulling out the bus is granted by practice.[32]

The Chairman grants an amendment of this provision to memorialize the current practice. E.1 is amended to read:

> ". . . Operators being required to relieve on the road shall be allowed five (5) minutes to prepare the relief vehicle and sufficient travel time from and to his/her garage/terminal."

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[32] Tr. 3, pp 159-160

The sole purpose of this provision is to memorialize the existing practice and not to add time to the work day.

c. ISSUE 22: CALL-IN PAY

Currently Article 8 A2 provides:

> A minimum of two (2) hours will be paid to any Operator called from home to work.

The Union proposes to add the following provision to that provision. The Employer opposes it:

> If an Operator is called in to work for an extra assignment and the Operator reports to work and the work has been cancelled or assigned to another Operator, the called-in Operator will be paid for the work that was offered unless Pace makes the contact with the Operator prior to the Operator leaving for work.

The Union explained that on two occasions during the expired agreement, employees were scheduled in advance for extra work, but when they reported as scheduled, the Employer had reassigned the work to someone else. In one case, the employee was compensated and in the other the employee was not compensated beyond the two-hour call in.

There are two issues underlying this proposal. The first is the responsibility of the Employer to treat its employees with respect and notify them if extra work is cancelled, if the Employer knows. The second is whether the two hour call-in ought to be increased. The evidence is insufficient to conclude that the Employer has deliberately failed to notify employees that extra work was changed. This situation appears to be more in the nature of honest error. Under the circumstances, this proposal goes too far. The Chairman will leave to grievance resolution whether the Employer acted unreasonably by adding a provision to that section as follows:

> Pace will make reasonable efforts to notify the affected employees if extra work scheduled for them is cancelled.

While the Chairman does not favor provisions which are not specific, this provision is preferred because it will allow the parties to deal with this issue.

d. ISSUE 23: CREATE OFFICIAL TIME CLOCK AND TWO-MINUTE LEEWAY

These two proposals arise from situations in which employees have come in essentially within one minute of being on time. The Employer proceeded to charge them with being tardy. Unfortunately, contract language cannot be written for every contingency and it cannot replace being reasonable. The Employer argued that the time clock issue not a mandatory subject of bargaining and not properly before the Chairman. As to the other issue, it argued that transportation is extremely time sensitive. The Employer has a legitimate interest in strict attendance policies.

The Chairman recognizes that this is the kind of work which requires that employees be very prompt for work. Creating two minutes of leeway would only cause the Employer to change the start time to two minutes earlier. There is more merit in the time clock issue. But the issue is still a relationship issue and not a clock issue. While the job does require promptness, should the Employer be unreasonable in its handling of this delicate issue, the result is not that it makes attendance better but that it makes it likely an arbitrator functioning under the just cause doctrine will not believe the Employer's policies. Thus, unreasonable actions undermine the goal of promptness. With this said, the Chairman denies both of these proposals.

e. ISSUE 24: NO MORE THAN THREE REPORT TIMES

Currently Article 5 Operator's Report, report Time and Spread Time, Section E 6 provides in relevant part:

> .... No Operator shall have more than four (4) report times in a given day unless an emergency arises.

The Union proposes to amend that sentence to read:

> .... No Operator shall have more than three (3) report times or work more than eleven (11) hour spread time in a given day unless an emergency arises.

The Union proposes to add a parallel sentence to Section E 3 for extra board Operators who currently have no similar limitation as:

> Extra board operators will not have more than three (3) report times over a (10) hour spread time.[33]

The evidence indicates that the foregoing is essentially the current practice as to the number of reporting times, although the Union concedes that there are times employees may have volunteered to take an extra run. It supports the hours limitation based on the hardship created on operators who have broad spread times between the start of report times.

Pace has accepted the Union's proposal to limit report times to three times per day. It has opposed the 11-hour and 13-hour limit on the basis that the Union has failed to show that there has been any change in circumstances. Instead, the Union relies on Union Counsel's assertion that it is disruptive to employees and employers have traditionally paid a premium for it. Only one of the comparables, Pace North Shore has a limit. Its limit is 13 hours. There was no evidence that Pace Fox Valley has any tradition of the sort.

