

# Union Drivers' Journal

Organizing Crew Transporters for a Better Life On and Off the Job

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## Union Update for PTI Drivers

April 23, 2018

**The Court Action:** As you know, PTI has gone to Federal Court to try to reverse the Arbitrators decision over its failure to pay your 2016 Wage Increases. On Friday, April 20<sup>th</sup>, the Company filed its position on summary judgment. Our attorneys have until May 18<sup>th</sup> to counter file our position. As we've said before, the slow pace of the courts is frustrating for all of us. But patience is the virtue we need here.

**Bargaining – Grievance Progress:** It is customary to attempt to settle any outstanding grievances in negotiations so that any new agreement begins with the prior issues resolved. In PTI's case, even though we had resolved hundreds of cases, we still had 139 open issues as this bargaining round began. We have had a number of both face-to-face meetings and conference calls over these cases. As it now stands, we have resolved 109 issues; moved 4 to Arbitration; and have 24 issues we are still discussing for possible resolution. Among those still pending are a complex set of cases dealing with the NEMT (Medical Drivers).

**Drivers We Need To Contact:** We are trying to locate some drivers who have not kept up their contact information. If you have any way of reaching the following drivers, please call the hotline and leave that information. The drivers are: Janell Jacobson (Selina,KS); Murdoch Jones (Cleveland, OH); Damion Bannister (Wilcoe, WV); Barbara Schrum (Burlington, IA); Katherine Beck (Columbus,OH); Darryl Webb (Chicago East); and Sarah Dean (McDowell NEMT).

**Bargaining:** While we continue to try to resolve the remaining grievance issues, the bargaining agenda began to deal with union and company contract change proposals. Some members have expressed the feeling that until the 2016 and 2017 Wage Raise issues are resolved, the union should refuse to bargain over a 2018 Contract. To be clear, labor law requires we enter into bargaining at the expiration of a contract or lose the right to bargain all together. Also to be clear, we have told the company that a baseline requirement to reach a 2018 Contract is the resolution of those wage violations in the prior contract. The first step in discussing issues is the exchange of non-economic proposals.

**Bargaining – Non-Economic Issues:** On April 17<sup>th</sup> we met with the Company in Indianapolis to begin discussions over non-economic issues. These are contract language changes and issues that do not directly increase wages and benefits. Issues like the 2016 and 2017 Wage Raises, new wage increases, vacation, personal days are "economic issues" that will be dealt with as the last step in the bargaining process.

We began the sessions reviewing a 30 slide Union Presentation that detailed the results of our membership survey. As in 2015, the 2018 negotiations proposals from the union are based on what members told us in that survey and contract issues that arose from grievances.

The Union presented 71 “non-economic” issues. The Company presented 19 non-economic issues. Over the course of three days of discussions we were able to reach tentative agreement on 12 union proposals and 2 Company proposals. The next bargaining session will be in Pittsburgh during the second week of May.

**Economic Proposals:** Once the non-economic issues are dealt with, we will move to “economic” issues. While we have yet to exchange these proposals with management, the union has some 30 proposals to present.

**What Goes On in Bargaining?:** We realize that most drivers have never been part of any labor negotiations or contract bargaining. But there really isn’t much mystery to the process. Each proposal that is submitted is put on an agenda for discussion. In this case, PTI sent its Chief Operating Officer Mike Morin and the Director of Human Resources Steve Greulich. For this portion of the bargaining the union was represented by UPSEU/USW Service Agreement Coordinator Ike Gittlen and USW Local 7234 President Rich Zimmerman. When we get to the economic discussions, both sides will add additional people to the talks.

The company and union have agreed to use a problem solving approach to the non-economic issues. The discussion starts out with a detailed explanation of the issue, the other party responds, and an effort is made to try to come up with something that fixes what is at issue. For example, the union had an issue where the Railroads ordered up “yard assist” vans from the over the road drivers pool, who were actually assigned regularly to yard work. Our drivers wanted those positions bid, where it became clear that those assignments would be ongoing. The resolution was to identify where this was happening and post temporary bids for those shifts. Sometimes either side needs to consult with people involved in an issue to get the facts right. Once that is done, the parties can either figure out a resolution, withdraw their proposal, or leave it open for further discussion.

**Everybody is an Organizer:** With the high turnover in drivers and the isolated way drivers work, union reps and stewards cannot possibly reach out to every new driver by themselves. The only way to build unity and strength is for each member to make a conscious decision to get to know new drivers, see that they get connected to the location steward, and urge them to join the union. One-on-One is the way it gets done.

