

Police Award Leaves MTA Sweating and TWU Salivating



SHAPE OF THINGS TO COME?: The Metropolitan Transportation Authority's chief negotiator, Gary Dellaverson (left) may have his negotiating leverage with 33,000 city transit workers represented by Transport Workers Union Local 100 President Roger Toussaint (right) hindered by a recent arbitration award covering just 500 MTA cops.

Razzle Dazzle**Cop Pact Has MTA Sweating**

By RICHARD STEIER

The terms of an arbitration award issued in late January for members of the Metropolitan Transportation Authority Police Benevolent Association have been so closely guarded that Transport Workers Union Local 100 President Roger Toussaint was unaware of them when asked to comment last week.

But the award, which grants 21 percent in raises over a four-year period to 518 police officers and Detectives employed by the MTA, is more than a bit alarming to the transit agency, which plans to appeal it in court. In the long run, it could also send shock waves through city government.



Arbitrator John Sands stated in his decision that improved revenue collections by MTA subsidiaries combined with productivity savings that his decision will provide will make the deal affordable. He is requiring cops to work longer shifts, equalizing overtime allocation procedures to prevent senior, higher-paid cops from working a disproportionate share of it, and discontinuing night differential pay to cops on sick leave.

Small Union, Big Ripple Effect

The MTA was tight-lipped on all aspects of the package, with its Labor Relations Director, Gary Dellaverson, not returning calls, and agency spokesman Tom Kelly declining comment other than to confirm plans to appeal the award.

The reasons for concern are obvious, however, and go well beyond the strain that the increases for a bargaining unit that makes up less than 1 percent of the MTA work force will have on the agency's budget.

The primary one is the potential leverage the award gives Mr. Toussaint in his contract talks for Local 100 that will begin this fall. If he is able to take advantage, that could benefit municipal unions in their next round of bargaining, although it seems less likely to affect them—most notably the Patrolmen's Benevolent Association—in the current round.

The first three years of the MTA PBA award provide wage hikes of 3, 4 and 6 percent, covering a period that begins in August 2002. Local 100's current contract, which took effect in mid-December of that year, provided a \$1,000 bonus in the first year in lieu of a pay increase, although a

large infusion of money into the union's health fund amounted to the equivalent of a pay raise of more than 2 percent. The two subsequent years of the Local 100 three-year contract provided annual raises of 3 percent.

The discrepancy in value of roughly 4 percent between the MTA PBA award over its first three years and the one for Local 100 cannot be explained away by productivity, since any savings the MTA will get from the police contract are confined to the final six months of that period, from February of this year through Aug. 14. Mr. Sands said that precedent existed for treating the MTA cops as a breed apart for bargaining purposes, with his primary example being the granting by then-MTA Chairman E. Virgil Conway four years ago of key fringe benefits to superior officers without seeking offsetting productivity changes in the union's previous contract.

8-Percent Hike's Impact

What really has to concern the MTA is the final year's increase of 8 percent that takes effect Aug. 15 under Mr. Sands' award. Quite apart from its swelling the value of the wage hikes to nearly 23 percent once compounding is figured in, from the MTA's standpoint it is a most unsightly number to have hanging out there when Local 100 comes to the bargaining table for a new deal whose first year will overlap the final 8 months of the MTA PBA agreement.

In a March 4 phone interview, Mr. Toussaint, while emphasizing that his union would not accept as a pattern any smaller union's wage agreement, said, "The [MTA] police contract, with respect to the numbers, certainly contributes to determining where the marketplace will end up being."

He already planned to stake a claim to having the \$1,000 bonus from the last contract transformed into base salary, citing a subsequent rollover involving the Civil Service Employees' Association's wage deal that became a pattern for all state workers. Mr. Toussaint also pointed to an agreement reached last year that gave the Subway-Surface Supervisors Association a first-year pay raise of 1½ percent after the MTA insisted to Local 100 that it could not grant wage hikes in the first year of any contract in the last bargaining round.

