in the matter of the

A R B I T R A T I O N

between

PACE West Division and Amalgamated Transit Union Local 241, S-MA-99-114, John Fletcher, 07/15/99

AMALGAMATED TRANSIT UNION

Local 241

and

PACE WEST DIVISION

ISLRB Arbitration No. S-MA-99-114

DECISION and AWARD

JOHN C. FLETCHER, Arbitrator

July 15, 1999

This matter came to be heard in the offices of Counsel for Local 241 of the Amalgamated Transit Union ("the Union") on April 13, 1999. The Union was represented by:

Lisa B. Moss, Esq.
Carmell Charone Widmar Matthews & Moss, Ltd.
225 West Washington Street, Suite 1000
Chicago, Illinois 60606

Pace West Division, ("the Employer") was represented by:

Thomas G. Draths, Esq.
Schuyler Roche & Zwirner
130 East Randolph Drive, Suite 3800
Chicago, Illinois 60601

Background:

Pace is the suburban bus service of the Regional Transportation Authority ("RTA"), the public transportation agency serving the six county area surrounding Chicago, Illinois. Pace is comprised of nine divisions, one of which is the Pace West Division. This division is headquartered in Melrose Park, Illinois, where the Employer maintains a single facility for its administration, dispatching, maintenance, and bus operations.

Prior to its incorporation into Pace, the Employer was known as West Towns Bus Company, and has had a collective bargaining relationship with Union for a considerable period of

time. Currently, the Union represents Employer's employees in the Maintenance Section and the Transportation Section under a collective bargaining agreement effective January 1, 1997, through June 30, 2001 ("the Agreement"). Under the Agreement, the Transportation Section includes Bus Operators and Dispatchers, within Union's unit(s). Under a separate collective bargaining agreement, the Union also represents employees of the Pace Heritage Division, headquartered in Joliet, Illinois.

In negotiating the current Agreement, the parties agreed to a side letter regarding the dispatcher classification, reading as follows:

> The parties reached impasse on the issue regarding whether or not the position of Dispatcher is to remain in the bargaining unit. In accordance with the applicable provisions of the Illinois Public Labor Relations Act, the parties agree to submit the issue to final and binding interest arbitration on an expedited basis.
>
> In the event the arbitrator rules in favor of Pace West, such incumbents in the Dispatcher classification will have the right, if they so chose, [*sic*] to return to a bargaining unit classification for which they are qualified within thirty (30) days[1] after the issuance the [*sic*] arbitration award. In the event any incumbent exercises that right, the Union will determine his/her seniority.

The parties have stipulated that the following three employees are affected by this dispute:

Stanley Rebacz
Seniority Date - August 17, 1976
Dispatcher Seniority - August 25, 1991

Ronald Robare
Seniority Date - June 6, 1980
Dispatcher Seniority - June 6, 1993

Joseph Filippelli
Seniority Date - September 5, 1991
Dispatcher Seniority - July 7, 1996

Pursuant to this side letter, the parties selected the undersigned to serve as Arbitrator. Hearing was held on this matter on April 13, 1999, at which time sworn testimony was given and a stenographic record was made. Counsel for the parties made oral closing arguments on the

[1] The parties have stipulated that this period is extended to ninety (90) days.

record. The record was closed on April 21, 1999.

STATEMENT OF THE ISSUE

The parties have agreed to the following Statement of Issue:

Whether the three dispatchers employed at Pace West Division are supervisors within the meaning of Section 2(r)[2] *of the Illinois Public Labor Relations Act; and, if so, whether they should be excluded from the Local 241 bargaining unit.*

The Employer has proposed the following in addition to the above Statement:

Whether the dispatchers should be excluded from the bargaining unit pursuant to interest arbitration for the most efficient operation of Pace West and consistent with the trend in the six county area transit industry.

RELEVANT STATUTORY PROVISIONS

Illinois Public Labor Relations Act

Section 3. Definitions.

As used in this Act, unless the context otherwise requires:

* * *

(r) "Supervisor" is an employee whose principal work is substantially different from that of his or her subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not a merely routine or clerical nature, but requires the consistent use of independent judgment. Except with respect to police employment, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding. . . .

(s) (1) "Unit" means a class of jobs or positions that are held by employees whose collective interests may suitably be represented by a labor organization for collective bargaining. Except with respect to non-State fire fighters and paramedics employed by fire departments and fire protection districts, non-State peace officers and peace officers in the Department of State Police, a bargaining unit determined by the Board shall not include both employees and supervisors, or supervisors only, except as provided in paragraph (2) of this subsection (s) and except for bargaining units in existence on July 1, 1984 (the effective date of this

[2] Although the parties have cited Section 2(r), it is Section 3(r) of the Act that defines "Supervisor."

Act). . . .

THE POSITION OF THE PARTIES

<u>The Position of the Employer</u>:

The Employer argues it has met the burden of proving that its dispatchers perform supervisory functions as that term is defined by the Illinois Public Labor Relations Act, hereinafter referred to as "the Act." It insists the dispatchers exercise discretion and independent judgment in a number of significant functions, including discipline and the assignment of work. The most important function of the dispatchers, says the Employer, is ensuring that bus runs are filled and out of the garage. When there is a miss-out (absence), it says the dispatcher has to exercise his own judgment from a variety of options.

