



AMALGAMATED TRANSIT UNION

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TRACKING FASTER

Union loses the battle but wins the war

The Union filed an unfair labor practice against TriMet over TriMet's unilateral implementation of the SIP customer complaint policy. The judge in that case is recommending that the complaint be dismissed. That is the battle that was lost. The judge's opinion, however, establishes that the Union won on all major points. The findings of the judge are important for you to know about because YOU are the eyes and ears of the Union and when the principles below are violated by TriMet, you need to sound the alert. So here are the important wins:

1. TriMet claimed that union members had no history of rights with regard to how customer complaints were handled -- the judge said that was not true.
2. TriMet claimed that it did not have to bargain over how it handled customer complaints -- the judge said TriMet must bargain.
3. TriMet claimed it did not have to give employees rights with regard to how TriMet handled customer complaints -- the judge said TriMet must give the employees due process rights.
4. TriMet claimed it could question employees about a customer complaint without a union officer present -- the judge said the employees have a right to request that a union officer be present. Thus, you should ask for an officer and not answer any questions about the complaint until an officer arrives.
5. TriMet claims that people cannot grieve the issuance of a SIP -- the judge says the Union should grieve SIPs that might impact promotion, bonuses, and job security [this means every SIP since TriMet retains them to show future arbitrators in discipline cases] **RECOMMENDATION: Regularly request a printout of all customer complaints in the TriMet data base that are attached to your name or employee number.**
6. TriMet is bound by the testimony of its witnesses, under oath, that many of the protections employees had under the 1996 customer complaint policy are incorporated into the "just cause" provisions of the labor agreement. The Union has a list of these protections that TriMet's witnesses testified were part of just cause.

What we learned, which was not clear from prior unilateral change cases, is that:

1. If it walks, quacks and flaps like a duck, it still might not be considered a duck, therefore, **everything** must be in writing. What management says across the bargaining table is meaningless -- Rose Jordan, Sam Schwarz, Bruce Hanson, Sandra Guengerich and myself all testified, under oath, that the parties talked about the fact they were bargaining over the customer service policy. Peggy Hanson, however, testified that she thought that the parties were just "talking" and not bargaining. The judge found that because one of the parties at the bargaining table, Hanson, testified she didn't think she was bargaining, the parties weren't bargaining. In essence the judge ruled that a union must get a written confirmation from the employer that the parties were bargaining.
2. A union must file an unfair labor practice unless the employer puts in writing that it is bargaining. It is not enough that the employer walks, quacks and flaps like a duck.
3. If the employer has excuses for not being timely in following through on promises it makes in bargaining, a union should ignore those excuses and hold the employer to strict timelines. A union should move a matter to interest arbitration at the end of 90 days of bargaining, regardless of the employer having excuses and asking for delay.
4. If a lower level manager makes incorrect statements about a TriMet policy or practice, repeatedly puts those statements in writings to the union and sends it to upper management and upper management fails to correct the station manager, upper management is not bound by that station manager's incorrect statements. Thus upper management can know a lower level manager is lying, do nothing to correct the lie and get a pass. Another way of saying this is that, if an employer's operation is in chaos, it is the union's responsibility to straighten it out, not management's.

Documents subpoenaed during the course of this legal proceeding revealed that TriMet's legal department was secretly involved in this process from the beginning. The Union interacts with 19 different employer groups. Of these, **ONLY TriMet** engages in such hostile, deceptive and dishonorable tactics calculated to harm the well-being of the people who actually provide the service.

Fraternally,

Jonathan J. Hunt
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