

IN THE MATTER OF
ARBITRATION

BETWEEN)	
)	
KANSAS CITY AREA TRANSPORTATION AUTHORITY)	
)	FMCS No. 050718-04690-7
AND)	
)	Grievance: Hunt/Williams;
AMALGAMATED TRANSIT UNION, LOCAL 1287)	Transfer of Job Duties
)	

Hearing held March 30, 2006, in Kansas City, MO

Arbitration Board Neutral: William S. Hart, selected through FMCS

APPEARANCES

For the Union: Scott A. Raisher, Attorney; Jolley Walsh Hurley & Raisher, P.C.,
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For the Authority: Michael F. Delaney, Attorney; Spencer Fane Britt & Browne, LLP,
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66210-2005

BACKGROUND

The KCATA is a bi-state public transit agency operating scheduled transit service in the Kansas City Metropolitan Area. Many of the Authority's employees have for many years been members of a bargaining unit covered by a series of work agreements between ATU Local 1287 and the Authority. In recent times, the KCATA took over from the City of Kansas City, Missouri the coordination and oversight of a "demand" or "paratransit" service called Share-A-Fare, the transportation of which is provided through vehicles and drivers supplied by several contractors. The administrative and customer service functions such as determining participant eligibility, scheduling individual trips,

coordinating activities of transportation contractors, maintaining records and reimbursements are handled by employees of the Authority.

The employees responsible for these functions are assigned and report through the Manager of the ADA Compliance and Customer Relations Department. There are two call centers in this department, the Regional Call Center, which deals with issues related to the Authority's scheduled service, and the Paratransit Call Center, consisting of seven Transportation Coordinators, which is responsible for dealing with customer service issues related to the Share-A-Fare and other paratransit services. The Transportation Coordinators were not part of a bargaining unit until May, 2003, when, after an election, the Missouri State Board of Mediation certified ATU Local 1287 as the collective bargaining representative for a separate bargaining unit comprised of the Paratransit Transportation Coordinators. An initial work agreement was reached in April, 2005, and was then modified in August, 2005 and remains in effect, automatically renewable annually subject to the will of both parties.

By a memorandum dated June 1, 2005, the Authority management announced that some of the job duties of the Transportation Coordinators were being transferred to the Statistical Accountant effective June 6, 2005. The Statistical Accountant position is classified as professional and is salaried and non-bargaining. The tasks that were transferred included activities involved in assisting with recordkeeping, helping to track vendor and customer complaints, and inputting data for accountability purposes.

On June 7, 2005, Jaunice Williams and Tamara Hunt, both Transportation Coordinators and bargaining unit members, filed grievances protesting the Authority's action of transferring tasks from their positions to that of the Statistical Accountant,

charging that such transfer of duties constituted a violation of the labor agreement. These grievances were processed through the grievance procedure without resolution and were referred to arbitration. The parties agree that this matter is properly before the Arbitration Board for a final and binding determination.

ISSUE

The parties agreed that the issue presented by this grievance is the following:
Whether the KCATA (the Authority) violated the work agreement when it transferred certain tasks relating to processing vendor reports, participant complaints, incident and quality control reports and "Section 15" data entry from the bargaining unit positions of Transportation Coordinator to the Statistical Accountant position, a non-bargaining unit position, and if so, what should be the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE I General Provisions

Section 1.05 Employees to Whom Applicable.

This Agreement shall apply to all present and future employees of the Authority who are within the job classification of Transportation Coordinator set forth in 8.03 of this Agreement who work in the Paratransit Call Center and to no other Employees.

Section 1.12 Management – Discipline.

(a) The Union recognizes that the management of the business, including the right to direct the working forces, to prescribe, effectuate and change service and work schedules consistent with and not contrary to any specific provisions contained in this Agreement, to plan and control corporate operations, to introduce new or improved facilities or operating methods, to relieve employees from duty because of lack of available work or for other legitimate reasons, to transfer them, to determine the

minimum qualifications of experience, health and physical and mental fitness for any job covered hereby and to appraise the qualifications of any individual therefore, is vested exclusively in the Authority; subject, however, to the seniority rules and grievance procedure hereinafter set forth as concerns any employee to whom this Agreement is applicable and who may be relieved from duty or transferred or whose qualifications may be questioned.