The Chairman adopts the three report time portion of this proposal. The evidence is insufficient to support any limitation on the spread times. The Chairman does not adopt any proposal limiting spread times.

f. ISSUE 25: THIRTY-SIX HOUR WORK WEEK

The Union is proposing to eliminate the potential that 36-hour work week people would have to work 10-hour days or have early or late straight runs. Currently, one of the 36-hour shifts has a 4-day week. In most cases, senior employees choose the 40-hour work weeks. The purpose of this proposal is to improve the work status of 36-hour people. The purpose of the 36-hour run is to give the Employer the flexibility it needs short of hiring many part-time workers. The Union has not shown that there have been any changed circumstances over this agreement or that the current provision is unworkable. This is a small property and the Employer needs flexibility to efficiently meet its runs. The Chairman awards no change in the current provision on this subject.

g. ISSUE 26: MAINTENANCE EMPLOYEES GET NIGHT SHIFT PREMIUM AFTER 3:00 P.M.

The Union proposes to amend Article 7 to add the following entirely new provision:

> Maintenance section employees who work shifts scheduled to start after 3:00 p.m. will receive a night shift differential pay of twenty-five cents ($.25) per hour, in addition to their regular hourly rate, for all hours worked.

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[33] The Chiarmanl has corrected the proposal to add the word "three" to be parallel with structure of other provisions.

The Employer opposed this. Currently, there is an afternoon shift for the maintenance department which starts at 2:00 p.m. (called "afternoon shift"). Usually, low seniority employees wind up on the night afternoon shift jobs. Right now there are no shifts beginning at 3:00 p.m. and there is no evidence that the Employer is contemplating starting one. The Chairman denies this proposal.

h. ISSUE 27: ELIMINATE CHOOSING DAYS OFF

Currently the Article 5, Section C provides that half of the full-time operators are allowed to choose their days off. The Employer proposes to eliminate the right of any Operator to choose his or her day off. The evidence is insufficient to indicate that there has been any problem administering this provision or that that it has ever generated unwarranted costs. The Chairman awards no change in the current provision.

i. ISSUE 28: DAILY OVERTIME

The Employer has proposed eliminating the provisions of Article 5 and 7 relating to paying employees who work more than eight hours in a day at the rate of time and one-half for all hours worked in excess of eight. Of the four smaller properties, Pace River is the only property which has a provision for overtime after eight hours. The Chairman awards no change in this provision.

6. Miscellaneous Items

a. ISSUE 29: SHUTTLE BUS OPERATORS

The Union has requested that the position of shuttle bus driver be added to the agreement and be granted various wages and benefits. The Employer hired about ten shuttle bus drivers during the term of the agreement but ultimately laid them all off with no immediate expectation of rehire. The Chairman concludes that the position should be listed in the wage schedule at the rate requested by the Employer adjusted slightly, $10.20, per hour, during the term of this agreement. It is unclear what future shuttle van drivers will do or the hours they will work. It is unclear what, if any, benefits they would need. Under the circumstances, the Chairman concludes it is better to encourage the creation of the positions before creating other benefits for those potential employees. Accordingly, the Chairman denies the other proposals of the Union with respect to the shuttle bus drivers.

b. ISSUE 30: TRANSPORTATION TO AND FROM PHYSICAL EXAM

Operators are required to have DOT physical examinations on a scheduled periodic basis. DOT also requires periodic surprise random drug tests. The Employer pays for the examinations, but the agreement does not require that the Employer provide the transportation for employees to go to and from those tests. The Employer chooses the medical providers and employees are required to travel to wherever those providers have offices. For the past ten years, the locations of these tests appear to have been the same. Because some of these providers have opened new locations, employees may be required to report to new locations. Some providers are now in St. Charles and in the northeast side of Aurora. The trip to those providers can require up to 25 minutes each way by personal vehicle. This is inconvenient to the employee. About ten years ago, these same providers were located along bus routes or otherwise nearby. Two incidents occurred in recent years underlying this proposal. On one occasion an employee was required to go to a test when he or she did not have personal transportation to do so. On another occasion, an employee was required to go to a distant location.

