VOLUNTARY ARBITRATION PROCEEDINGS
PENNSYLVANIA BUREAU OF MEDIATION

In the Matter of the Arbitration	(Opinion and Award	
	(	
Between	(Grievance Nos:	9748
	(	10042
	(	
Pennsylvania Turnpike Commission	(	
	(Date of Hearing:	February 3, 2010
	(	
and	(	
	(Record Closed:	March 12, 2010
Teamsters Local 250	(	
	(	
	(Date of Award:	April 12, 2010

Representing the Commission: Michael J. Witheral, Esq.
Attorney

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

William J. Miller, Jr.
Arbitrator

I. THE GRIEVANCES

Two grievances were filed by employees of the Pennsylvania Turnpike Commission (hereafter referred to as the "Commission"). Eric Bruno and Kenneth Fowler, Kenneth Myers and Douglas Bennett, the grievants herein, had the grievances filed on their behalf by Teamsters Local Union 249 (hereafter referred to as the "Union") in accordance with the applicable provisions of the Agreement between the Pennsylvania Turnpike Commission and Teamsters local Union Nos 77 and 250 field agreement, October 1, 2007 – September 30, 2011 (hereafter referred to as the "Agreement"). The grievance filed by grievants Bruno and Fowler on May 26, 2009 stated the following:

The turnpike is exceeding the work opportunities allowed by the supplemental employees.

The adjustment requested was as follows:

To use supplemental the proper number of times allowed contractionally. To make whole in every way.

The grievance filed by grievants Myers and Bennett provided the following:

Work opportunities being used as full-time hire at interchanges plus excessive opportunities per month.

The adjustment requested was as follows:

Grievance made whole in everyway.

On June 5, 2009, the Commission responded to the grievances as follows:

On June 3, 2009, I along with Pat Caro and IM Don Ferraro met at Pittsburgh Interchange with Union Officers Chuck Gaston, Gary Pedicone and Eric Bruno regarding the above-subject grievance concerning the turnpike exceeding work opportunities.

The Union contends that management is exceeding work opportunities as specified by the labor agreement. Management is not in fact exceeding work opportunities. The contract language pertaining to Supplemental Work Opportunities specifically states the following:

Create within a Fare Collection District extra work opportunities totaling three (3) work opportunities times the number of interchanges in each District during each twenty-eight (28) day schedule.

There are seventeen (17) interchanges in District One, which entitles us to fifty-one (51) work opportunities. In spite of this fact, the Union contends that some of the interchanges in District One are not Interchanges.

In conjunction with the collective bargaining agreement, the commission is operating within the parameters of the contract and I find no contractual violation.

On July 21, 2009, the Commission issued the following response:

This is in response to the grievance filed by Kenneth Fowler and Eric Bruno, Union Steward at Pittsburgh Interchange. The grievance alleges a violation of Article 1 of the Collective Bargaining Agreement. Specifically the Union alleges the Commission is exceeding the number of supplemental work opportunities that are permitted by the contract each month in District 1 Fare Collection.

The contract allows 3 extra work opportunities at each interchange per month. District 1 has 17 interchanges, which entitles Management to 51 additional work opportunities for these locations. Therefore, there are work opportunities at each of the locations.

I find no contractual violation, and this grievance is denied.

The grievances remained unresolved and were appealed to arbitration. This arbitrator was selected to hear and decide the issue through the offices of the Pennsylvania Bureau of Mediation. Accordingly, a hearing was held in Pittsburgh, Pennsylvania on February 3, 2010. During the hearing, the parties were given the opportunity to present evidence, both oral and written, to examine and cross-examine the witnesses who were sworn, and to argue their respective positions. In lieu of oral closing arguments, the parties decided to file post-hearing briefs. The briefs were received in the office of the arbitrator on March 12, 2010, at which time the record was considered closed.

II. BACKGROUND

Chuck Gaston, business agent for the Union, stated that prior to becoming a business agent, he was a teller and toll collector, working at the Allegheny Valley location. He explained that a prior arbitration decision advised the parties how to use supplemental employees. He contended Article 1, Section 3E.4 provides that this will be three times the number of manned interchanges. He claimed that a ramp is just an unmanned collecting system, and prior to the recent arbitration decision, the parties never considered ramps. However, Mr. Gaston alleged after the arbitration decision the Commission expanded and provided more supplemental opportunities, which prompted the filing of these grievances. Mr. Gaston submitted schedules which he claimed showed that supplemental opportunities were exceeded. He explained for the ramps the tolls collectors ride a van there to empty money, make change, and fix a jam or problem. He noted that no one is assigned to the ramps. Mr. Gaston also provided a complement report, generated by the Commission, which shows how many employees work at each location.

