

TRANSCRIPT

INTEREST ARBITRATION PROCEEDINGS Pursuant to Charter Sections A8.409 & 8A.104(N)

Transport Workers Union Local 200
And
Municipal Transportation Agency

Wednesday, May 11, 2005
Vol. 4, Part 3

MR. ANDERSON: All right. Mr. Arbitrator, I would ask that that -- at the close of this and we get this information, that we be authorized to submit an additional exhibit that would be based upon that data.

ARBITRATOR HOH: I'm fine with that.

MR. ANDERSON: With that, we're finished.

MR. SLOAN: And I presume that we will be given the opportunity to make an immediate response --

ARBITRATOR HOH: Yes.

MR. SLOAN: -- to anything that he may provide --

ARBITRATOR HOH: Yes.

MR. ANDERSON: -- in writing?

ARBITRATOR HOH: Yes. Let's go off the record here.

(Discussion off the record)

ARBITRATOR HOH: Back on the record.

MR. DE NARDO: Union Exhibit 72 is in the process of being copied right now. They are meeting minutes, documents from employees of Muni back in 1981 regarding the class consolidation of several different classes into the

9139s. Those documents were obtained from the City archives by TWU Local 200 exec board member Rudy Parson, and that's going to be Union Exhibit 72.

ARBITRATOR HOH: All right.

MR. DE NARDO: And they came from the City archives, so they were all the documents pertaining to the class consolidation.

ARBITRATOR HOH: All right.

MR. DE NARDO: And our --

ARBITRATOR HOH: Next.

MR. DE NARDO: -- our next witness is Alice Fialkin, past president of TWU Local 200.

ARBITRATOR HOH: Right up here. Mr. Sloan, Mr. De Nardo and I had a discussion about moving this along, and I asked --

MR. SLOAN: So Ms. Fialkin is going to help move it along?

ARBITRATOR HOH: She is by not making a question-and-answer format, but largely making a statement, after which you can cross-examine.

MR. DE NARDO: Right. This statement will be --

ARBITRATOR HOH: Raise your right hand, if you will, Ms. Fialkin.

(Whereupon, the witness was sworn.)

ARBITRATOR HOH: F-i-a-l --

THE WITNESS: k-i-n.

ARBITRATOR HOH: -- k-i-n? Alice?

DIRECT EXAMINATION BY MR. DE NARDO

THE WITNESS: My name is Alice Fialkin, and I've been at Muni for 31 years, and I was either vice president and business agent or president and business agent of Local 200 from 1984 until 2002. And I want to give a statement about what I know of the classification system back when it changed in 1981.

Prior to the change, there were different classifications for many of the -- like if you came in -- you came in as a supervisor over streets or as an assistant dispatcher, and everything beyond that was promotive, so you could take a test to become an instructor, and you could take a test to become a lead dispatcher, and you could take a test to be a schedulemaker or a central control dispatcher or a station agent supervisor. All those were different civil service classifications that each had -- each were promotionary from the lower level street supervisor group, and they carried with it higher wage rates, and seniority was kept intact for each one of those groups, and -- and that's -- I mean that was just the way of the world.

And then we had a head of the Public Utilities Commission at that point Muni was under, and he changed that system. His name was Richard Sklar. And he changed that system to create a generic transit supervisor, and his position was that it -- you know, if you were a supervisor, you should be able to supervise any of those units. After all, your job duties and responsibilities were pretty similar.

And at that point they combined all those classes into the 9139 with one wage rate, and seniority still prevailed. It combined all the classes in together, and a sign-up was established, I think, in -- somewhere in '82 was the first sign-up.

