

VOLUNTARY ARBITRATION PROCEEDINGS  
BUREAU OF MEDIATION

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| In the Matter of the Arbitration | ( | Opinion and Award  |
| Between                          | ( |  |
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| Pennsylvania Turnpike Commission | ( | Grievants: Alex Lugin<br>Ken Fowler                      |
|                                  | ( |  |
| and                              | ( | Dates of Hearing: December 10, 2008<br>February 17, 2009 |
|                                  | ( |  |
| Teamsters Local 250              | ( | Record Closed: April 6, 2009                             |
|                                  | ( |  |
|                                  | ( | Date of Award: May 6, 2009                               |

Representing the Commission: Robert J. D'Anniballe, Esq.  
Attorney

Representing the Union: Ernest B. Orsatti, Esq.  
Attorney

Michelle Miller-Kotula  
Arbitrator

**I. THE GRIEVANCES**

Grievances were filed on behalf of two Toll Collectors for the Pennsylvania Turnpike Commission (hereafter referred to as the "Commission"). The Toll Collectors are members of Teamsters, Local Union No. 250 (hereafter referred to as the "Union"). The grievances were filed in accordance with the Agreement between the Pennsylvania Turnpike Commission and Teamsters, Local Union Nos. 77 and 250, dated October 1, 2007 to September 30, 2011 (hereafter referred to as the "Agreement"). The first grievance dated January 9, 2008 read as follows:

Turnpike District One and PgH Interchange have exceeded the work opportunities for supplementals.

The second grievance filed by the Union on January 10, 2008, read as follows:

Commission is exceeding work opportunities for supplementals.

The adjustment requested read:

Follow contract language.

On January 15, 2008, the Commission issued the following response to the second grievance:

On January 11, 2008, Michelle Prestopine and I met with Gary Pedicone and Charles Gaston of Local Union 250 to discuss Grievance No. 9372 pertaining to the scheduling uses of supplemental toll collectors in Fare Collection Districts One, Two and Six.

The contention of the Union is that the Commission has violated Article 1, Section 3E of the labor agreement by scheduling supplemental toll collectors for more work opportunities than permitted by the agreement. In addition to this issue, the union's position is that supplemental toll collectors may not be scheduled for 40 hours per week unless they are utilized according to the provisions of the labor agreement.

Management understands the Supplemental Toll Collector schedule process as follows:

During December, Management determined the available work lines for supplemental toll collectors to select. The supplemental toll collectors by seniority selected from the available vacant permanent employee lines and from additional 28 day work schedules. The selection of the 28 day schedules created additional work for supplemental toll collectors.

At this time, both parties maintain two very different interpretations of the language and a resolution to the grievance is unattainable. Therefore, at this step, the grievance is denied.

The grievances remained unresolved and were appealed to arbitration. This arbitrator was selected to hear and decide the issues through the offices of the Pennsylvania Bureau of Mediation. Accordingly, hearings were held in Pittsburgh, Pennsylvania on December 10, 2008 and February 17, 2009. During the hearings, the parties were able to present evidence, both oral and written, to examine and cross-examine the witnesses who were sworn, and to argue their respective positions. At the conclusion of the hearings, the parties decided to file post-hearing briefs. The briefs were received in the office of the arbitrator on April 6, 2009, at which time the record was considered closed.

## II. BACKGROUND

Gary Pedicone testified he has been the Secretary/Treasurer, Principal Officer of Local 250 for three years. Before he became President of Local 250 he said he was a Toll Collector at the Pittsburgh Interchange and worked for the Commission for eight years. He stated he participated in negotiations for the current Agreement on behalf of the Union. He pointed out Local 250 represents Toll Collectors and Maintenance employees from Gettysburg to the Ohio line including the AKH, 66 and 43 and the Mon