Because dispatchers are the first line of discipline, the Employer asserts it has a fundamental problem. It recognizes the natural hesitancy of Union members to testify against one another. It insists, however, that it have the undivided loyalty of the dispatchers as they are the first line to whom the operators must report and they have the primary responsibility for alerting higher supervisory authority of uniform issues, attendance problems and drug or alcohol impairment. It submits this places the dispatcher in a very difficult situation when he is called upon to be a witness against another Union member.

The Employer argues the decision of the Illinois State Labor Relations Board ("ISLRB") in *City of Aurora and American Federation of State, County and Municipal Employees, Local 3298*, 7 PERI ¶2026 (April 24, 1991) should not be persuasive. It avers the decision was based upon the hearing officer's recommended decision and order, and never went before the full ISLRB for a decision on the merits. According to the Employer, the Amalgamated Transit Union took over the representation of the unit and agreed to remove the dispatchers from the unit. Thus, says the Employer, the case never went through all the tests and was never appealed.

Furthermore, the Employer contends *Aurora* is distinguishable because the dispatchers, who were referred to as "transit supervisors," could not assign work to operators or issue discipline beyond a verbal or written reprimand. The dispatchers in this case, notes the Employer, may change routes, move buses, move drivers or send a driver home without pay.

The Employer cites *Department of Central Management Services v. ISLRB*, 278 Ill.App.3d 79, 662 N.E.2d 131 (4th Dist. 1996), which it says employs the "preponderance test." In particular, the Employer quotes the following:

> The term "preponderance" means that the employee spends more time on supervisory functions than on any one nonsupervisory function. The presence of even one indicium of supervisory authority accompanied by independent judgment is sufficient to support a finding of supervisory status. "Independent judgment" means that the employee makes choices between two or more significant courses of action without substantial review by superiors. [citations omitted] (662 N.E.2d at 134.)

The Employer insists it has met this test by showing that dispatchers can make significant choices regarding the assignment of operators without having to go to a higher authority. The Employer further cites the court's definition of "preponderance," as follows:

> "Preponderance" can mean superiority in numbers or superiority in importance. If an employee spends 51% of employment time doing administrative functions and 49% in supervisory functions, the most significant part of the job may not be the administrative matters because of the importance of employee relations. Whether a person is a "supervisor" should be defined by the significance of what that person does for the employer, regardless of the time spend on particular types of functions. No one can expect mathematical certainty in these types of cases. (662 N.E.2d at 136.)

The Employer avers the important factor is that the employee have the authority to direct other employees when appropriate. It is not necessary, says the Employer, that a supervisor perform supervisory functions on a regular basis. The Employer further denies that supervision requires hands-on or eyes-on supervision. In this regard, the Employer cites *Chief Judge of the Circuit Court v. American Federation of State, County & Municipal Employees, Council 31*, 153 Ill.2d 508, 180 Ill. Dec. 288, 607 N.E.2d 182 (1992), as holding that a supervisor has, for a preponderance of the time, the authority to exercise and handle supervisory functions.

The Employer concludes that the dispatchers are supervisors under the definitions in the law. Alternatively, it argues that there is compelling evidence that all of the other Pace properties must control. Accordingly, the Employer asks that the dispatcher classification be excluded from the bargaining unit at the Pace West Division.

The Position of the Union:

The Union submits the Employer has a compelling burden to change the status quo. It submits that for over thirty years, with only a two or three year hiatus in the 1970's, the status quo has been that the dispatchers have been included in Local 241's bargaining unit. It insists that if there were any indicia of supervisory authority in this case, they would have to be more than merely routine or clerical in nature for the Employer to prevail under the Act's definition of "supervisor." According to the Union, The Employer has not met this test.

The Union asserts that the dispatchers do nothing more than complete a preprinted form when an employee is absent, and that this occurs only two or three times a month. It denies the dispatcher exercises any authority when he prohibits an employee from working without a valid commercial driver's license because he is just following the law. With regard to alcohol or drug impairment, the Union contends the dispatcher merely reports to a higher level of supervision that he suspects the employee may be impaired. It asserts the dispatcher does not have authority to send an employee for drug and alcohol testing. Additionally, the Union avers the evidence shows the dispatchers have no authority to discharge, promote, layoff, recall, transfer or hire other employees, or to make recommendations for such actions.

The Union cites *City of Aurora, supra*, which it says involved exactly similar circumstances and resulted in a finding that transit supervisors at Pace Fox Valley were not supervisors under the Act. In that case, suggests the Union, the employees in question had more supervisory authority than the established record in this case. According to the Union, the transit supervisors could give oral and written reprimands, send employees for drug and alcohol testing,

as well as other exercises of supervisory authority that are absent in this case. The Union also cites *City of Burbank and American Federation of State, County and Municipal Employees*, 1 PERI ¶2008 (1985).