"We consider [that] an entitlement from the last contract, and we'll move from there," he said.

PBA President Pat Lynch did not return a call seeking comment on whether the

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MTA PBA award furnished ammunition for the briefs his union submitted in its pending contract case, but it's likely it figured prominently in that submission.

One fact from the decision that the union surely noted was that 138 of the 143 cops the MTA has lured from other police agencies during the past seven years came from the NYPD. This is not surprising given that, while NYPD cops as rookies are paid \$350 a year more than their MTA counterparts, after five years on the job maximum pay for the MTA force was \$2,000 above that for city cops even before this contract award.

Relatively Safe Job

Those who choose to work 20 years in the NYPD still have some pronounced advantages: an annual Variable Supplements Fund payment that in two years will peak at \$12,000, and key pension rights that MTA cops do not have. They also receive better longevity benefits until the 25th year of service.

MTA cops, on the other side of the ledger, were scheduled for 35 fewer tours on average than those in the NYPD, and that gap will double—to 71 fewer scheduled tours—now that they are going from 10-hour to 12-hour shifts, compared to the 8-hour, 35-minute tours for city officers.

They also have a far safer job. The MTA stated in its arbitration brief that its police officers primarily handle quality-of-life issues rather than tangling with violent offenders, a claim that gets added weight from statistics showing that their line-of-

duty fatality rate is lower than that of other non-police units within the agency.

Mr. Sands did not count that against the MTA PBA, however, stating that even in relatively safe jobs, "Police Officers carry guns [and] are constantly exposed to potential violence and situations in which they must make split-second life-and-death judgments."

Labor Relations Commissioner Jim Hanley brushed off the possibility that the MTA award might affect the PBA arbitration, noting that other arbitration awards covering larger employee groups including cops in Nassau and Suffolk counties failed to significantly influence past city police arbitrations.

Courts Rarely Overturn

"I certainly don't think that a decision affecting fewer than 500 suburban railroad police officers is going to have much of an effect on the City of New York," he said.

If anything, the award's influence on city bargaining is likely to be indirect, stemming from a Local 100 contract deal. That union's wage terms in the past have sometimes offered a preview of what municipal settlements were going to be.

Asked whether the MTA PBA award if not overturned could be a prime factor in Local 100's talks, Mr. Hanley replied, "At this point, it's too early to tell."

It is rare that an arbitrator's ruling on a contract is overturned by a court; judges have stated in numerous de-

terminations that they are reluctant to substitute their judgments for those of persons who were designated to arbitrate wage disputes in the first place because of a presumed expertise in the subject area. They generally overrule arbitrators in only two situations: if an award would violate the law, or if it is so out of tune with contracts with comparable employee groups as to meet the legal standard of arbitrary and capricious.

History of Reversals

One veteran negotiator not involved with the MTA's contract dealings said, however, that Mr. Sands had an unusually high rate of legal reversals of his arbitration awards. This official said that while Mr. Sands was generally well-regarded, he sometimes departed from conventional thinking in arriving at a decision, discarding evidence that most arbitrators would find compelling.

In concluding that the current Local 100 contract terms should not be binding on the MTA PBA, Mr. Sands stated in his 86-page decision that the police union has had its compensation tied not to other transit groups but to other cops since a 1986 arbitration award by Martin Scheinman, a man best known for generous awards—generally with the tacit approval of the affected County Executives—to the Nassau and Suffolk PBAs.

That 1986 award to the then-independent Long Island Railroad PBA [the MTA PBA includes cops from the LIRR and from MetroNorth] came following a strike and placed their salaries in line with those of city transit cops represented by the now-defunct Transit Police Benevolent Association.

The union's last contract provided the same three-year wage terms—raises of 5, 3, and 4 percent—that were negotiated with Local 100. Mr. Sands accepted the MTA PBA's argument, however, that a significant de-

parture from the Local 100 contract came during the deal's second year when the cop union got additional money for base salary, members' annuity funds, and longevity differentials.