Fayette. He contended Local 77 represents employees on the eastern half of the Turnpike. He testified it took long to sign the Agreement because of the argument on the use of supplemental employees. Mr. Pedicone said toward the end of November he had discussions at the western regional office about supplemental employees with Chuck Gaston, the Business Agent for Local 250, Mr. Zajicek, Gary, and Michelle and Maria. He stated no one from Local 77 was present. He pointed out the Commission said supplemental employees were going to be scheduled 40 hours. He explained the Union indicated the Commission had to schedule the supplemental employees and protect the full time employees. He contended the Union felt if the Agreement would be signed, a resolution on the matter would occur. He pointed out the parties came to an agreement on how supplemental employees would be used in the interim, but noted the Agreement was not signed and there was no resolution of the Agreement. Mr. Pedicone contended the parties met after the two grievances were filed on January 9 and January 10, 2008. He stated he, Mr. Gaston, Gary and Michelle were present for the meeting. He said the Union filed the grievances because of the contention the tentative Agreement was resolved at picking lines. He pointed out he told Gary and Michelle since the matter was not resolved on supplemental employees he had to file the grievances. He testified he told Gary and Michelle the remedy to the grievances should go back to the way they were and indicated when employees are scheduled outside of the guidelines set forth in the Agreement, the full time person should be paid time and a half. He explained he wanted to make it clear at the meeting what he meant in the tentative Agreement by supplemental employees picking lines. He stated he discussed what picking a line meant and noted this explanation was agreed by Mr. Brinnmeir and Mr. Sobel. He said a supplemental

employee picking a line refers to a full time line that is vacant because a full time person is off due to Sickness and Accident (S&A) or Injury and Illness (I&I). He testified after the meeting he called his office and asked his secretary Maureen Nelson to send an e-mail to the Commission to explain his interpretation of the issue because he wanted to be on record. Mr. Pedicone stated in the original meeting an agreement was made between Local 250 and the Commission related to the use of supplemental employees and noted an interim agreement was in place until the issue was resolved.

Mr. Pedicone contended he discussed the two grievances at issue with management 15 times and mentioned the remedy the Union was requesting every time the grievances were discussed. He said the remedy he requested related to supplemental employees being scheduled outside the parameters of the Agreement. Mr. Pedicone pointed out in the interim agreement he said the Commission stated supplemental employees would be scheduled 40 hours and he indicated he did not think it was right, but if the Commission was going to schedule the supplemental employees, he wanted to make sure the full time employees were taken care of and would get vacation time. He stated the Union did not modify the terms of the Collective Bargaining Agreement. He contended the Commission presented the Union with a written document on what was agreed to that day, but he did not sign it. He stated it was a gentleman's agreement. He said as part of the interim agreement, the Union did not back off of its position regarding the grievances.

Mr. Pedicone testified this hearing is the first time he heard Mr. Rowe's explanation of Article 8, Section 8.B. He said it is his understanding the supplemental employees fill in as outlined in the Agreement on a one for one basis. He pointed out this

is the first time he heard about the balancing theory. He contended at no time during the grievance procedure was this position the Commission's answer to the grievances. He said there is no manager in this District aware of the balancing formula.

Mr. Pedicone stated Mr. Rowe's interpretation of Article 8, Section 8 does not work. He said supplemental employees are used to fill in as outlined in the Agreement. He testified one of the reasons these grievances were pursued was because of non-economic problems created as a result of what the Commission has been doing. Mr. Pedicone contended the Union does not have access to the formula and has no way to determine if it is correct. Mr. Pedicone pointed out he made it clear at the signing of the Agreement what his interpretation was of picking a line. He said Mr. Sobel and Mr. Brinnmeir in subsequent meetings said they agreed with him. He contended his interpretation is that picking lines was for employees on S&A and I&I and the language changed. He noted the tentative Agreement was initialed and was understood by employees in the room.

During cross-examination, Mr. Pedicone contended he participated in the 2007 negotiations. He said he made a statement his interest in the negotiations was to preserve wages and benefits in regard to a succession clause. Mr. Pedicone pointed out neither he nor Jock Rowe initiated discussions concerning the use of supplemental employees because the first item the Commission asked for was more flexibility in regard to the supplemental employees. He contended the Union asked what was needed and the Commission indicated management would get back to the Union. He said he did not recall an interest of Mr. Rowe putting sanity back in the lives of supplemental employees. He pointed out prior to 2007, supplemental employees sometimes needed to wait by the