Notwithstanding this position, the Union submits that any supervisory role the dispatchers might play is insufficient to remove them from a bargaining unit of which they have been members prior to July 1, 1984. The Union argues the mere fact that other Pace properties may have excluded dispatchers from the bargaining unit does not mean that they should be excluded in this case.

The Union concludes that the status quo should not be changed in this case, based upon the record evidence, the case law and the Act. It asks, therefore, that the Employer's request to remove dispatchers from the bargaining unit should be denied.

DISCUSSION

The Union has asked, in its proposed Statement of Issue, that this arbitration be limited to an interpretation of the Act; specifically the definition of "supervisor." The Arbitrator does not see his charge as being so limited. Had the parties intended the decision to rest solely upon the statutory definition, the appropriate avenue for such a resolution would have been to ask the ISLRB for a unit determination. By making this a subject of collective bargaining, and ultimately arbitration, it is evident that the parties intended to include other criteria as a basis for retaining or excluding the dispatchers from the bargaining unit. Accordingly, the Arbitrator finds the additional Statement of Issue proffered by the Employer to be appropriate.

Since the only witness in this proceeding was Regional Division Manager Richard Pullia, offered by the Employer, the evidence before the Arbitrator is essentially uncontroverted. Based upon the record, the Arbitrator finds that there are nine divisions within the Pace organization. Of those nine, <u>only the Pace West Division has dispatchers who are within a bargaining unit</u>. In at

least some of the others, if not all, Pace has negotiated to have the dispatchers excluded from the bargaining unit.

The duties and responsibilities of the dispatcher include ensuring that all bus runs have operators and leave on time. To accomplish this, the dispatcher must be able to assign employees to runs when operators do not report for work or when they have to leave work early. This may require the dispatcher to exercise discretion as to whether he is going to use an extra board employee, a part-time employee, an employee on his day off, or any other employee in the garage. In emergency situations, this may require the dispatcher to make decisions based upon expediency rather than the collective bargaining agreement. Additionally, the dispatcher may direct bus operators to take detours when street conditions warrant. The Arbitrator finds that such responsibilities are consistent with the definition of "supervisor" in the Act to the extend the dispatcher directs the work of subordinate employees.

It is evident that the dispatchers also have the authority to discipline employees, albeit to a limited extent. They may remove an employee from service when they suspect them of being impaired by drugs and/or alcohol or for uniform violations. This may require the dispatcher to make a judgment as to whether the operator is impaired or out of uniform. This, too, is a supervisory responsibility under the Act.

The Act does not require a supervisor to possess all of the duties enumerated in the definition of "supervisor." The legislature's use of the disjunctive conjunction "or" implies that it is sufficient that only one of the duties be part of the employee's job. The Arbitrator further finds that the supervisory duties performed by the dispatchers constitute a preponderance of their work, as that concept is used in *Department of Central Management Services, supra*. There was no testimony regarding the amounts of time spent by the dispatchers on their various duties, nor was a job study introduced. The only evidence before the Arbitrator goes to the question of the importance of these supervisory duties within the context of the dispatcher position. These duties

relate directly to the prime role of the dispatcher; namely to have the buses staffed and on the street. This is the *raison d'être* of the agency. The importance of these functions dictates that the positions be considered supervisory.

Notwithstanding the fact that the positions meet the statutory definition of a supervisor, the Arbitrator finds other cause to exclude the dispatchers from the bargaining unit. It is most significant that this is the only division of Pace where dispatchers are within the bargaining unit. With this Union, the Employer has been successful at negotiating a removal of similar positions on the Heritage Division. No rational basis for this difference has been offered, except that there has been a long history, albeit briefly interrupted, of the dispatchers being within the unit on the West Division and its predecessor, the West Towns Bus Company. There is no evidence of any bargaining unit containing dispatchers in any comparable community anywhere in the State of Illinois. In the single case where the ISLRB found the transit supervisors not to be supervisors, the Union (through a different local) subsequently agreed to exclude them.

There is a rational basis for excluding the dispatchers from the bargaining unit. In addition to the supervisory functions cited above, it is not unusual for the dispatchers to be required to testify on the Employer's behalf at arbitration hearings. Such testimony is typically adverse to the interests of the Union in its representation of other employees. The Employer expects the dispatcher to serve its interests, creating conflict for the dispatcher, as well as difficulty in his relationships with his brothers and sisters in the Union. Such divided loyalties are in no one's best interests.

All things considered, removal of the dispatchers from the bargaining unit would allow the Employer to make better use of these employees, thereby fostering the efficiency and effectiveness of the agency.

A W A R D

The dispatchers are to be excluded from the bargaining unit. The incumbents in the Dispatcher classification will have the right, if they so choose, to return to a bargaining unit classification for which they are qualified within ninety (90) days after the issuance of this Award. In the event any incumbent exercises that right, the Union will determine his/her seniority.

_____

John C. FLETCHER, Arbitrator

Mount Prospect, Illinois - July 15, 1999