**Instant Pay Anyone?:** Technology is opening up all kinds of new possibilities for workers. One of the interesting topics the company raised at the bargaining table was the idea of “instant pay”. Apparently it is possible to pay over the road drivers as they complete trips. While some money needs to be held back for taxes, court-ordered payments and other deductions, it is possible to take a trip and see some of those earnings go directly and immediately to your pay card. The company is just at the start of looking into what this might cost and how long implementation would take. The union is interested in your thoughts about being paid this way. At the moment, yard drivers are not being considered for this system, but that may come later. Let us know what you think about “instant pay” by emailing us at [1222@usw.org](mailto:1222@usw.org).

**Constructor or Destructor?:** In these negotiations, the one thing the company is concerned about is the unity of its drivers. If the railroad customers begin to feel that driver services may be

disrupted, that threatens their profits. The union's power is in how determined and unified drivers are. If the company decides drivers will stick together and intend to get what is owed them, then we have an opportunity to resolve the company's wage obligations under the 2015 labor agreement and gain a reasonable economic package in the 2018 negotiations. If the company sees their workforce as a splintered and unconnected group, they will use divide and conquer tactics to avoid resolution and a decent economic proposal. So if you're talking to your coworkers about how to stick together and be resolute about a fair deal, you are constructing solidarity and improving the negotiations outcome. If your frustration with the bargaining and court process becomes rants against the union, you are helping the company destroy unity and solidarity. The union is your tool to do better through joining your voices together. To be successful we need to all be singing out of the same songbook. What you do will make a difference.

### **How Important is Your Union to You?**

**Martin Luther King Jr.** – *“The labor movement was the principle force that transformed misery and despair into hope and progress”*

**Bruce Springsteen:** *“Unions have been the only powerful and effective voice working people have ever had in the history of this country”*

**Delores Huerta:** *“If we don't have workers organized into labor unions, we're in great peril of losing our democracy”*

**Pope Francis:** *“Trade unions have been an essential force for social change, without which a semblance of a decent and humane society is impossible under capitalism”*

**PTI Driver:** “insert your quote here”

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**What the Law Says About Federal Court Intervention in Labor Arbitrations:** For those who want to know more about why our attorney's feel the PTI Federal Court attempt to wipe out the Arbitrators ruling on the 2016 Failure to Pay Wages case goes against long-settled legal rulings, we thought this bit of legal history would be helpful.

### **LABOR ARBITRATION UNDER § 301 OF THE LMRA; *STEELWORKERS TRILOGY***

*(Relevant Portions of the Article Reprinted Here)*

#### *Steelworkers Trilogy*

In three leading cases, known as the *Steelworkers Trilogy*, the U.S. Supreme Court laid down broad principles governing labor arbitration. The first two, [\*Steelworkers v. American Manufacturing Co.\*](#), 363 U.S. 564 (1960), and [\*Steelworkers v. Warrior & Gulf Navigation Co.\*](#), 363 U.S. 574 (1960), dealt with court enforcement of agreements to arbitrate. The third, [\*Steelworkers v. Enterprise Wheel & Car Corp.\*](#), 363 U.S. 593 (1960), dealt with enforcement of an arbitration award. (Only about 2% of all labor arbitration awards are appealed to the courts.) The *Trilogy* rationale was that arbitration was a substitute for strikes and was to be preferred over litigation because of arbitrators' “knowledge of the common law of the shop” and their capacity to consider not only the express

provisions of the contract and the parties' customary practices but also the more intangible factors affecting employee morale and plant productivity.

*Lessons of the Trilogy Reaffirmed*

In *Paperworkers v. Misco, Inc.*, 484 U.S. 29 (1987), and *Eastern Associated Coal Corp.*, 531 U.S. 57 (2000), the Supreme Court reexamined *Enterprise Wheel, supra*, and the standards for judicial review of an arbitral award that has been issued. A valid award must “draw its essence” from the labor contract but a court must not otherwise review the merits of an arbitral decision. As long as there is no fraud or denial of due process, or exceeding of authority under the parties' submission, a mere mistake of law or fact by the arbitrator is not grounds for vacating the award.

An arbitrator must be allowed considerable flexibility, especially in formulating remedies for situations that were never anticipated. Yet even so, an arbitrator cannot “dispense his own brand of industrial justice.”

*Excerpted From: A Brief Overview and Historical Background on Labor and Employment Arbitration by Professors Malin, Oldham and St. Antoine (Part III) - July 29, 2015 - This is the third part of a four-part series essay by Professors Martin H. Malin and James Oldham and Ted St. Antoine on the history and legal framework of labor and employment arbitration.*

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