phone for work opportunities, but it was not a concern of the Union. He agreed permanent Collectors are interested in using days off for vacation and understood this is limited by the ability of management to deliver services in their absences. He contended Mr. Lugin, a permanent employee did not get to take unscheduled time off. He explained Mr. Lugin wanted a vacation day and was denied because the Commission could not move a supplemental employee to fill in for him because the Commission restricted its flexibility in regards to supplemental employees. He testified the Commission was going to place an employee at one interchange for 28 days and not move him. He stated during the November/December 2007 discussions he said to put the supplemental employees back to the way it was which moved the employees from interchange to interchange. Mr. Pedicone testified the block on the schedule for supplemental employees appeared gray because the supplemental employees were not filling in for anyone. He said the supplemental employees could be moved where needed. He stated he told the Commission in December 2007 if the supplemental employees were to be scheduled 40 hours a week, the supplemental employees could be moved to another interchange within the 28 day period. He contended this agreement would provide a greater opportunity for permanent employees to use their days off.

Mr. Pedicone said he worked as a supplemental employee. He explained the supplemental employee could be moved around from an interchange or a shift. He pointed out unless the employee is moved his schedule is predictable. He noted flexibility is provided to the Commission. He contended the resolution of December 2007 was a bridge until the Agreement was executed. He said from his standpoint the reason it took so long to execute the Agreement was because of the supplemental

employee issue. He pointed out the biggest issue with Local 77 was when supplemental employees work to get vacation days.

Mr. Pedicone testified Article 1 and Article 8 were finalized immediately and noted the only change was supplemental employees could be used during a disciplinary process. He said according to the Agreement, supplemental employee lines need to be reselected every 28 days to accommodate the operational needs of the Commission. He stated the line is a schedule that reflects a five day work week for a permanent employee. He explained the Agreement is clear on the meaning of a line and said a permanent line is referred to in another section. He contended a five day work schedule is for a permanent employee. He pointed out the Agreement addresses permanent employees work lines, but does not indicate S&A or I&I. He contended the Steward files and signs grievances on behalf of the Union member. He stated no adjustment was requested on the first grievance and the adjustment requested on the second grievance by Mr. Lugin was to follow the Agreement. He contended the grievances were discussed 15 times since they were filed in January 2008. He testified in the discussions he offered the District numerous opportunities to settle without money and noted he told the Commission if the Union pursued the issue through arbitration money was being sought. He stated there is no writing that reflects his discussions concerning a make whole award. He said he did not ask his Secretary to send an e-mail concerning a make whole award.

Mr. Pedicone said at the time of the actual signing of the Agreement he had three days of conversation with Mr. Sobel and Doreen. He said the balancing procedure would not work because the Union would not be able to prove if it was done correct. He explained he needs to know how many employees are on vacation or call in sick. He said

he would need to determine how the supplemental employees worked, where they were scheduled and how many hours they received. He stated he does not believe there is a formula. He pointed out Mr. Rowe did not lead the discussion in negotiations about scheduling supplemental employees. He said from a noneconomic standpoint this issue prevents senior employees from taking days if the Commission is correct. He testified no evidence was introduced by the Union as to what senior person was denied vacation because of the way management used supplemental employees. He contended Local 77 is governed by the same terms and conditions of the Agreement as Teamsters Local 250. He stated he expects supplemental employees in Local 77 to be scheduled in accordance with the terms and conditions of the Agreement.

Charles Gaston testified he has been a Business Agent for the Union for three years and previously worked for the Commission as a Teller. He said he was employed by the Commission for 18 years and was a supplemental employee. He described the Districts of the Commission. He contended he participated in negotiations related to the current Agreement. He pointed out the former Agreement in Article 1, Section E contained four reasons when supplemental employees could be used and noted the current Agreement provides five reasons. He pointed out supplemental employees need 16 hours off between schedules unless they are forced to work if all permanent employees turn down overtime. Mr. Gaston stated the Commission has 20 days to fill a bid and noted supplemental employees could be used to fill a line during the bidding process which is included under No. 1. He contended under No. 2 supplemental employees are used to fill in for permanent employees who request a holiday and said No. 3 relates to supplemental employees filling in for permanent employees who have

been assigned to a different position as shift leaders or janitors. Mr. Gaston explained schedules are comprised of 28 days. He pointed out work opportunities are for one day, one shift. He stated the Commission is allowed to create three work opportunities times the number of interchanges in the District. He said the use of supplemental employees is explained in paragraph 4. Mr. Gaston contended Paragraph 5 refers to supplemental employees filling in for permanent employees during disciplinary actions.

