----------x

In the Matter of the Arbitration :

- Between - : Re: Spring 2023 RTO Pick
Canella, Gomez et al
Pass No. 327104

NEW YORK CITY TRANSIT AUTHORITY : LR No. CI-2023-0045
TWU No. 58418

"Authority" or "NYCTA" :

- and - :

LOCAL 100, TRANSPORT WORKERS UNION :

"Union" or "Local 100" :

----------x

APPEARANCES

For the Authority
Rasheeda Baksh, Esq., Labor Relations Attorney
Baimusa Kamara, Esq., Deputy Vice-President, Labor Relations
Aliaa Abdelrahman, Esq., Senior Director, Labor Relations

For the Union
Arthur Schwartz, Esq., Attorney
Richard Davis, President, Local 100
Anthony Utano, Former President, Local 100
Jack Blazewicz, Co-Director, Grievance and Discipline

BEFORE: HOWARD C. EDELMAN, ESQ., ARBITRATOR

This case involves the Spring 2023 RTO Pick for the 1, 6 and 7 lines. The Union contends the proposed pick violates the Collective Bargaining Agreement. The Authority disagrees.

For many years (more than 50) RTO picks have involved selecting five consecutive days, RDOs and vacations separately. In this process, the employee has picked the run, then the days off, followed by vacations. Start times and end times were the same or nearly so, as were start and end sites. To complete the pick, workers checked the available slots and had ten minutes to call in and choose their schedules, all by seniority.

Recently, the Authority decided to propose picks at variance with the previous process. As clarified at the hearing held on February 23, 2023, some runs varied by an hour or more, and during their ten minutes on the phone employees had to pick RDOs right after their five day schedule.

That is the essence of the dispute before me. The Union contends the new pick structure eradicates the long standing practice cited above. The Authority insists the picks are not packaged and that pursuant to its management rights, it is free to impose the new system.

I have reviewed the record on this issue in detail. My analysis convinces me the Union's grievance must be sustained. This is so for a number of reasons.

First, unlike the previous method, the new schedules contain substantial variations in start and end times. This change has a major impact upon workers' lives, especially those who have child care obligations.

Second, while the Authority contends the "cafeteria style" pick remains undisturbed, it is very difficult for the employee, having been denied the RDOs selected, to choose others given the size of the pick book and the time allocated.

Also, the difficulty of selecting five days of work in a row constitutes another change from the past. This factor, too, weighs in the Union's favor.

The Authority cited Section 1.6(A) which gives it the right "to fix operating schedules and personal schedules [and to] order new work assignments." I agree these are significant prerogatives. It certainly may decide to alter say, Monday and Friday service since fewer passengers are riding the subways those days. However, it must do so in a way which respects the Union's pick rights, noted above. It has not done so, I am convinced.

Both parties cited a number of Awards in favor of their positions. The Union's are entitled to greater weight, I find. In Hines, Arbitrator Collins opined that:

> ...when there is a past practice that has some nexus to the contract text, and which also goes to matter involving very important working conditions, the situation is one in which the practice is entitled to great weight within the meaning of the second paragraph of Section 1.3 of the Contract.

The same principle applies here, I find.

Decisions cited by the Authority do not warrant a different conclusion. Burgess involved work jurisdiction and O'Brien the elimination of two TPPA posts. Neither addressed pick rights. While Ingram did, the rights there were not of the magnitude in this dispute. Thus, the cited Awards support the Union's claim, not the Authority's defense.

NYCTA insisted that the new pick contains the "cafeteria" method of the old. In theory, this may be so. However, as suggested above, it severely hampers the employee's ability to make an informed selection if his/her first is rejected.

For these reasons, I sustain the Union's claim. However, Local 100 should not misinterpret this finding. While the Authority is directed to construct a pick which

gives appropriate weight to prior pick practices, it is not necessarily required to adhere strictly to every detail of prior picks. Rather, consistent with its need to adjust schedules, it must give far greater deference to the pick rights than exists currently.

In light of this determination, I shall direct the Authority to construct a pick, after consultation with the Union, which conforms to the terms of this Opinion. The Union is free to return to me if it believes the revised pick violates the Collective Bargaining Agreement. It is so ordered.

AWARD

1. The proposed RTO pick violates the Collective Bargaining Agreement.
2. The Authority is directed to construct a new pick in accordance with the terms of this Opinion.

Dated: 2/28/23

Howard C. Edelman, Esq.
Arbitrator

State of New York)
) s.:
County of New York)

I, Howard C. Edelman, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.

Dated: 2/28/23

Howard C. Edelman, Esq.
Arbitrator