The Chairman recognizes that these tests are in everyone's interest, the Employer, the public, and even the employee. The issue presented here is one of common courtesy and respect by an employer for its employees. It is impractical to write collective bargaining language for every problem. In general, these rare

costs are just a part of being an operator and need not be borne by the Employer. The Chairman expects the Employer to accommodate situations in which transportation is expensive or otherwise a hardship for an employee and for the Union to accept that some employees may be helped while other need not necessarily be.

c. ISSUE 31: TWO EXTRA BOARD EMPLOYEES DESIGNATED AS VACATION RELIEF ONLY

The Union is proposing to change Article 5, Vacation Relief, to require that "Pace will designate two (2) extra board vacation relief positions each run pick." As explained by the Union the purpose is to make at least two positions among the extra board positions more desirable. When an operator takes vacation, he or she must do it in one week increments. An extra board person would then have an assignment which is one week long instead of having to change assignments possibly daily. In its view, these operators would have a better chance to get to know the route and, thus, reduce errors.

The Employer opposes this provision primarily because it would unduly restrict the Employer in using the extra board. In its view, extra board people are not all low seniority employees and all employees, new or otherwise, are trained in all routes.

The Chairman understands that a more stable work week is desirable for an employee. However, Pace Fox Valley is a very small unit. Even if this provision were adopted, operational necessity is likely to cause it to be administered less favorably than expected. This provision is very likely to add a layer of inefficiency at the least to the overall operation. The Chairman awards no change in the current provision as to this issue.

d. ISSUE 32: PART-TIME OPERATORS

In 2004, Pace entered into a side letter with the Union that it would not hire part-time employees. It provides:

> Pace Fox Valley agrees not to hire part-time employees during the term of this agreement. Further, within two weeks of ratification by both parties, Pace will move present part-time employees to a full-time position whose work week will be a minimum of thirty-six (36) hours over four (4) or five (5) days per week with at least two (2) days off per week.

The Employer proposes to eliminate this side letter for two reasons. First, in its view, the side letter violates the enabling documents of the RTA. Specifically, 70 ILCS 3615/3A.14 provides:

> The collective bargaining agreement may not include a prohibition on the use of part-time operators on any service operated by the Suburban Bus Board except where prohibited by federal law.

Second, the Employer argues that using part-time employees is more efficient. Normally, the Employer does not pay benefits for part-time employees. Also, it is difficult to meet a 40 or 36 hour week requirement. The Union opposes any change. It argues that the parties must have thought this was lawful when it entered into the side letter. They did agree to a *quid pro quo* of moving part-timers to a 36-hour guarantee instead of a 40-hour guarantee. The Union notes that the part-time provision is still in the agreement. It does provide that the maximum number of part-time employees may be eight. It specifies which terms of the agreement are applicable to part-time employees. Specifically, it provides that part-time employees employed for six months will receive the single HMO benefit for the employee only. They are not to be scheduled to work more than thirty hours per week and must be laid off before any full-time employee.

The Chairman is without authority to determine the legality of a proposal. That matter is reserved to the appropriate authority and nothing stated herein is intended to make a judgment on that issue.

The Employer has generally shown some change in circumstances supporting its position. First, ridership here continues to decrease. The Employer has switched to smaller busses. Its ratio of return from its own revenue sources here is lower than elsewhere. The Employer's funding issues continue. The Employer's argument breaks down into two fundamental issues. First, it is easier to fill-in hours with a part-time employee without having to guarantee a 36 or 40 hour week to that employee. Second, the Employer ordinarily would not provide benefits to the part-time employee. I address these issues from the standpoint of the public interest. The public interest is always served by efficient service. This would include wasted time. The Employer has failed to show any plans for the use of part-time employees on its existing routes or any specific need at this time for part-time employees. Thus, while conceptually it might be efficient to use part-time employees there is no showing that it is practical in this small unit. The public interest has been demonstrated nationally by the health care debate and similar issues in Illinois. That interest is not served by creating an underclass of under-employed people who cannot obtain insurance for themselves and their families. The available evidence thus indicates that at this time, the Employer only needs at most one part-time employee. The side-letter is deleted. Article 6 is amended to read in relevant part: "The maximum number of part-time employees shall not exceed one (1)." Article 6, Section (b) 2 is amended to read:

> Part-time employees, who have completed six (6) calendar months of continuous service, will be eligible to received HMO (Health Maintenance Organization) single and family coverage on the same basis as full-time employees.