And what happened is that it was shown that the responsibilities of the class were considerably different. In other words, you needed to know technically how to do central control. You -- you know, we were -- I came in, actually, as an instructor when I first came in as a

-39, and we were given a lot more -- all the classifications had a whole lot more training than what we currently get, but -- you know, in other words, you had to learn how people learn and what to do in terms of how to teach, and dispatching was -- which was very detailed kind of work, all those, so that actually by the late '80s, management proposed to us to separate those classes again and to have exams for each of those different groups, and it was recognized that there would be different pay for those different groups and that people could volunteer to take those tests, and it was never a question to maintain the seniority within each of those classifications.

It did not go through for a couple of reasons, primarily the issue of seniority, that under civil service there was an understanding that since the 9139 class encompassed all those different functions, anyone who was on the 9139 list passed and -- I mean was currently working there or in the future would have rights to take that exam, rights to those jobs, actually.

Now, that has changed recently, as exhibited in our 9150 class and 9160 class, because both of those were carved out from the 9139 exam, but not everybody had the right to just -- you know, to just move by seniority into those classes. It was -- by agreement, it was decided to just give civil service tests and create those positions. They are promotive classes as before, and they -- and as you've seen in your figures, each of them have compensation that reflect that. So that's basically my presentation.

ARBITRATOR HOH: Cross-examine?

MR. SLOAN: A couple minutes, please.

ARBITRATOR HOH: "A couple" being a couple.

MR. SLOAN: Yes, sir.

ARBITRATOR HOH: Only two and a half. Let's go.

MR. SLOAN: Thank you.

(Discussion off the record.)

ARBITRATOR HOH: Back on the record. I understand you have no cross-examination for this witness. Is that the case, Mr. Sloan?

MR. SLOAN: Yes, sir.

ARBITRATOR HOH: Thank you, Ms. Fialkin.

MR. DE NARDO: And that's it. We will be submitting Union 72 once they're done being copied and distribute them.

ARBITRATOR HOH: Okay. Is there anything else we need to do on the record for purposes of the arbitration portion of this proceeding?

MR. SLOAN: May we submit Employer 53?

ARBITRATOR HOH: It's marked as Employer Exhibit 53, described as an offer of proof from Larry Williams dated today, 5/11. Anything else, Mr. Sloan?

MR. SLOAN: We have one document that's coming over probably 1 o'clock relating to --

ARBITRATOR HOH: It's 1 o'clock.

MR. SLOAN: Oh, is it here?

ARBITRATOR HOH: No. It's 1 o'clock.

MR. SLOAN: Well, we have one document late and coming that relates to some of their testimony.

ARBITRATOR HOH: In what area?

MR. SLOAN: Mr. Donohue's testimony. It relates to when that particular class was established.

MR. ANDERSON: 9142?

MR. SLOAN: -43.

MR. ANDERSON: I'll put Alice back on there and let her say with respect to what was done with that classification.

MR. SLOAN: I think it's better to wait for the document to come.

ARBITRATOR HOH: Well, we don't have much time for waiting, simply put. So I'm going to put her on. Maybe that will help. If --

MR. SLOAN: I was risking them opening some doors.

ARBITRATOR HOH: No, this is only going to talk about the distinction between the elimination of 9142 and the -- I'll call it the creation of 9143. Go ahead, Mr. De Nardo.

MR. DE NARDO: Q. Ms. Fialkin, go ahead.

ARBITRATOR HOH: Very quickly.

THE WITNESS: Very quickly, the 9142 was promotive -- direct promotive over the 9141. It used to be in Local 200, and it was traded for something else, I think, in 1985. And then when it was made into the -- then when they -- when it was -- the reorganization came, those -- the class was just changed to -- from the 9142 to a 9143 with a big increase in wages, and most of the people who have been in the 9142 class were given those positions.

MR. ANDERSON: Q. What happened to the 9142?

A. The 9142, I understand, remained -- you know, from the salary standardization ordinance remained in the budget. It was unfunded for any positions. That became an issue a couple of years ago with the demotion of --

ARBITRATOR HOH: Say, two employees at this point?