Mr. Gaston testified he requested documents and work schedules from the Commission to analyze and determine the impact on members of the bargaining unit. Mr. Gaston contended a supplemental employee was scheduled for a vacation if a permanent employee took vacation. He stated if a supplemental employee got a line it remained his line until the employee returned. He pointed out under the new Agreement supplemental employees are scheduled 40 hours outside the lines that belong to full time employees. He said this method is not contained in Article 1, Section E and noted this type of scheduling was not done in the past. He contended he analyzed work schedules to determine the extent the Commission was using this method.

Mr. Gaston explained the document showing the supplemental employees working in a particular period of time. He discussed the individuals on the document and the scenario related to the reason the employee worked. He pointed out he was able to make determinations about the work schedules because of shaded areas. He explained the documents for the period of February 1, 2008 through November 6, 2008. He contended there was a change in the way the documents were submitted to him beginning October 10, 2008 because they did not contain the same information as the previous documents. Mr. Gaston explained his calculations from the document. He also presented

supplemental schedules for District 6 and District 2 for periods during 2008. He pointed out the Commission's actions of scheduling supplemental employees has impacted the ability of employees to take vacation. He contended lines are being made that the Agreement does not permit. He pointed out Mr. Lugin has been impacted.

While being cross-examined, Mr. Gaston testified the schedules were e-mailed to him by the Commission on a monthly basis. He said the schedules represent the original schedules that were posted. He stated it is possible the schedules or supplemental shifts were modified or cancelled after they were posted. Mr. Gaston stated sometimes he received schedules from the Collector by e-mail or at the interchange. He said he did not write extra on the schedules. He pointed out 95 percent of the schedules came from the Secretaries at the District office. He contended he did not include extras in his calculations. He alleged he did not make a request for additional information prior to coming to the hearing. He explained he went through the schedules the way he has known them to be for 18 years. He stated he was present in November and December during discussions concerning scheduling supplemental collectors. He pointed out in the schedules introduced by the Union, supplemental employees were scheduled in the manner contained in the document entitled Supplemental Toll Collector Scheduling Procedures. He explained the schedules came from the Commission and were posted at each location for the supplemental employees to know where they are to be. He contended he received copies of the schedules through e-mails from Collectors or copies were made from the board. He pointed out the copies of schedules e-mailed to him were approved by management to be e-mailed through the Secretaries in the New Castle

District 6 office or WRO District 1 office. He said the actual documents reflecting how supplementals were used would be payroll statements.

Richard DiPiero testified he has been the Director of Fare Collection for three years. He said he was present at times during the 2007 labor negotiations and discussions concerning the use of supplemental fare collectors. He pointed out he is aware of post negotiation discussions in late December 2007 between management and Local 250 regarding scheduling supplemental fare collectors. He contended the Union indicated they had concerns about the language in the tentative agreement as it relates to supplemental employees and the Union was concerned permanent employees would be denied vacation time upon request. He explained the Commission told the Union they would be willing to sit down and talk about it. He pointed out the Commission convened a meeting with District Managers, Ray Zajicek the Operations Manager, and the Union. He testified the parties agreed how the situation would be managed and a document was presented which summarized how supplemental employees would be used in the District. Mr. DiPiero said after the document was prepared he thought the issue was resolved. He pointed out he learned in the past month from in house counsel the Union was seeking a make whole remedy. He contended he never saw a document or received any report from management the Union was seeking a make whole remedy.

During cross-examination, Mr. DiPiero testified he did not participate in the grievance meetings. He said he did not know how the Union described the grievances other than at the first step. He contended he is not aware of any agreement between the Commission and the Union after the negotiations were concluded for the new Agreement to amend Article 1, Section E. He pointed out he understood the document entitled

Supplemental Toll Collector Scheduling relates to how to schedule supplemental employees.