While being cross-examined, Mr. Gaston said the article in question was in the prior contract, but he was not personally involved in the 2004 negotiations. He testified there is nothing found in the Agreement language that specifies an interchange needs to be manned.

It was the testimony of Michelle Prestopine, District Manager for District 1 that she considers a ramp as being an interchange. She provided further testimony which established how employees are assigned, and she contended since 2006 she has always considered an unmanned ramp as being an interchange. She said she has never

considered both sides of the ramp as being two interchanges, but that somebody must take care of the machines and collect the money. She explained to do this, some full time positions were created along the way. She provided documentation related to deposit slips, phone lists, interchange maps, traffic count reports, lane configuration charts, the turnpike website, and press releases which she contended related to all interchanges listed. Ms. Prestopine testified her calculation of job opportunities didn't change after the issuance of the arbitration decision, and such calculation started in 2006.

While being cross-examined, Ms. Prestopine stated after the arbitration award, substantially more opportunities for supplementals were used. She pointed out at manned interchanges there are four to fifteen employees, with one to four supplemental employees. She explained that at ramps, an employee could spend an eight-hour shift at the ramp. She contended in the summer if lanes are going to be scrubbed, the janitor could be there eight hours, and this could occur six times during the summer. She noted employees are assigned to work at multiple ramps. Ms. Prestopine concluded her testimony by providing specific examples when employees, including herself, worked at ramps.

Gary Kwolek, District Manager for District 6, testified regarding the various ramps and interchanges. He stated there are four full time collectors and one full time janitor who perform work at the ramps. He contended the number of opportunities available for supplementals has not been unusually high, and in prior years he had numbers in the high twenties, and when Finley came on board, the numbers were in the high twenties and low thirties. During cross-examination, Mr. Kwolek stated he has always considered ramps in his calculations.

It was the testimony of Gary Pedicore, Secretary-Treasurer of the Union, stated in response to the assertions of the Commission witness, prior to the issuance of the recent arbitration award, the supplementals never exceeded the operations needed, and in the past, whenever the schedule was posted, the schedule always stated why there was an opportunity.

II. UNION POSITION

The Union considers the issue to be whether unmanned ramps may be considered "interchanges" for purposes of calculating work opportunities under Article 1, Section 3E.4 of the Agreement. It is the position of the Union that only manned interchanges can be used to calculate supplemental work opportunities pursuant to Article 1, Section 3E.4 of the Agreement. The Union argues the clear and unambiguous language of the Agreement requires the grievances be sustained. The Union would point out Article 1, Section 3E.4 expressly provides that supplemental employees can be used to replace permanent full time fare collectors for very specific reasons. Additionally, Article 1, Section 3E.4 allows for additional work opportunities for supplemental employees based upon the number of interchanges in each district during each twenty-eight days scheduled. The Union contends while there was no testimony regarding bargaining unit history, it is clear the applicable language placed in the Agreement in 2004 was negotiated by persons who were rational people. The Union asserts the specific limitations on the Commission's right to utilize supplemental employees rather than using permanent full time employees was specifically linked to the number of interchanges within each District, presumably because there is a logical relationship

between the number of manned interchanges and work opportunities for supplemental employees. The Union contends if it were otherwise, the parties could have simply selected an arbitrary number for additional work opportunities. It is the position of the Union that there is absolutely no logical connection between the number of ramps or ramp interchanges within a District and additional work opportunities for supplemental employees.