THE WITNESS: Two employees. And one of them did not get it. It's my understanding that another one did get it. It had to be -- it had not been funded in the budget, so they must -- they must have taken it from TX'd other positions.

ARBITRATOR HOH: I'm sorry. What was that phrase?

THE WITNESS: TX'd. I don't remember.

MR. ANDERSON: Temporary --

THE WITNESS: It's right -- they take -- what they do is they take the funds from another position that's unfilled.

ARBITRATOR HOH: All right. Is that it? Cross-examine?

MR. SLOAN: I will bring in the information through a more reliable source.

ARBITRATOR HOH: Irrespective of that characterization, you have no questions for Ms. Fialkin?

MR. SLOAN: There are errors in her testimony, but in the interest of expediting --

ARBITRATOR HOH: Fine.

MR. SLOAN: -- I will bring in the information from a different source.

THE WITNESS: Well, at least that was the information we were given by --

MR. SLOAN: Fine.

THE WITNESS: -- Lisa Mancini.

MR. SLOAN: Q. Who?

A. Lisa Mancini.

Q. When?

A. At the time that this happened, or by Lou Johnson or whoever was there before then in negotiations, since I'm not sure of the exact year.

ARBITRATOR HOH: All right. Fair enough. We're done with Ms. Fialkin, right? All right.

MR. ANDERSON: Is there any relevance to this discussion?

ARBITRATOR HOH: You make that argument for a lot of things that we've heard over the last four days.

MR. SLOAN: Do you want me to answer that question?

ARBITRATOR HOH: No, I don't want you to answer that question. It's just an argumentative question, and it would be an argumentative response.

MR. SLOAN: Excuse me for making that statement.

ARBITRATOR HOH: Are we done for the record now?

MR. SLOAN: I think we are done with the record for that one thing. I think we just need to

be off the record and deliberate over the prospect that if -- that there is still some very minor issues that are hanging out there that are not addressed at the present time.

ARBITRATOR HOH: All right. Let's go off the record here.

(Discussion off the record.)

(Whereupon, the witness was sworn.)

ARBITRATOR HOH: I assume this is in response to Mr. Williams' material contained in the --

MR. DE NARDO: Yes.

ARBITRATOR HOH: -- Employer Exhibit 53? If you could limit it to that, I'd be greatly appreciative. Go ahead.

DIRECT EXAMINATION BY MR. DE NARDO

THE WITNESS: Mr. Williams is correct that we have been released. However, I have documentation -- and we can get copies made -- that we had to go through several steps to get released to start preparing for arbitration, and the preparation -- even though we started the letter writing in February we were not released until March, and that was with a lot of things that was going on.

And part of it had to do with the fact that my manager would not release me in order to go -- everyone else was able to be released but myself, and I had to go to Stuart Sunshine. I had to go to Steve Kava. I also had to go to my boss -- my manager's manager in order to get released. So that, just to make sure that -- while we did get released, I want to make sure that it -- that there were some issues with the release time. I also have documentation to prove it.

MR. DE NARDO: Q. Glenda, you asked to be transferred from dispatch to streets because you felt -- and correct me if I'm wrong here, just a yes or no at the end -- you asked to be transferred because you felt that you had less of an impact on the operations of Muni by being in a streets position in the 9139 classification than you did in dispatch in terms of getting release time to go to meetings with management and whatnot?

A. That's correct. Just for background, my seniority in the 9139 is I'm about number 14, and so I can basically sign almost any shift. I have worked almost any shift there is and most of the positions that exist.

I was working in dispatch and told the general manager, Mr. Fred Steven, and Jim Kelly, that I would move from dispatch, and because the impact of leaving -- every time I had to go to a meeting with management or anything else that we had to do created such an impact on the dispatching office. So what -- what I would do -- what I did when the general sign-up came up is I signed out of dispatching into streets, and the management knew exactly why that was taking place.