AWARD

The Chairman awards as follows:

The parties' agreement will include all items of tentative agreement and otherwise agreed during the pendency of this matter and the following:

ISSUE 1: TERM

As agreed by the parties and the retroactivity language specified above.

ISSUE 2: PRESCRIPTION DRUG

As specified above

ISSUE 3: HMO AND PPO CONTRIBUTIONS:

Effective, the first day of the month following twenty (20) days after the date of this award, HMO premiums will be set at $25 (single) and $50 family. PPO premiums will be $80 (Single) and $110 (Family).

ISSUE 4: OUT-OF-NETWORK MAXIMUM

Effective, the first day of the month following twenty (20) days after the date of this award, the out-of-network maximums are increased to $2,200 (Single) and $4,400 (Family)

ISSUE 5: LIFETIME MAXIMUM

Effective, the first day of the month following twenty (20) days after the date of this award, the lifetime medical maximum will be $2 million.

ISSUE 6: PRE-ADMISSION TESTING

No change in current agreement.

ISSUE 7: SHORT TERM DISABILITY

Effective, the first day of the month following twenty (20) days after the date of this award, the short-term disability benefit of Article 17, shall be increased to $41.

ISSUE 8: DENTAL

The Chairman awards the changes specified under Issue 8 above effective the first day of the month following twenty (20) days after the date of this award.

ISSUE 9: VISION

The Chairman adopts the changes specified under issue 9 above effective the first day of the month following twenty (20) days after the date of this award.

ISSUE 10: WAGES

The Chairman awards the percentage wage increases listed in the following table:

	Operator	**Non Operator (Mechanic Bld. Maint. Service Wkr.)**
12/1/2007 6/1/2008	2.5%	2.5%
12/1/2008	1.5%	1.5%
6/1/2009	1.0% $0.50	1.0%
12/1/2009	2.0%	2.0%
6/1/2010	1.0% $0.25	1.0%
11/01/2010	1.5% $0.25	1.5%

ISSUE 11: TOOL ALLOWANCES

The tool allowance for mechanics is $975 over the life of this agreement

The tool allowance for building maintenance is $855 over the life of this agreement.

The increase is retroactive; therefore if an employee purchased an appropriate tool during the term of this Agreement, upon presentation and proof of purchase, the employee shall be reimbursed up to the amount of the tool allowance.

ISSUE 12: UNIFORM ALLOWANCE

The uniform allowance shall be $210 per year.

The increase is retroactive; therefore if an employee purchased an appropriate uniform item during the term of this Agreement, upon presentation and proof of purchase, the employee shall be reimbursed up to the amount of the uniform allowance.

ISSUE 13: SHIFT RESPONSIBLE, LINE INSTRUCTOR, AND RELIEF DISPATCHER PAY

Line instructor pay shall be increased by $.10 per hour effective the first of the month following twenty (20) days after the date of this award.

Shift responsible pay shall be increased by $.15 per hour effective the first day of the month following twenty (20) days after the date of this award.

No change in relief dispatcher pay.

ISSUE 14: SICK LEAVE FOR SUBPOENAS

Article 11 shall be amended to read:

> C. Subpoenas
>
> If an employee is subpoenaed in connection with a legal proceeding, the employee shall notify Pace immediately with proof of the subpoena. Such an employee shall not receive an instance of absence. The employee shall be paid for the absence only if the employee elects to use a Paid Personal Leave day. If the employee does not elect to use a Paid Personal Leave day, he or she shall receive unpaid leave sufficient to comply with the subpoena. The employee will cooperate to minimize the loss of work time.