Section 1.29. Supervisors Working With Tools and on Union Jobs.

All supervisory personnel will use such tools as they deem necessary, only when demonstrating a method to an employee, in an emergency, and in inspection, research or experimental work which would not be classed as production and maintenance work. Supervisory personnel will be allowed to work in an emergency situation when all appropriate overtime lists have been exhausted.

In the event that the authority creates a position of "Lead Transportation Coordinator," or another similar position, which would require the incumbent to perform tasks currently performed exclusively by members of the bargaining unit, such position will be created as a bargaining unit position.

Section 1.44. Sub-Contracting.

The Kansas City Area Transportation may contract out the work performed by the Paratransit Call Center work group, whether or not such contracting would eliminate work performed by the Bargaining Unit and whether or not such contracting would result in the layoff of any Bargaining Unit employee. Before making any final determination concerning contracting work performed by the Paratransit Call Center work group that would result in the layoff of any Bargaining Unit employee, the Authority will notify the Union and bargain concerning the decision upon request. A decision by the Authority to contract such work shall not be subject to the grievance procedure provided in Section 1.13 or the arbitration procedure provided in Section 1.14, and no Arbitration Board determining the terms to be included in any future bargaining agreement between the parties shall have any authority to alter or remove this provision.

Section 8.07. New Job Classifications or Positions.

New job classifications or positions may be established by the Authority from time to time when necessary to provide needed public service unforeseen at the time this Agreement was made, and when that necessity is so immediate that it cannot be delayed for negotiation, subject, however, to the following two conditions: (1) that the description of the new job classification or position and the wages, hours or working conditions pertaining thereto shall be promptly filed by the Authority with the Union and, if any objection is made to the wages, hours or working conditions thereof and such objections are not promptly cleared by negotiation between the parties, the Union may present those issues to arbitration pursuant to Section 1.14; and (2) that the establishment of such new job classification or position shall not be for a purpose or in a manner contrary to Section

1.31 of Article I of this Agreement, nor shall such new job classification or position affect the wages, overtime payments, established hours or working conditions of any present job classification or position as provided in this Agreement.

A set of job descriptions, which are mutually agreed upon between the Authority and the Union, describing all job classifications in the Paratransit Call Center Unit specified in this Article shall be printed separate from this Agreement and kept up to date. These will be used as the basis for describing jobs in posting notices of positions open for bids and shall be considered a part of this Agreement. A copy of these job descriptions shall be furnished to the Union.

POSITION OF THE UNION

The Union submits that the Authority did violate the Agreement, including the written and agree-upon Transportation Coordinator job description, when it transferred the duties in question to a non-bargaining, salaried position. These job duties were historically a significant component of the Transportation Coordinator position and the bargaining unit. Unilaterally transferring these job duties from the grievants' positions amounts to the Authority rewriting the agreed-upon job descriptions without negotiating such changes with the Union. It is not particularly significant or relevant to the issue at hand that the transfer was recommended by a consultant, that it may have resulted in an increase in the number of calls answered, or that the tasks were related to other job functions performed by other employees. What is significant is the issue of whether the unilateral transfer violated the Agreement.

The job description of the Transportation Coordinators is entitled to special consideration as it is a part of the parties' collective bargaining agreement. Section 8.07 provides that all job classification in the Paratransit Call Center Unit shall be printed separate from the Agreement and kept up to date, and that they shall be considered a part of the Agreement. As part of the Agreement, it is to be accorded the same status and

effect as the Agreement itself, and cannot be unilaterally altered or amended by the Authority.

The Transportation Coordinator's job description states the essential duties of the job as including the processing of participant complaints and vendor reports; these are exclusive job duties for this job and activities that essentially involve customer contact. It is the only written job description that expressly identifies these job duties. The Transportation Coordinator's job (processing) is customer relations oriented and involves regular and personal contact with participants and vendors alike, unlike the Statistical Accountant job (monitoring) to which the tasks were transferred. The Statistical Accountant's job description provides that the position "monitors and tracks complaints" and "verifies" certain information. But monitoring and tracking is not the same as processing. There is an obvious and distinct difference between supervising and overseeing the performance of a task and actually performing the task itself.