And just to kind of clarify some more things, is that when I go to a meeting, most of the UMM meetings or the meeting with management, I have a shift that goes from 7 in the morning to 6 in the evening. I have a three-hour split. Most of the meetings that are scheduled are scheduled between 9 and 1 or 2. My split is from 9:30 to 12:30, and I go without compensation to those meetings with management.

MR. ANDERSON: Let me just ask one question.

Q. And have you ever been written up for, you know, having to go to a meeting and failing to get release time?

A. Yes, I have, and I have a copy of that also.

MR. DE NARDO: We would just like to add those to the Union exhibits, and the record on our side can rest.

ARBITRATOR HOH: Cross-examine?

MR. SLOAN: I'd like to see the documents.

MR. DE NARDO: Yeah, we'll have copies made.

THE WITNESS: We'll get copies. Michael, can you make copies?

ARBITRATOR HOH: Can you just show it to him. I want to save time here. I don't want to another freaking break to make copies of more documents. Let's do this.

CROSS-EXAMINATION BY MR. SLOAN

MR. SLOAN: Q. How much release time do you receive -- well, let's let me start -- when did you become the Union president?

A. 2000 -- 2002.

Q. And when you receive release time, is it typically by making a request for release time?

A. Yes, it is.

Q. How frequently do you -- have you requested release time?

A. There -- inside the documentation folder states that -- I listed the items that I attend meetings for, so I -- I can't just give you a blatant number, if that's what you're looking for.

Q. Every day? Every week? Every month?

A. Every month there is something. I go to the Board of Supervisors. I go to the MTA board meeting. I have meetings with management, the UMM. I have meetings with the General Manager. I have meetings with the Deputy General Manager. I have meetings with the Senior Operation Officers. Yes, there are things that happen that -- the answer is yes.

Q. And for --

A. And -- excuse me. If I could finish.

Q. Absolutely.

A. And I work from 7 to 6, and in most cases, you see, I work my first part. I work from 7 to 9:30, and then I go to the meetings.

Q. At 7 a.m. to 9:30 a.m.?

A. Yes, and then after the meetings, I go back 700 if -- if the meetings have ended in enough time.

Q. What does it mean to go back 700?

A. It means I go back on my shift.

Q. Besides attending board of supervisors' meetings, MTA meetings, UMM meetings,

meetings with the general manager, deputy general manager, senior operations manager, what other kinds of meetings and committees do you participate in for release time?

A. It depends. I have managers in the training department that might have issues with employees that it's better that I go versus a steward because of the -- probably the confidentiality of the issue. It just depends, you know, different divisions. I go to different divisions to check on situations that's going on. Someone complains of some improprieties, I go meet with the EEOC people, you know, to make sure that people are being written up for violations of EEOC. So, I mean, it's a wide range.

Q. So in connection with all of these activities that you've described, these are the sorts of activities where you request and are given release time, correct?

A. I put in for release time. Sometimes I am. Sometimes I have to do it on my own time, yes.

Q. When you say you do it on your own time, that means that you will find time after work hours to do it?

A. My split time or my work -- or my after-hours.

Q. When you say on split time --

A. That's 9:30 to 12:30.

ARBITRATOR HOH: a.m.?

THE WITNESS: a.m.

MR. SLOAN: Q. 9:30 to 12:30 a.m. I'm sorry. Do you work a split shift?

A. Yes.

Q. So it's during your split time that's your own time off?

A. It's my own time off, but, I mean, with UMM and different department heads.

Q. Okay. We've looked through this file and don't see any -- any instance when you have been denied release time. Is it --

A. Okay. Yes, I -- if it's not in there, I might have picked up the wrong folder, but I do have a whole packet of it, and I will make sure you have --

Q. Well, how many times have you been denied release time?

ARBITRATOR HOH: Estimate.

