Kahn #2

ARBITRATION OPINION AND AWARD

EMPLOYER June 27, 1998

-and-

UNION

Subject: Parking Space

Statement of the Grievance:

> "The Employer notified its employees via a memorandum distributed with their paychecks on November 25, 1997 which notified its employees that the Employer would no longer be providing Bus or jitney service (red cars) to the Lot A. This clearly is a violation of the agreement insomuch as it is a drastic change in the terms of employment for those persons who have utilized the Lot A as their assigned parking space. The Employer has offered a lot much further away from City Hall and this proposal is unacceptable to the Union."
>
> "Suggested Adjustment: Immediately reinstate Bus A and jitney service to the levels that had been established prior to 12/1/97 and any and all things to make the Union and its members whole."

Contract Provisions Involved: Articles IX, XXXIV and XXXIX of the January 1, 1995 - December 31, 1997 Agreement.

Statement of the Award:

The grievance is returned to the parties for development of a better record with respect to the travel times for the return trip to the Lot B during the evening hours, 4:00 p.m. - 6:00 p.m. The parties should then consider, in light of the described standard as to what constitutes "reasonably" or "roughly comparable" bus service, whether the facts establish a violation and if so, how to remedy the violation. If the parties are unable to resolve the dispute, it may be re-appealed to this or another arbitrator.

Because neither party clearly has prevailed in this case, the parties are directed to share the fee and expenses of the arbitrator, in accordance with Article IX.

BACKGROUND

This grievance from the Union protests changes in the parking arrangements offered to its members. The Union asserts two violations of the Agreement by the Employer: (1) The Employer failed to notify or negotiate with the Union regarding the change in the parking program; and (2) The Employer failed to provide parking services that are reasonably comparable to previously available arrangements. The Employer denies any violation.
The provision in the Agreement that concerns parking is Article XXXIX, CAR ALLOWANCE AND PARKING, §2. It states:

> Management agrees to provide free parking space for all bargaining unit employees who are employed in the City Hall, Justice Building, and Police Headquarters and who drive their personal automobile to work.

According to the Union, this provision has been in the parties' Agreement, unchanged, since 1970.

The evidence is that the Employer has made many changes over the years in the location

of Employer employees' parking, the relocations coming about as a result of urban renewal and the consequent demolitions and new construction. Pertinent to this case, the 150 Union members who work at or near City Hall had, since approximately 1992, been afforded free parking at the Lot A, about .3 of a mile from the work place. A bus transported the employees from the Lot to work in the morning and picked them up in the evening. At these peak times -- 7:00 - 9:00 a.m. and 4:00 - 6:00 p.m. -- the bus operated at five-minute intervals. Between 9:00 a.m. and 4:00 p.m., there was service every fifteen minutes. Each leg of the trip took no more than approximately five minutes.

The Employer announced a curtailment of the off-peak service in January 1995. It had concluded that demand was too low to justify the cost of operating regularly scheduled transportation during the mid-day. The Union grieved the elimination of the 9:00 a.m. - 4:00 p.m. bus. Pursuant to Article VII, SPECIAL MEETINGS, the parties met in March to discuss this issue. The Employer agreed to look into an alternative means of providing off-hours transport.

A "Trial Temporary Solution" was adopted in June, 1995. It established a "Jitney" service to run between 9:00 a.m. and 4:00 p.m. and after 7:00 p.m. An employee needing the service was required to call in advance (same day, at least fifteen minutes prior to pick-up time). The solution, accepted by the Union, noted that the new arrangement was intended to replace the discontinued bus service and was temporary, subject to an evaluation of its usage and feasibility. It expressly "reserve[d] the positions of either side to cancel at any time."

This was the arrangement in effect in November 1997 when the City announced the here-protested change. The announcement states:

> Shuttle bus and security vehicle transportation service to the Lot A parking area will be discontinued on December 1. Expanded shuttle service and evening jitney service (security vehicle) will begin operating from the Employer's new 1,000 car parking area on Avenue A (Area 7) on the same day....

> Bus service to and from the new parking site is scheduled at five- minute intervals [at peak hours].... A bus will also operate at 15 minute intervals [at off/mid-day hours] to accommodate unusual midday transportation needs.
>
> The first stop on the new bus route will be on Monroe Avenue at the Hall of Justice. ... past 6:00 PM a security vehicle will continue to be available, on demand, for trips to the new west side parking site or the Lot A site. ....