Jock Rowe testified he is employed by Teamsters Local Union No. 77 as a Secretary/Treasurer, Principal Officer. He said he participated in the 2007 negotiations. He stated supplemental toll collectors were discussed more by Local 77 than Local 250. He explained Local 77 had need for supplemental employees. He contended what is ultimately put into the Agreement applies to both locals. He pointed out there was a need to address scheduling supplemental employees in the 2007 negotiations because every day a supplemental employee was hired as a fill in for a full-time employee and noted the supplemental employee needed to wait for the telephone call 24/7 or be disciplined if not available. He testified the Commission said one of the objectives in the 2007 negotiations was more flexibility was needed to run an economic and efficient operation. He stated the Agreement was signed around September 17, 2008.

Mr. Rowe contended after this Agreement was negotiated there was a line selection instead of a shift selection. He explained once the employee worked five days or 40 hours he did not have to be available the last two days of the week. He said the Commission has six Districts with interchanges within the Districts. He explained there are different shifts within an interchange. Mr. Rowe pointed out before the 2007 negotiations the Commission would have assigned supplemental employees based on the shift selected and the supplemental employees would be sent to locations based on the selected shift. He stated the supplemental employee needed to be available until he worked five shifts or 40 hours in a week. He said some supplemental employees were put on lines for employees out on indefinite leave and were not being called day to day.

Mr. Rowe testified in his area line selection occurs at each location for full time employees, then a line selection occurs for supplemental employees. He pointed out supplemental employees select lines by seniority. He alluded to the fact the supplemental employees select a five day schedule. He said the five days supplemental employees work must meet the criteria in Article 1, Section E specifically in that area. Mr. Rowe contended the schedule occurs based on hours and it is referred to as the balancing of scales. He said the reasons the supplemental employee are scheduled occur because of an Article 1 event. He testified there should be a balance in the end. He explained if there are 2080 leave hours among full time employees in the District, one supplemental employee can work in the District for a year. He stated this method defines balances. He contended he did not know how often the balance is checked. He pointed out in the end balance must occur. He discussed the Commission has 30 years worth of history on supplemental scheduling to determine how many hours supplemental employees are needed. He said prior to this Agreement supplemental employees had to be available 24/7. Mr. Rowe testified some of the issues in the Agreement are still being worked out in his area. He said there are still issues being worked on with Article 8 provisions, but said it does not affect what is being discussed with this issue.

Mr. Rowe alluded to the fact the way scheduling supplemental employees is being done in Local 77 is the way he believes it was negotiated. He stated it was his intent to eliminate one to one and move to historical balancing. He explained this referred to the vacancy not actually being created the moment it occurs. He pointed out supplemental employees are not scheduled and accountable to the absences that occur. He contended the balancing of the scales could occur in 28 days or in a year. Mr. Rowe stated in his

area scheduling of supplemental employees is a work in progress because the Agreement was signed in September. He said the issues of Article 8 that were not "cleaned up" or modified in conjunction with what was negotiated does not affect the language of the issue of these grievances.

While being cross-examined, Mr. Rowe testified he proposed language in the current Agreement to make it easier and better for supplemental employees to be scheduled. He said neither he nor the Union proposed language during negotiations to increase the use of supplemental employees, but noted the Commission asked to increase the use of supplemental employees and proposed for the supplemental employees to fill in for permanent employees during disciplinary action. He pointed out both Unions agreed with this proposal. He testified after the regular toll collectors select lines for the year, the supplemental employees are allowed to select lines. He explained a line is a work schedule, consisting of 28 days and a work schedule consists of 28 days broken up by four seven day weeks. He pointed out when an employee selects a line he selects a five day schedule. He stated the employee is put on the schedule for purposes outlined in Article 1, Section 3. He contended before a supplemental employee can select a line during the annual selection there has to be some reason for the supplemental employee to work the particular line for a 28 day period. Mr. Rowe explained if management does not have a need to move supplemental employees the schedules remain the same. Mr. Rowe discussed if a regular toll collector is on S&A for 60 days, the supplemental employee does not fill in for that S&A line. He said the full time person can select to move into vacant lines. He pointed out scheduling is done based on history instead of a one for one occurrence. He explained it does not matter where supplemental employees work