The Union contends the Agreement language is clear that additional work opportunities needed to be based upon the number of manned interchanges. The language provides, according to the Union, the work opportunities may be used within each District to address staffing needs including, but not limited to, those caused by traffic volume, special events and similar circumstances determined by the Commission, and the Union contends increase staffing needs caused by traffic volume, special events and similar circumstances do not occur at ramps. The Union argues the contracting parties gave this matter some thought, and did not base this figure on some arbitrary figure, such as the number of ramps in the District where employees are not scheduled to work an entire shift. At a ramp location an employee based out of another location will go to each ramp once a day to collect money from the ramps and where janitors may be assigned to clean up from time to time, and on rare occasions an employee may spend the entire day working at a ramp, but the Union argues this is in stark contrast to a regular interchange where, on average, twenty regular employees and three to five supplemental employees normally work. The Union contends, in this regard, that no one is regularly scheduled to work at a ramp. The Union argues in this case, the Agreement language is clear and unambiguous, and if there is any doubt as to its meaning, when faced with two

possible interpretations of the language, the interpretation which is consistent with the obvious purpose should be selected. The Union asserts in this case the language is crystal clear and provides that additional work opportunities for supplemental employees are to be calculated based upon three times the number of interchanges and not ramps.

It is the position of the Union the Commission redefined "interchange" in response to the Miller-Kotula award. The Union contends prior to the decision of Arbitrator Michelle Miller-Kotula, the Commission had always construed "interchange" for calculating the number of work opportunities under Article 1, Section 3E.4 as "manned interchanges." However, once the decision came down and the Commission attempted to comply with it, the Commission decided for the first time to count ramps as interchanges. According to the Union, by doing so, the Commission has affected the overtime of the regular full time employees in District 1 and District 6. The Union argues the Commission failed to provide any documents to rebut Mr. Gaston's testimony that this was the first time the Commission ever used ramps to calculate work opportunities for supplemental employees. Rahter, the Union alleges the Commission provided eleven documents with absolutely no probative value. The Union contends following the Miller-Kotula award, the Commission unilaterally redefined the term "interchange" within the meaning of Article 1 Section 3E.4 of the Agreement in an effort to water down the impact of such award. Upon the basis of the foregoing facts, arguments and authorities, the Union submits the Commission violated the Agreement by considering ramps as interchanges in calculating work opportunities for supplemental employees. Accordingly, the Union requests the grievances be granted and that ramps not be considered as interchanges in calculating work opportunities for supplemental

employees, and that regular full time employees in District 1 and District 6 who have lost overtime as a result of the Commission's Agreement violation be made whole for their loses.

IV. COMMISSION POSITION

It is the position of the Commission that the current Agreement, and the language found in Article I, Section 3E.4 as to the number of interchanges, does not include any definition of interchange. The Commission contends the Union presented no testimony concerning the bargaining history of the term "interchange." This Union's position is simply that the term "interchange", five years after the language was implemented, means only the original traditional main line interchanges on the original turnpike.

It is contended the Commission has been consistent in designating that interchanges represent areas in which monies are collected regardless of whether or not this is done by an automated system, or by toll collectors. The Commission argues this is true because as the testimony has clearly indicated, human personnel are needed to maintain all of the interchanges, whether "automated" or "manned", and the Commission contends there are a number of permanent positions in each District that existed solely because of the interchanges that the Union contends are not interchanges.

The Commission would point out it considers the automated interchanges on a on-off section of the turnpike to be a single interchange. The Commission asserts the fact that interchange is not defined in the Agreement permits the arbitrator to look at the other indicia of just what "interchange" means. It is the Commission position that the language in question is not ambiguous, and the meaning of "interchange" can easily be determined

based upon the evidence presented at the arbitration, the documentation entered into evidence, including the history of interchanges within the Commission, as presented by Commission witnesses.

The Agreement principles relied upon by the Commission are that the Agreement is not ambiguous, and the simple facts of which, from the nature of the language show the meaning of the language. It is the position of the Commission that Commission exhibit No. 1 is instructive as to the nature and make-up of the turnpike and its interchanges. At the time that the language was bargained in 2004, the work opportunity language, which is the subject of this grievance, was added to the Agreement. At this time, the Fare Collection Department District No. 1 consisted of a total of 23 interchanges where tolls were actually collected. During January, 2006 District 1 was split into Districts 1 and 6, with nine toll collection interchanges for District 6 and fifteen for District 1. Then, according to the Commission, additional miles of toll road opened, such as the Findlay connector and the establishment of EZ pass and AMM installation and toll equipment modifications at various interchanges, which are responsible for a minimum of fourteen full-time employees. The Commission asserts the exhibits it submitted clearly establish there is no distinction between main line interchanges and automated interchanges. The Commission contends the most telling exhibit is Commission Exhibit No. 12 which demonstrated the supplemental work opportunities scheduled from 2005 forward, and this demonstrated there was a time period when supplementals were scheduled for 40 hours per week, and it was not necessary to list the number of opportunities, and has shown that the continued use of supplemental employees although never utilized to the extent of the number of interchanges that were actually available. The Commission