The Authority contends that the Transportation Coordinator and the Statistical Accountant have shared portions of the processing and validation of the Vendor Reports. More accurately, the processing of Vendor Reports has been the sole task of the Transportation Coordinator. They both have roles to play, but the fact is that their respective roles are separate and distinct – each plays a different role and performs different tasks with respect to each. It cannot be said that the tasks are the same, thereby justifying the Authority's unilateral transfer of job duties.

Custom and practice may be considered in interpreting ambiguous contract provisions. In this case the testimony confirms that the job duties at issue have always been performed exclusively by Transportation Coordinators and not by any employees in

any other classifications. The job description itself leads to the conclusion that the parties intended that these duties were bargaining unit tasks that could not be transferred unilaterally out of the unit.

During negotiations, Authority representatives understood and agreed that the job duties now at issue were Transportation Coordinator duties that would not be transferred out of the bargaining unit. In the context of minimizing the Transportation Coordinator position or in creating a “lead” position, the job duties now at issue were identified and discussed. They were understood to be bargaining unit job duties. Assurances were given that these job duties would not be minimized or transferred out to the administrative side. As such, they became part of the contractually mandated job descriptions referenced in Section 8.07 that cannot be unilaterally changed.

The Authority relies on a claim of management rights; management clearly has many rights to determine and direct the operations of the KCATA. Those rights, however, are always subject to restriction or limitation based upon the language of the Agreement. The Authority has a superior obligation to comply with the mutually agreed upon provisions of the Agreement.

The Authority’s obligation to negotiate with the Union before unilaterally implementing its programs has been confirmed by a prior arbitration award in 2000. The Authority had unilaterally implemented a “Sign On” bonus program with no discussion with the Union regarding the details or opportunity for the Union to offer its input. The arbitrator sustained the Union’s grievance and directed the Authority to “cease and desist” from further implementation of the bonus program until such time as the parties had an opportunity for the “meaningful discussions that should have occurred at the

outset.” When mediation failed, the arbitrator issued his final award and as part of a make whole remedy, ordered that additional compensation be paid first year employees who had been adversely affected by the bonuses.

The arbitrator in that case had little difficulty in concluding that the management rights clause did not justify the Authority’s failure to bargain with the Union. Or to ignore the clear language of Section 8.07 regarding the maintenance of mutually agreed upon job descriptions, the general provisions regarding the Union’s status as bargaining representative and the Authority’s obligation to first bargain with the Union in good faith over mandatory subjects of bargaining. To construe the management rights clause so as to justify the Authority’s action would render the language of the Agreement and commitments made to the Union meaningless.

In regard to the 2002 consultant’s recommendations for the Share-A-Fare Service, one would have thought that some mention would have been made of the report at some time before the hearing. In 2002 there was no bargaining unit or labor agreement; implementation of the recommendation in 2005 would necessitate its being done in the context of the existence of a bargaining unit, a labor agreement and commitments made during negotiations. If called in 2005, the consultant would certainly be sensitive to the changed landscape and would advise accordingly.

The consultant’s report itself provides support for the Union’s position in that the report confirms that the tasks at issue were performed by the Transportation Coordinators and was part of their job description. The report also confirms these tasks involved a significant amount of time, as “agents spend thirty-person hours per week on these tasks.” Thus the unilateral transfer of these duties has significant consequences for the

Union and the employees involved, it precludes the expansion of the unit and eliminates the potential creation of a lead position. The grievances should be upheld and the Authority directed to return to the Transportation Coordinator job classification and the bargaining unit the job duties improperly transferred in June 2005. It is further requested that the arbitrator retain jurisdiction to assist in the implementation of any award if that becomes necessary.

POSITION OF THE AUTHORITY

It is the position of the Authority that there are at least four reasons for rejecting the claims made by the Union to support the present grievances. First, the tasks that were reassigned to the Statistical Accountant have never been regarded as the exclusive work of the Transportation Coordinators. These tasks were formerly assigned to and performed by other classifications and remain in the job descriptions of those positions, including that of the Statistical Accountant. Having a work agreement has not captured every task performed by any bargaining unit member and made it exclusively the property of the bargaining unit. The same job descriptions are currently in place that predated the Union's certification for both bargaining and non-bargaining unit employees. Some responsibilities are exclusively assigned to the Transportation Coordinator and do not appear in any other classification job description. Others, such as the ones at issue, have been allocated to several classifications and are assigned among classifications as conditions warrant.