THE WITNESS: Numerous. Prior to going to negotiations, probably in a given week -- I don't have a number, but it's quite a few. I don't know a number. I'm sorry. But it's been quite a few. And I've had to go through my manager's manager in order to get some time off to attend meetings with the manager that I needed to meet with.

MR. SLOAN: Q. When you -- typically, if you're -- if you've been denied release time -- in your terminology, denied release time, that has been your supervisor denying you release time saying check with Jim Kelly, correct?

A. Something to that effect.

Q. Okay.

A. Or I need to talk to Fred Stephens or if they've -- he's got to call Larry Williams' office to find out if it's okay, yes.

Q. Right. So your supervisor needs you to check with an individual who had more authority and knowledge of the situation that you were asking to be released about, correct?

A. No. He said that in order for me to be released, the decision had to be made from someone higher than him.

Q. Okay. And once he would say that and you would go up to the next step and ask for release time, how frequently would MTA end up saying, "We're denying you release time. You cannot go to that meeting. Keep working"?

A. That's not the issue, but --

Q. That's the question. It may not be your issue --

A. Well, are you --

Q. -- but --

ARBITRATOR HOH: Answer the question, please. Let's move forward.

THE WITNESS: If I --

MR. SLOAN: Q. Do you want it read back?

ARBITRATOR HOH: No. She understands it. Let's go.

THE WITNESS: No, I understand it very clearly. The idea is if I'm able to catch up with the managers the month prior to, no, no denial. Prior to that, there was some denial because I wasn't going through Jim Kelly. So I'm not sure where you're going with that one.

MR. SLOAN: Q. Okay. So just for clarity, when you have followed up by checking with the manager that you have been asked to check with to receive permission, or denial for release time, you have received permission and you can think of no instance in which you have received denial, correct?

A. Only if I'm unable to reach the person, yes --

Q. If you are --

A. -- that is correct.

Q. If you are unable to reach a person?

A. Then I don't take off.

Q. Then you don't take off?

A. Correct.

Q. How frequently are you unable to reach a person?

A. Frequently.

Q. How hard do you try?

A. Very hard.

Q. Is there any particular individual that you were unable to reach?

A. Yes.

Q. Who is that?

A. Jim Kelly, Wilson Johnson. They will eventually return your call.

Q. Okay. So how far in advance do they tell you to contact them with requests for release time?

A. I have a standing letter that says what meetings -- when I first came to the department, the manager asked me to put in a 1012. And just for your information, that's just a little slip of white paper, and that's what we call it. It's something the street inspectors use. I put down what meetings I attend so they would know in advance.

Q. Okay.

A. And I submit that when I first -- I submitted it when I first got there. When I got there, he told me that he had to check with his manager. His manager said he had to check with HR to see whether or not it was permissible.

I would put in every day -- one particular instance what happened is I came in one morning -- and I did tell Larry about that -- and came to work, had a meeting with Larry scheduled at 1 o'clock, came in, spoke with the manager on duty. The manager said, "Go. Just make sure you call central control." I called Central Control to just -- I'm sure by now you have an idea what central is. I meet with Larry at 1 o'clock. The next morning that I come in, the manager that I spoke with who gave me permission to go to the meeting stated very emphatically that he was chewed out for letting me go and I should write up why -- you know, whatever it is that I went to so it could be verified.

In addition to that, I did tell the manager that I was just coming off of FLMA because I had a family member that was ill and that they could verify with Larry that I had been with him. But he said I had to write a T 12 about an incident, that a manager on duty had given me permission to go to.

Q. How many grievances have you filed for being denied release time?

A. I actually filed an EEOC complaint.

Q. How many grievances have you filed for being denied release time?

A. I haven't filed a grievance.

MR. ANDERSON: I'll represent that I advised her to do so.

MR. SLOAN: Q. Okay. So your solution -- your proposed solution to the problem of sometimes not being able to get through to a manager who can approve your release time is for you to not have to go to work at all during the term of your union presidency; is that correct?

