

ERB: Arbitrator's ruling stands, but TriMet broke law

The transit agency is ordered to pay \$136,000 and stop trying to collect back-premiums

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Oregon's three-member Employment Relations Board (ERB) has ruled — once again — that TriMet violated Oregon's public employee labor law. In a July 19 decision, ERB ordered TriMet to cease further violations, pay \$136,000 into two funds, and stop trying to collect retroactive health insurance costs from employees.

"I see it as a win," said Amalgamated Transit Union Local 757 President Bruce Hansen.

The ERB ruling stems from Local 757's challenge to a July 2012 contract arbitration. Under Oregon law, transit workers can't strike, but instead submit contracts to binding arbitration if union and management can't agree. Arbitrator David Gaba picked TriMet's final contract offer over the union's. But in his written decision, Gaba pointed out several features of TriMet's contract offer that could be problematic or even illegal. Local 757 included some of those in its multi-part legal challenge, and TriMet responded with its own charges, saying the union had refused to cooperate with efforts to impose the arbitrator's decision.

The 47-page ERB ruling resolves all those

charges. Local 757 had hoped ERB would overturn the arbitrator's decision outright, but ERB didn't do that. Instead, it agreed with two union allegations, while dismissing its other allegations, as well as TriMet's charges against the union.

TriMet broke the law, ERB said, when it sent a different "final offer" to the arbitrator than the actual final offer it had presented to the union during bargaining. It also broke the law in August 2012 when — without bargaining over it — it stopped making payments to the Recreation Trust Fund and Employee Assistance Program. The union-administered Recreation Trust Fund pays for an annual picnic, among other things, while the Employee Assistance Program pays for Cascade Centers, Inc., to provide confidential employee counseling about marriage, drug and alcohol use and other personal issues. To remedy the violation, ERB ordered TriMet to pay \$63,000 to the recreation fund and \$73,000 to the employee assistance program by Aug. 19.

The ERB ruling also bars TriMet from trying to recoup past health insurance costs purportedly owed by ATU members. That bizarre scenario was one result of a three-year contract being imposed — retroactively — almost three years after the previous one expired. During the several years workers waited for their contract dispute to be resolved, they and their dependents had a health insurance benefit that was more expensive than the one the arbitrator later decided TriMet was ultimately responsible for. Once the arbitrator an-

nounced his decision, TriMet drafted a letter seeking to collect the difference from workers, but Local 757 urged members not to cooperate with any collection efforts, and in the end TriMet didn't send the letter.

Several other allegations by ATU were dismissed by ERB, including the claim that it was illegal retaliation for TriMet to stop paying union stewards to represent employees in grievances. Over a six-year period, TriMet paid \$150,000 to stewards to handle 1,400 grievances. ERB was persuaded that TriMet halted the payments on budgetary grounds, not to retaliate against employees for filing too many grievances. ERB also disagreed with ATU's contention that a provision limiting retiree cost-of-living increases violated the terms of previous contracts.

As of press time, it wasn't clear whether either side would appeal the ERB ruling to a court of appeals.

Under the imposed contract, TriMet still pays 100 percent of health insurance premiums, but the



insurance benefits are less generous: Workers pay a deductible and then 10 percent of costs up to an annual maximum. The contract also ends the traditional defined benefit pension for workers hired after Aug. 1, 2012. Instead, new hires get a 401(k)-style "defined contribution" retirement plan to which TriMet contributes 6 percent of wages.

The arbitrator-imposed three-year contract expired Nov. 30, 2012. After legal delays and schedule conflicts, bargaining over a new agreement will begin Sept. 7.

TriMet: Blind Spot on Bus Safety

In 2004, a TriMet bus that was turning left struck and killed a man in a crosswalk. The investigation that followed determined that the design of the bus itself was partly to blame. The 8-inch windshield pillar was so wide that it effectively blocked the operator's vision during left-hand turns. For small stature operators, the risk was even greater. Further analysis of accident statistics showed that the wide-pillar buses were responsible for over 36% of all crosswalk accidents, even though that model made up just over 10% of the TriMet fleet at the time.

SUBSEQUENTLY, the Union presented TriMet with videos, diagrams and expert witness testimony to demonstrate that this particular model of bus was inherently dangerous to pedestrians. The Union went on to request that TriMet provide special training to drivers, especially small stature drivers, so that more people would not be killed during left-hand turns. Lastly, the Union asked that those buses not be used on routes that had left-hand turns.

TRIMET IGNORED BOTH REQUESTS AND DID NOTHING TO FIX THE PROBLEM.

Fast-forward eight years to 2012, when TriMet signed a contract for 365 new buses. Operators were horrified to learn that the windshield pillar of the new buses is even wider. As shown in the photos on the left, a wide pillar like that on the new bus can "hide" as many as six adults, two children and a baby in a stroller — all at the same time! When the side mirror is added to that width, the blind spot becomes enormous, especially for short stature operators.

While there is no question that TriMet needs new buses, it is unbelievable that the agency would compromise public safety with such a significant purchase. What's even more unbelievable is that each of these 365 buses is getting an \$11,000 "nose job".

That's right. TriMet has decided to add a custom-fabricated "snoot" to each bus in order to match the look of the new Max trains. The expense alone seems questionable, but there's more. The snoot further compromises safety by creating yet another visual obstruction near the windshield pillar.

At a time when TriMet is blaming workers' benefits for its financial problems, the agency is spending over \$4 million on cosmetic surgery for 365 new buses. It appears that TriMet not only has a blind spot on bus safety, but also has a blind-eye for prudent spending.

Sincerely, Your Transit Workers

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