ISSUE 15: WORK PICKS

The work pick selections shall be posted for seven (7) days.

Article 5's work pick provisions shall be changed as follows:

> All Operators must keep in touch with Pace during the process of the pick, and failing to do so, shall have his/her selection made by the Division Manager unless the employee notifies Pace that he or she wishes to have his or her selection made by the Union's designee. Such designation shall be in writing and shall expire in thirty (30) days unless the employee specifies a longer period. If an Operator who is entitled to pick is ill or on vacation, Pace shall notify the Operator of the pick at least twenty-four (24) hours in advance. If the Operator cannot be reached and has not previously designated the Union designee, the Division Manager shall pick for the Operator.

ISSUE 16: PERSONAL LEAVE DAYS AS TIME WORKED

The Union's proposal is adopted this issue.

ISSUE 17: EMPLOYEES' HOLIDAYS AND SICK DAYS

Time off allowed for sick days and personal leave days shall upon ratification of this agreement be allocated annually in hours and the employee shall be allowed to take the time equivalent to his normal straight time shift.

ISSUE 18: VACATION

1. No change in the amount of vacation.

2. No change in the agreement with respect to the number of vacation slots.

3. The Chairman orders the following change in the current language:

> Pace shall conduct the vacation pick over a two consecutive day period in October of each year. Each employee in order of seniority will be scheduled to pick vacation. An employee may notify the Employer in advance of his or her proposed selected weeks in order of priority on a form to be agreed to by the Union and the Employer. Alternatively, or in conjunction with the use of the vacation designation form, the employee may authorize the Employer or the Union's designated agent to make his or her selection for him or her.

4. Add the following provision:

> Maintenance employees who are eligible to pick four (4) complete weeks of vacation, will be allowed to select one (1) week (five days) of non-consecutive vacation days (vacation random days or VRDs). Maintenance employees who are eligible for such days shall notify their Superintendent or designee in writing by October 1 of the preceding vacation year. VRDs shall not carry over from year to year. Available VRDs will be granted on a first come, first serve basis. VRD requests shall not be accepted prior to January 1 of the vacation year. Permission for employees to use a VRD may be granted by the Superintendent or designee within the employee's specific work section dependent upon manpower. VRDs must be requested no less than five (5) calendar days prior to the day requested. After an employee opts to participate in the VRD program, that employee is not allowed to withdraw from the program during that vacation year. Under no circumstances will an employee have a right to demand a VRD. Employees with remaining VRDs as of November 1 of the current vacation year must request the remaining VRDs , in accordance with the above, by November 8, unless otherwise excused by Pace, to ensure that the VRDs are taken prior to the end of the vacation year. An employee who fails to select paid VRDs shall forfeit pay for any remaining VRDs. No VRD will be lost as a result of discipline; any employee who is disciplined on a scheduled VRD shall reschedule the VRD.

5. Add the following provision:

> Pace shall provide the Union with a copy of the employee's scheduled vacation pick after the vacation pick in October.

ISSUE 19: FAMILY AND MEDICAL LEAVE ACT

No change in the current side letter.

ISSUE 20: SIXTY MINUTE MAXIMUM LUNCH BREAK

Change Article 5, Lunch Relief, Section E8 as follows:

> A break of as near as possible to thirty (30) minutes will be provided for lunch on all runs scheduled more than six (6) hours. The time on lunch breaks of more than one hour and fifteen minutes will be paid.

ISSUE 21: RELIEF VEHICLE PULL OUT TIME

E.1 is amended to read:

> ". . . . Operators being required to relieve on the road shall be allowed five (5) minutes to prepare the relief vehicle and sufficient travel time from and to his/her garage/terminal."

ISSUE 22: CALL-IN PAY

Add the following provision to Article 8 A2 provides:

> Pace will make reasonable efforts to notify the affected employees if extra work scheduled for them is cancelled.

ISSUE 23: CREATE OFFICIAL TIME CLOCK AND TWO-MINUTE LEEWAY

No change in current agreement.

ISSUE 24: NO MORE THAN THREE REPORT TIMES

Section E 3 shall be amended as follows:

"Extra board operators will not have more than three (3) report times per day."