In summary you may:

- continue parking at Monroe North without daytime transportation service
- park in Area 7 ... which will be served by day long transportation to and from City Hall ...

The new lot, referred to as Lot B, leases or rents parking for the public along with the free space for Employer employees. The record is not clear as to whether the public parked at Lot A, but because it is a much smaller lot, it is unlikely that many non-employees used it. The Employer intends Lot B to encourage downtown usage, hence the bus transportation to and from the Lot is for the public as well.

The Union contends the new location as well as the transportation provided to and from the Lot are a "drastic change", for the worse, from the former parking provisions/ in violation of Article XXXIX of the Agreement. The Union further urges that the Employer's unilateral change of the employees' working conditions violates Article XXXIV, Maintenance of Standards, which states:

> ... Management agrees that all conditions of employment not otherwise provided for herein relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at the standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.
> Finally, the Union insists the Employer instituted these changes unilaterally and by failing to notify the Union and negotiate about the new arrangements, it has further violated the

Agreement.

The Union calls attention to a 1983 Arbitration Opinion (the "Herman Award", Joint Exhibit 6) that addressed a dispute between this Employer and the predecessor Union over parking arrangements for employees working at the Place A. In that case the Employer directed the employees, who had been parking very close to the Center, to no longer park at the Center, but to go to one of three areas, on Front and Scribner, on the far side of Grand River. The arbitrator observed:

> "The Employer is not bound to provide the identical area for parking spaces of the employees but it must offer reasonably comparable facilities.... The employees would have to walk a half mile or more from the proposed parking lots to their jobs at the City Hall and Place A, a rather unpleasant prospect in winter weather. The [new lots do] not meet with the proscriptions of [a 1976 Arbitration Award from B. Brown, Joint Exhibit 7) and violates the Maintenance of Standards provision of Article XXXIV. The Employer is bound by that provision to supply parking space to the employees within a distance from City Hall roughly comparable to the distance to the Place A area." (Underlining added)

The "Brown Award" concerned a protest over the closing of an employees' lounge in City Hall, taken by the Employer because it needed added office space. The Arbitrator found the lounge to be a condition of employment protected by Article XXXIV, Maintenance of Standards. He directed the Employer to provide a proper substitute lounge facility in the City Hall.

DISCUSSION AND FINDINGS

The critical issue in this case is whether the Employer has violated the Agreement by offering changed parking arrangements for City Hall bargaining unit members. The Employer insists it continues to offer "free parking space for all bargaining unit employees ..." in accordance with Article XXXIX and hence, it has not violated the Agreement.

The Employer's view of the issue and applicable contract language is too narrow. Article XXXIV requires that "conditions of employment not otherwise provided for herein relating to ...

general working conditions shall be maintained". The Agreement is silent with respect to the provision of transportation for employees between the "free parking space" and the work site, but such transportation has been an integral part of parking arrangements since at least 1992, with the establishment of the Lot A. The bargaining unit has come to expect and rely upon the transportation as a part of the parking benefit. Hence, the provision of transportation between the free parking and work is a working condition protected by Article XXXIV.

Turning to the facts of this dispute, for ease of comparison the following is a summary of the "before and after" arrangements. Previously, the employees parked at the Lot A, located .3 miles from City Hall, and were transported by a bus that left the Lot every five minutes at peak hours. The route to and from the Lot and City Hall is a "straight shot", with only one traffic light, and would take no more than four or five minutes in the morning and a minute or two longer in the evening. During off hours (between 9:00 a.m. and 4:00 p.m., and after 6:00 p.m.), employees could request jitney service to take them to the Lot or back. The request had to be made the same day and with at least fifteen minutes' notice.

Currently, employees may continue to use the Lot A, but the Employer provides no transportation between that Lot and City Hall. It offers a second and larger Lot, Lot B, with bus service to and from work. According to the Union, the morning trip from Lot B to City Hall is .6 miles and takes about seven minutes. The evening trip is longer, about 1.2 miles, and takes between fifteen and twenty minutes. The bus makes other pick-up stops after City Hall and that, together with the lights and traffic, cause the longer time. During peak hours, the bus runs every five minutes. During off hours, the bus operates every fifteen minutes. According to Management, the entire trip takes thirteen minutes.