contends there were times during the time period 2006 to 2007 that the opportunity for supplemental employees exceeded the number that the Union claims is the appropriate number of opportunities based upon their now definition of interchange, and no prior grievance was filed. The Commission agrues the lack of any action by the Union in 2006 and 2007 is clear evidence that there was no question between the parties as to what constituted an interchange, and that interchanges included all of the interchanges in which money was collected.

It is contended by the Commission the Union's position that the interpretation by the Commission as to job opportunities being a response to the prior arbitration decision is simply at odds with the facts of this matter. This is established by the fact that the use of opportunities prior to the arbitration award exceeded what the Union is now claiming to be those numbered interchanges and opportunities available, but this was done routinely in years preceding without any grievance. It is also pointed out by the Commission there are no unmanned interchanges, as all of them require maintenance and toll collection. It is the position of the Commission that the parties did not define "interchanges" in 2004 because it was not necessary, and the definition of interchange that the Union is presenting simply is not supported by the evidence and testimony. The Commission therefore requests that the grievances be denied.

V. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 1
RECOGNITION

Section 3

E. A "supplemental employee" is defined herein as a person who is hired as a replacement for a permanent full-time employee who is on sick leave or other authorized leave. The use of supplemental employees is to be determined in accordance with the provisions of this section.

In addition to the users listed above, supplemental employees may be used to:

4. Create within a Fare Collection District extra work opportunities totaling three (3) work opportunities times the number of interchanges in each District during each twenty-eight (28) day schedule. These work opportunities may be used within each District to assign supplemental employees to interchanges to address staffing needs including, but not limited to those caused by traffic volume, special events and similar circumstances as determined by the Commission.

VI. OPINION

The issue to be decided is whether or not the Commission violated Article 1, Section 3E.4 of the Agreement by the manner in which it counted "interchanges" in determining extra work opportunities for supplemental employees. A review of the relevant record has established the following material facts. The language in question, namely Article I, Section 3E.4 of the Agreement was negotiated by the parties and included in the 2004 Agreement. Commencing with the inception of the 2004 Agreement, until the present grievances were filed, the Commission made regular determinations as to the number of work opportunities for supplemental employees. The Union contends only manned interchanges are to be used to calculate the number of supplemental employees, and this was regularly done by the Commission on the basis of

the clear language of the Agreement until the Commission responded to an arbitration decision of Arbitrator Michelle Miller-Kotula. The Commission argues it has always considered both manned and unmanned interchanges in the calculation of the number of work opportunities for supplemental employees, and the language of the Agreement and supporting evidence support such position. Furthermore, the Commission contends it was not influenced by a prior arbitration award, and its method of calculating the number of opportunities for supplemental employees has not changed since the applicable language has been included in the Agreement.

I have carefully reviewed the arguments of the parties, the language of the Agreement and the specific facts present in this situation. Regarding the contention of the Union that the Commission changed the manner in which it counted interchanges subsequent to the issuance of an arbitration award by Arbitrator Michelle Miller-Kotula, it is readily apparent, upon carefully reviewing such decision, that the Commission was directed to utilize supplemental employees only for the permissible reasons contained in Article I, Section 3E.4 of the Agreement. Such decision was issued on May 6, 2009. Upon reviewing the record related to these two grievances, it is clear such grievances were filed during May, 2009. The Union has argued the reasons for these two grievances being filed, was a result of the Commission changing the way in which it counted the number of interchanges. While the record does not reflect any specific admission by the Commission that it altered the manner in which it counted interchanges, it is interesting to note that there were no grievances filed by the Union regarding the way in which interchanges were counted from 2004 through May of 2009, but shortly after the May 6, 2009 decision, the Union contended there were problems in the way the Commission

began to calculate the number of available supplemental positions. Whether by coincidence or by design, the evidence establishes that during May 2009 the Union, for the first time since the applicable language was placed in the Agreement, objected to they way interchanges were considered in the calculation of extra work opportunities for supplemental employees.