ISSUE 25: THIRTY-SIX HOUR WORK WEEK

No change in the current provision on this subject.

ISSUE 26: MAINTENANCE EMPLOYEES GET NIGHT SHIFT PREMIUM AFTER 3:00 P.M.

No change in the current provision on this subject.

ISSUE 27: ELIMINATE CHOOSING DAYS OFF

No change in the current provision on this subject.

ISSUE 28: DAILY OVERTIME

No change in the current provision on this subject.

ISSUE 29: SHUTTLE BUS OPERATORS

The wage rate for shuttle bus operators shall be $10.20.

No other change in the current agreement as to shuttle bus operators.

ISSUE 30: TRANSPORTATION TO AND FROM PHYSICAL EXAM

No change in the current provision on this subject.

ISSUE 31: TWO EXTRA BOARD EMPLOYEES DESIGNATED AS VACATION RELIEF ONLY

No change in the current provision on this subject.

ISSUE 32: PART-TIME OPERATORS

The side-letter is deleted. Article 6 is amended to read in relevant part: "The maximum number of part-time employees shall not exceed one (1)." Article 6, Section (b) 2 is amended to read:

> Part-time employees, who have completed six (6) calendar months of continuous service, will be eligible to received HMO (Health Maintenance Organization) single and family coverage on the same basis as full-time employees.

Dated this 25th day of August, 2010,

Stanley H. Michelstetter II
Stanley H. Michelstetter II,
Impartial Chairman

The arbitrators agree that each may concur in part and dissent in part, but as long as there is a majority on each issue, the award is complete.

Pursuant to the parties' collective bargaining agreement, the Board of Directors of Pace shall have the opportunity to review the decision of the Arbitration Board on each issue. If the Board of Directors fails to reject one or more items of the Award by a two-thirds vote within twenty (20) days of the issuance of the Award, such term or terms adopted by a majority of the Arbitration Board shall be final, binding and conclusive upon the Union and Pace.

If the Board of Directors of Pace rejects any terms of the Award, it must provide a written statement of the reasons for such rejection with respect to each term so rejected within twenty (20) days of rejection. The parties will return to the Arbitration Board within thirty (30) days for further proceedings.

I concur as to issues ____________________________

I dissent as to issues ____________________________

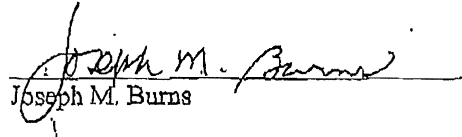
Dated this ________ day of August, 2010,

____
Joseph J. Stevens

I concur as to issues 1, 5, 6, 7, 8, 9, 10, 11, 12, 13 (1st and 2nd paragraphs), 14, 15, 16, 17, 18 (paragraphs 3., 4., and 5.), 19, 20, 21, 22, 24, 28, 29, and 32.

I dissent as to issues 2, 3, 4, 13 (3rd paragraph), 18 (paragraphs 1. and 2.), 23, 25, 26, 27, 30, and 31.

Dated this 26th day of August, 2010,



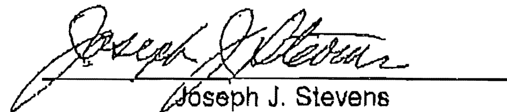
Joseph M. Burns

I concur as to issues 1, 2, 3, 4, 5, 7, 9, 12, 13 (paragraph 3), 18 (paragraphs 1 and 2), 21, 23, 24, 25, 26, 27, 29, 30 and 31.

I dissent as to issues 6, 8, 10, 11, 13 (paragraphs 1 and 2), 14, 15, 16, 17, 18 (paragraphs 3, 4 and 5), 19, 20, 22, 28 and 32.

I further dissent to the Interest Arbitration Award to reflect opposition to the Impartial Chairman's decision regarding the scope of the agreement that the Impartial Chairman could discuss issues with the other arbitrator separately, which, according to the Interest Arbitration Award at page one, is incorporated by reference into the Interest Arbitration Award.

Dated this 27th day of August, 2010,



Joseph J. Stevens

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