The tasks in question do not even appear among the principal duties of the position of Transportation Coordinator, but are included in a catch-all provision calling

for Transportation Coordinators to have the skills to perform other “related departmental tasks.” These responsibilities do, however, appear in the job descriptions for other non-bargaining unit department positions as intended core responsibilities for these positions. Because the tasks at issue have never been exclusively assigned to the bargaining unit, the employer is free to assign or reassign them within the department as it deems appropriate.

The second consideration is that even if these tasks were exclusively bargaining unit work, management must be deemed to retain the right to transfer work out of the unit in the absence of a specific prohibition in the work agreement. The only restriction on assignment of bargaining unit work in the work agreement is found in Section 1.29, where supervisors only are proscribed from performing routine production and maintenance work. When there is a limitation on assignment of bargaining unit work to a specific classification, it is routinely held that the restriction applies only to the specified class and not to other classifications. The focus of this section is on the Union’s desire to ensure that if a “lead” position were to be created in the future, it would be assigned to the bargaining unit. The text of Section 1.29 of the work agreement makes it absolutely clear that the section does not deal with the tasks at issue here in any way.

Thirdly, where arbitrators imply a limit on management’s right to assign work out of the bargaining unit, in the absence of a contractual prohibition, they balance management’s justification for the transfer against the possible impact upon the bargaining unit. Evaluating this case shows that the balance clearly tilts in management’s favor. The work has not been performed exclusively by bargaining unit employees in the past; the tasks appear in at least four different job descriptions and have been performed

by a variety of classifications other than the Transportation Coordinators. Insofar as the impact on the bargaining unit is concerned, no bargaining unit employee has suffered an adverse effect with respect to her hours worked, lost overtime opportunities or impact on her work schedule as a result of the reassignment. The amount of work involved is modest as evidenced by the fact that the Statistical Accountant has absorbed all of the duties at issue but works the same number of hours she did prior to the change while retaining her former responsibilities.

The reasons for the Authority's decision to move the tasks from the Transportation Coordinator position are so the employees in that job are not required to schedule these tasks around incoming phone calls. Management believed that accountability for timely completion of the tasks would be enhanced if the tasks were assigned to the end user of much of the information, and would ensure timely completion of the tasks and preparation of the monthly invoices. All of these reasons were identified by a management consultant engaged by the Authority long before the Union arrived on the scene and all are legitimate explanations for the change.

Lastly, the parties specifically recognize in Section 1.44 that management has the essentially unfettered right to contract out any work of the bargaining unit without regard to any impact on the unit. The broad and absolute provision in this section of management's right to contract work regardless of impact on the bargaining unit gives the Union little basis for arguing that the reassignment of peripheral, non-exclusive tasks to other department employees constitutes a contract violation. This is particularly true where there has been neither adverse impact on the bargaining unit's size nor any

reduction in the unit's work opportunities, including overtime work. These two grievances should be denied.

DISCUSSION

A careful reading of the labor agreement and consideration of the evidence and testimony given in this case leads to the following conclusions pertaining to the resolution of the issue presented by the parties. The Union pointed out that it is not particularly significant to the issue that the task transfer was a recommendation made by a consultant, that it resulted in increased numbers of calls answered, and that the tasks were related to other job functions performed by other employees. This is partially true in that none of these facts, in themselves, justified the Authority's unilateral transfer of the tasks in question. They do, however, serve to justify a proper work related motivation on the part of the Authority for the taking of such action; as opposed to the implied motivation of weakening the bargaining unit. Still, there is some question of why a seemingly beneficial recommendation being given in 2002 was not implemented by the Authority until 2005.