The crux of the issue in this case is the determination as to the meaning of the language in question. The applicable language in Article 1, Section 3E.4 provides for extra work opportunities for supplemental employees to be three work opportunities times the number of interchanges in each District during each twenty-eight day schedule. In a case of contractual interpretation, it is necessary to consider the language and whether or not it is clear and concise. Where contractual language is ambiguous, it is necessary to consider bargaining history and/or past practice to see if such bargaining history or past practice will help to clarify the ambiguous language. In this case, the record is devoid of any evidence of bargaining history. Neither the Commission or Union submitted any evidence as to how the language was bargained and became part of the Agreement. With regard to "past practice", in order to have relevant evidence in this regard, it is necessary to show that a specific procedure, process or way of doing something has been done consistently, with sufficient longevity and has been mutually accepted by the parties. In this specific case, there has been considerable testimony and evidence provided by the Commission and Union as to the way in which interchanges have been considered. The Union asserts manned interchanges were used as the basis for determining extra work opportunities for supplemental employees, wherein the Commission has contended both manned and unmanned interchanges have been counted.

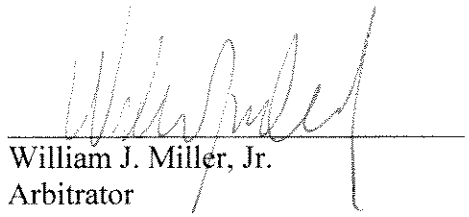
Unfortunately, the evidence submitted by the Union and Commission has not proven to be persuasive enough to show that a particular way of counting interchanges has been consistently applied, over a long period of time and in a manner that was mutually accepted by the Commission and Union. Consequently, there is no evidence of past practice in this circumstance which would help to clarify the language in question.

In my considered opinion, upon carefully reviewing the language in Article 1, Section 3E.4 of the Agreement, it is my belief that such language is not ambiguous, but is clear and specifies the manner in which extra work opportunities for supplemental employees is determined. When the entire provision is considered, it is evident the language in such provision is intended to provide the Commission with work opportunities for supplemental employees to address staffing needs for various contingencies. These work opportunities are to be used within each District, and this being the case, it is logical and clear that the calculation to determine the number of supplemental work opportunities be based on interchanges where consistent and meaningful staffing has occurred. While I have carefully assessed the documentation cited by the Commission concerning other ancillary matters, and how "interchange" has been defined, this information does not provide the best evidence in determining the meaning of the language at issue. It is evident, when the parties concluded their bargain as to how many supplemental opportunities would be available, there was a limitation placed upon such opportunities. The number of supplemental opportunities was predicated upon a precise formula, that being three work opportunities times the number of interchanges within the District. It is reasonable to conclude that the number of interchanges would be limited to such interchanges which would be manned by a

meaningful number of employees on a consistent basis. This is based upon the fact the work opportunities were to be made available within each District, and it is reasonable to conclude such work opportunities would be based upon a number of interchanges that had work opportunities available on a consistent basis. Furthermore, in my opinion, to accept the Commission's interpretation of interchanges including manned and unmanned interchanges would lead to an unacceptable interpretation of the language, and would lead to inconsistent results such as when considering the Commission position that two unmanned ramps constitute one interchange. Rather, a review of the language at issue leads to the reasonable conclusion that an interchange means what it says, that is, an interchange. In my opinion this would be where employees consistently work on a regular basis. While I understand that it is necessary to use employees, on occasion, at ramps which are not manned consistently, on a regular basis, such circumstances do not meet the test of being an "interchange" as defined in Article I, Section 3E.4 of the Agreement. It is my determination such language is clear, and requires that interchanges be defined as what would be considered a practical and reasonable definition, that being a manned interchange where employees are assigned and work on a regular basis. Consequently, the Union's interpretation of the language is more persuasive than the interpretation made by the Commission, and it is my determination that interchanges do not include unmanned ramps.

AWARD

The grievances are granted. The Commission is directed to use manned interchanges in its calculation to determine extra work opportunities for supplemental employees. In the event the Union can adequately demonstrate that employees lost earnings from the time the grievances were filed until extra work opportunities are calculated for supplemental employees by using manned interchanges, then such employees shall be made whole.



William J. Miller, Jr.
Arbitrator
April 12. 2010