A. I don't think that that's what I said, and I don't know where -- where you got that from.

Q. You're proposing a hundred percent release time.

A. Well, that was one of the proposals, and the answer is yes.

Q. Actually, the proposal was 110 -- one hundred percent plus ten percent.

A. Well, now you're being facetious. Let's go forward, please.

MR. SLOAN: Well --

ARBITRATOR HOH: That's been backed away from and backed away from 50 percent.

MR. SLOAN: Well, I've never heard that, and if that's so, it is off the record.

ARBITRATOR HOH: It's off the record; you're right. That's a mediation matter.

MR. SLOAN: And I've never heard it.

ARBITRATOR HOH: All right. Fair enough.

MR. SLOAN: Q. So on the record, your proposal is a hundred percent release time, which means you do not work at all; you're released a hundred percent of the time to fulfill union duties?

A. That is the original proposal.

Q. Okay. Well, that's the proposal that's on the table, correct?

ARBITRATOR HOH: I don't know, but it doesn't -- it is what it is. That was the original proposal. That's her testimony. Let's move forward.

MR. SLOAN: Okay. I have no further questions.

ARBITRATOR HOH: Cross -- redirect?

MR. DE NARDO: None.

ARBITRATOR HOH: Thank you. We're done, Ms. Lavigne.

MR. ANDERSON: Just for my information -- off the record.

(Discussion off the record.)

ARBITRATOR HOH: Back on the record. It's my understanding Mr. Sloan has another exhibit. Do you want to briefly describe it for the record, Mr. Sloan?

MR. SLOAN: It's submitted as Employer Exhibit 54. It's a three-page document, the first page of which is a memo reading "Notice of Proposed Classification Actions." And reviewing the interior, one can see that this is in connection with the establishment of class 9143.

ARBITRATOR HOH: And this is in response to Ms. Fialkin's testimony; is that correct?

MR. SLOAN: Yes, sir.

ARBITRATOR HOH: All right. It's in. No response? Then fair enough. What's next, if anything? We're still on the record at this point. I know. I'm looking mostly at him.

MR. SLOAN: We rest.

ARBITRATOR HOH: All in and all done for purposes of the record; is that correct, gentlemen? All in and all done for the purposes of the record and the court reporter?

MR. DE NARDO: Yes.

MR. SLOAN: Well, my assumption is that the arbitrator, following his statement of his preference on the first day, will be receiving all

of the exhibits that have been submitted, leaving open the question of what weight is to be afforded --

ARBITRATOR HOH: Yes, that's correct.

MR. SLOAN: -- a particular exhibit?

ARBITRATOR HOH: Ideally, I would have liked to have taken things out that weren't referred to or that don't matter, but that takes too much time. But we're fine.

MR. DE NARDO: And we're still awaiting a copy of Exhibit 72, but once that gets here --

MS. PRESCOTT: It's here.

ARBITRATOR HOH: Let's go off the record.

(Discussion off the record.)

ARBITRATOR HOH: Back on the record. Union Exhibit 72, which as I understand is some -- why don't you describe it very briefly, if you would, Mr. De Nardo.

MR. DE NARDO: They were documents that Rudy Parson, an executive board member, the secretary-treasurer of TWU Local 200, obtained from the San Francisco archives. They are the civil -- all records -- civil service commission records pertaining to the class consolidation into the 9139 classification back in 1981.

ARBITRATOR HOH: Okay. Thank you. I need my copy in the end.

MR. DE NARDO: Yeah.

ARBITRATOR HOH: But that's -- okay. That's in. All right. Anything else for purposes of the record? Hearing nothing, I'm going to assume that we're done. Are we done for purposes of the record? Hearing nothing, the answer apparently is yes.

MR. SLOAN: I believe that is.

ARBITRATOR HOH: Thank you, Ms. Court Reporter.

(Whereupon, the proceedings adjourned at the hour of 1:42 p.m.)