The MTA pointed to the fact that in return the union agreed to savings that resulted from several management changes, among them the civilianization of police communications functions and creation of an MTA Highway Safety Unit. MTA PBA President Ray Gimmler Jr.—who did not return a call seeking comment on the contract award—successfully countered that claim by noting that superior officers he represented had won the same additional benefits while some of them remained in their jobs in the MTA Police Communications Unit.

Brighten Fiscal Skies?

Pointing out that the only other MTA employee group whose jobs remotely resembled those of the MTA cops (the cops who patrol the subways are members of the NYPD) were Bridge and Tunnel Officers, Mr. Sands noted that an arbitrator had previously rejected the bid by the BTOs' union for parity with cops because so little of their work constituted law-enforcement duties.

Although the MTA had argued that its fiscal problems made it essential that an award for the MTA PBA not exceed the terms it granted to Local 100, Mr. Sands—who conducted hearings over a five-day period last July—cited an improvement in conditions by the end of November. A memo from MTA Executive Director Katie Lapp at that time, he observed, showed a \$330 million improvement in the MTA budget. Combined with the productivity features that were part of his award, he said the MTA could come close to meeting the union's actual demand of a 26-percent increase (about 28.6 percent with compounding) without undue hardship.

Mr. Sands believes, how-

ever, that a large portion of that increase will be offset by the change in tour hours. Currently, the 10-hour tour schedules leave the MTA with three periods—between 7 and 9 a.m., 3 and 5 p.m., and 11 p.m. and 1 a.m.—when tours overlap. Deputy MTA Police Chief Ron Masciana testified during the arbitration that in each instance there are “twice as many officers” on duty as are needed, even though two of those overlaps come during railroad rush hours.

Giving the MTA greater flexibility and therefore more cops available when they are most needed, Mr. Sands said, could save the agency as much as \$4.4 million a year, even allowing for the need for some continued overlap during changes of tours. Given his estimate that each percentage point wage increase would cost the MTA about \$414,000, by his calculation the final-year wage increase would be more than paid for by this productivity savings.

No Night Pay If Sick

He also ended the practice of allowing MTA cops to bid for any new position that becomes available, with seniority the determining factor, directing that the seniority bids now be limited to periods in October and April. This limits the problems the MTA has once the domino effect of each vacancy coming open leads to dozens of officers moving into posts they consider more desirable.

Mr. Sands eliminated the contractually guaranteed night-shift differential payments to officers who are out on sick leave. Paying them, Mr. Sands noted, constituted a double hit on the MTA, since it was also paying the 10-percent differential to the cops working in place of the absent officers.

He also gave the MTA the right to fire cops who miss an entire year of work as the result of any disability not incurred in the line of duty. Mr.

Sands noted that there were three cops in that position last year, and that one of them had remained on the payroll for five years after incurring a non-job-related illness.

Mr. Sands conferred upon the MTA the right to equalize the distribution of overtime, noting that officers who were already retirement-eligible had been supplementing their base pay by about 50 percent more than cops who were on the job five years or less. Besides the overtime being paid at a higher rate for those officers than for less-tenured cops, this allowed senior officers to significantly boost their retirement allowances, a factor in the MTA's soaring pension costs.

Court OT Guarantee

To the union's advantage, the award grants cops required to make court appearances a minimum of four hours overtime pay, regardless of whether they are actually in court for that long. Mr. Sands justified this change by noting that the fewer tours worked as a result of lengthened shifts increased the likelihood that officers would have to make court appearances on their days off, and that the commuting time alone, he stated, made it unfair to only pay them for an hour or two of actual court time.

They will also get another eight hours in holiday pay in recognition of their having to work on Martin Luther King Jr.'s birthday.

Mr. Sands believes that the productivity savings and added revenue from fare and toll increases that just took effect allow the MTA to afford the generous wage package “with no impact on its financial ability to pay, on its present fare structure, and on the continued provision of services to the public.”

The MTA, gazing uncomfortably at Mr. Toussaint in its rear-view mirror, would rather not test Mr. Sands' hypothesis.