Job descriptions played a substantial role in the support of each party's position relative to where the transferred tasks had been performed in the past, both before and after the formation of the bargaining unit. It is true, as the Union claimed, that the tasks that were transferred were historically and primarily performed by the Transportation Coordinators. How significant a part the transferred tasks involving data entry and verification were to the total work load of the Transportation Coordinators is questionable. The consultant was quoted as writing that, "Agents spend thirty-person

hours per week on these tasks.” It can be assumed that the thirty-person hours is a total for the entire group of Transportation Coordinators since the consultant uses the plural term “agents” in referring the hours spent per week. Since there were at the time seven (7), and currently eight (8), of these positions it would seem that the time per employee devoted to performing the transferred tasks was not too great. This is further substantiated by the fact that the Statistical Accountant was able to absorb all of the tasks in question when they were transferred to that position, and appear to do them satisfactorily - although the volume was reduced by relying on sampling rather than 100% confirmations and the elimination of written notification in favor of telephone contacts.

It was argued by the Union that the transfer of the tasks had a significant impact on the jobs of the Transportation Coordinators. This does not seem to be supported by the evidence of the paragraph above, or by the work record of the Transportation Coordinators subsequent to that transfer of tasks. There has been no significant change in the hours worked or the opportunity for overtime; there has also been an additional Transportation Coordinators position filled since this transfer of tasks. There has been no reduction of earnings, working conditions have not been affected and the bargaining unit has not been reduced; rather it has been expanded by at least one position. In other words, there has been little, if any, adverse affect on the Transportation Coordinators resulting from the transfer of tasks to the Statistical Accountant, independent of whether or not the transferred tasks were a significant part of their jobs.

Another reason the parties focused on the job descriptions is the role they play as part of the labor agreement. Section 8.07 provides that a set of job descriptions be

printed separate from the Agreement and “shall be considered part of this Agreement.” As such, the Union contends, they cannot be altered unilaterally by the Authority any more than can any other part of the agreement; and transferring tasks has the affect of altering a job description. This Section not only provides that job descriptions be printed separate from the Agreement but also be “kept up to date.” This separation and updating implies that the job descriptions are not inflexible, but are subject to some change on occasion. They should be mutually agreed upon between the Authority and the Union. The reason for the job descriptions is that they “will be used as the basis for describing jobs in posting notices of positions open for bids.”

These agreement provisions allow for the adaptation of job tasks to new conditions and demands that normally occur in an organization over a period of time. Changes take place during continuing operations that necessitate adaptation of work to the new needs that follow from the demands of customers running through to the organization’s effort to satisfy those demands in the most efficient manner possible. While the agreement permits this adaptation of work tasks to better service, on the other hand it makes provision that it be done in such a fashion so as to result in proper and acceptable job demands on employees.

It would appear that under its provisions the terms of Section 8.07 function to allow the Union the opportunity to monitor this process of job adaptation to see that employees are protected in the effort bargain and working conditions. The provision that the job description be “mutually agree upon between the Authority and the Union” is assured by making job descriptions “a part of this Agreement.” It is not the intent of Section 8.07 to prohibit the alteration of the task content of positions, but to have the

evolutionary process Union supervised such that the resulting jobs are of labor agreement quality for the employees assigned to them.

The above interpretation of Section 8.07 is further supported by the provisions of Section 1.44, Sub-Contracting. While the transfer of tasks from bargaining unit positions to a non-bargaining unit position is not technically a matter of sub-contracting, both activities involve the removal of tasks from a bargaining unit position, in this case that of the Transportation Coordinator. This provision allows the KCATA freedom to contract out the work of the Paratransit Call Center work group, of which the Transportation Coordinator is a part, independent of elimination of work performed by the bargaining unit or the resulting layoff of bargaining unit employees. The only restriction placed on the Authority in this regard is that if there is to be a layoff of any bargaining unit employee, before making a final determination concerning contracting work, “the Authority will notify the Union and bargain concerning the decision upon request.”

But this requirement is followed by the provision that “A decision by the Authority to contract such work shall not be subject to the grievance procedure....and no Arbitration Board determining the terms to be included in any future bargaining agreement....shall have any authority to alter or remove this provision.” This would support the contention that the Authority has considerable latitude to remove tasks from the Transportation Coordinator position, as need arises, subject to giving consideration to Union input concerning the matter when the layoff of bargaining unit employees may result. The implication is that when no bargaining unit employees are to be laid off, the Authority has the contractual right to unilaterally transfer tasks from the Transportation Coordinator position without negotiating the matter with the Union. As pointed out by

the Authority, work and employment in the Transportation Coordinator positions has not diminished as a result of the task transfer; rather, their number has increased by the filling of previously vacant positions.