The contractual test, as established in the Herman Award, is whether the new

arrangements at Lot B are "reasonably" or "roughly comparable" to the former arrangements at Lot A. What is "reasonably/roughly comparable" is a fact question. When Herman addressed this question, he compared the former, adjacent parking with the replacement parking lots estimated to be a half mile or more from the work site, across the River, and noted the "unpleasant prospect" of walking that distance in winter. He concluded the new parking was not "reasonably comparable".

Examining the facts or attributes of the Lot B vis-à-vis Lot A parking sites, at the outset it must be stated that the change of location per se is not a violation. The evidence establishes that Employer employees have had many parking sites over the years, a necessary consequence of introducing expressways, new buildings, and the overall burgeoning of the downtown. The key issue is access or transportation.

I find the provision for transportation to City Hall in the morning to be "reasonably comparable" to the former arrangements. I make the same conclusion with respect to the off-hours bus service at fifteen-minute intervals. It is not substantively different from calling for a jitney that required at least fifteen- minute notice. There is no evidence that the jitney routinely appeared within fifteen minutes. While the distance to Lot A is shorter, I accept the Employer's testimony that at least at mid-day the bus can traverse the entire route from Lot B in thirteen minutes (fewer passengers fewer drops/pick-ups, lesser traffic). Hence, it cannot be said that the mid-day bus is not "roughly similar" to the jitney.

The major concern in this case is with the increased amount of time required at the end of the work day.[1] The bargaining unit protests the time added to the trip from City Hall to Lot B. It also asserts that exiting the Lot B at night takes longer than it had at Lot A.

1The Union said that one adverse impact of the move was that there are some employees who like to walk from the parking lot to City Hall, but that the whipping wind off the River makes that not advisable. The answer, of course, is for the walkers to park at Lot A.

The added travel time to Lot B is because of the bus route, i.e., after the bus has picked up at City Hall it continues to several major business centers to pick up more passengers. According to the Union, the bus makes three additional stops and must pass through twelve traffic lights. This is different from the Lot A situation, where the bus headed due north after making its one stop near City Hall and with only one traffic light. (Nothing was said about time to exit that Lot.)

The evidence with respect to the time required for the return trip to the Lot at night is sketchy at best making it the area where "reasonable comparability" is in doubt. The time to Lot A was about five minutes. The Union testimony was that the trip to Lot B takes fifteen minutes on a "good day", and the average is twenty or above. The Employer testimony was that its time studies showed a thirteen-minute cycle, but it is not clear what this covers. It would seem unlikely the evening run could be thirteen minutes, in view of the estimate that the time from the Lot to the first stop at City Hall is about five minutes, and thereafter there would be three stops, twelve lights and a left turn across traffic that the Union said sometimes required a wait of four lights before a turn could be made. (Whether or not the twelve lights are timed for a certain speed is not answered.)

Neither the Union's nor the Employer's time estimates are supported by records showing how many such studies were done, the times and conditions, and so forth. I believe the record needs to be better developed in this regard in order to reach an informed appraisal of the reasonable/rough comparability of Lot B vis-à-vis Lot A.

A return trip in the evening that takes more than ten-to-twelve minutes -- from City Hall to the Lot -- is not "reasonably comparable". Ten minutes as compared to the previous five (or twelve compared to six) is of course twice as long, but in absolute terms the longer time period is hardly burdensome. If the return trip exceeds ten-to-twelve minutes, the Employer must make

some accommodation to bring the parking or transportation arrangements into conformity with its Article XXXIV obligation to maintain general working conditions "at the standards in effect at the time of the signing of this Agreement.

AWARD

The grievance is returned to the parties for development of a better record with respect to the travel times for the return trip to the Lot B during the evening hours, 4:00 p.m. - 6:00 p.m. The parties should then consider, in light of the described standard as to what constitutes “reasonably" or "roughly comparable" bus service, whether the facts establish a violation and if so, how to remedy the violation. If the parties are unable to resolve the dispute, it may be re-appealed to this or another arbitrator.

Because neither party clearly has prevailed in this case, the parties are directed to share the fee and expenses of the arbitrator, in accordance with Article IX.

RUTH E. KAHN, Arbitrator

Grievance Data: Date:

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