The tasks in question that were transferred were placed in the job of Statistical Accountant, a position that is outside the bargaining unit but which is not a supervisory position, although it does monitor processes. Section 1.29 is not applicable in that it restricts supervisors from working with tools and on Union jobs. This section also addresses the issue of the contingent creation of a Lead Transportation Coordinator position and the inclusion of such a position in the bargaining unit, and event that has not yet occurred.

The Union claimed that the Transportation Coordinator job description included processing of participant complaints and vendor reports as essential and exclusive job duties. The job description of the Transportation Coordinator position in the General Summary states “The Transportation Coordinator shall be responsible for coordinating and recording trip reservations for paratransit and swing shift (access to work) participants with the proper vendor.” Under Essential Job Functions for this position there is, at number 8 (and last), “Ability to perform any related departmental task, including but not limited to, processing Vendor Reports, participant claims, trip cancellations, No Show collections.” The transferred tasks, vendor reports and participant claims, even if performed exclusively by Grievants, hardly rise to the level of core job requirement when they are listed among several tasks illustrative of work constituting Departmental tasks. The position of Administrative Assistant II provides as an Essential Job Function, “Log in, record, clarify and edit customer complaints.” While

the grievants may have performed the bulk of the transferred tasks in question, it does not appear that those tasks were exclusively theirs insofar as job descriptions are concerned.

. The Union claimed that past practice established the transferred tasks as belonging to the Transportation Coordinators in that they were the only ones in the past to be assigned those activities. It was also pointed out that during negotiations for the Agreement the Authority representatives agreed that the job duties at issue were Transportation Coordinator duties and assurances were given that those duties would not be minimized or transferred out to the administrative side. Such facts are helpful in making a determination of the intent of the parties in cases where the agreement is not clear. In the present case, the agreement is quite clear as to intent and is unambiguous in permitting the Authority the right to transfer job tasks among positions.

There are restrictions on the Authority in the reassignment of tasks, one being that resulting job descriptions must be reviewed by the Union such as to obtain mutual agreement by the parties; a requirement found in Section 8.07. The other is a requirement for the Authority to seek Union input in those cases where removal of tasks will result in the elimination of bargaining unit jobs. Neither of these situations is involved in the present issue being resolved; that issue being whether or not the Authority can transfer tasks from a bargaining unit job to a non-bargaining unit job, or to any other job for that matter.

A previous arbitration award was cited as being a precedent to the present case in which Arbitrator Barnard ruled the Authority could not act unilaterally under the management rights clause. That arbitration dealt with the Authority's unilateral implementation of a Sign On bonus program designed to help recruit new employees.

Arbitrator Barnard ruled that, since the program affected compensation, the Authority was required to bargain with the Union prior to the implementation of such a program. That was a wise interpretation by the Arbitrator given the issue being resolved; i.e., compensation. The nature of collective bargaining is to mutually establish issues of wages, hours and working conditions affecting employees.

The Barnard award is of little value as a precedent to the current case in that the present issue does not involve a question of compensation, either directly or indirectly. It was established that neither the grievants personally nor the bargaining unit suffered any loss of compensation, change in hours or alteration of working conditions resulting from the transfer of tasks from the Transportation Coordinator positions. In fact, the transfer of tasks simplified their jobs such as to enable them to spend less time on performance of departmental tasks and focus more of their time and effort on their core responsibilities; that is, coordinating and recording trip reservations for participants. The jobs of Transportation Coordinator may have been simplified, but they have not been minimized – there are now more employees in that position than there were at the time of the task transfer. Tasks removed from bargaining unit positions for other motives might be questioned, but the agreement, including management rights is Section 1.12, gives the Authority the right to transfer and assign tasks such as to rationalize its work and processes; to do so is not a violation of the agreement.

AWARD

For the reasons given above, the grievance is denied.



William S. Hart
Neutral Arbitrator

August 11, 2006

For the Union: agree/disagree

For the Authority: agree/disagree