

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TRANSPORT WORKERS UNION OF AMERICA :
LOCAL 234, AFL-CIO :
 :
v. : Case No. PERA-C-20-75-E
 :
SEPTA :

PROPOSED DECISION AND ORDER

On March 19, 2020, the Transport Workers Union of America Local 234, AFL-CIO (Local 234 or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Southeastern Pennsylvania Transportation Authority (SEPTA or Authority), alleging that SEPTA violated Section 1201(a) (1) and (5) of the Public Employee Relations Act (PERA or Act) by refusing to provide information essential to the processing of grievances and to monitor and enforce the collective bargaining agreement.

On July 1, 2020, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on August 31, 2020, if necessary.¹ The hearing ensued, as scheduled, on August 31, 2020, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.² The parties each filed separate post-hearing briefs in support of their respective positions on October 29, 2020.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. SEPTA is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5-6)
2. Local 234 is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5-6)
3. Local 234 is the exclusive bargaining representative for a unit of transit employes working at SEPTA. (PERA-C-19-60-E)
4. Local 234 and SEPTA are parties to a Collective Bargaining Agreement (CBA) effective November 7, 2016 through October 31, 2021. (Union Exhibit 1, PERA-C-19-60-E)
5. SEPTA assigns work to transit operators at each of its locations through an assignment process that allows operators to pick their assignment by seniority. Specifically, operators may pick a regular run, and any operators who are not able to pick a regular run based on their seniority may pick a relief run or other types of non-regular runs. Operators who are not able to pick a regular or other type of run become slate operators, who are

¹ The processing of the charge was initially delayed as a result of the covid-19 pandemic.

² The parties agreed to a virtual hearing in light of the pandemic.

assigned work on a daily basis, which may differ. (N.T. 22-23; Union Exhibit 2)

6. Section 417(A) (2) of the CBA, which is entitled "Reporting List for Extra Persons," governs the procedure by which slate operators receive work and establishes 12 factors to determine the priority of assignments. Specifically, that Section provides in relevant part as follows:

(a) The "Reporting List for Extra Persons" will be made up each day and posted at 2:30 p.m. to show hold-down assignments, run assignments for open runs reporting before 12:30 p.m. on weekdays and Saturdays, or reporting times for extra persons, for the next succeeding day.

(b) The position of each extra person on the reporting list for the next succeeding day shall be determined by the work received or assigned as of 12:30 p.m. Extra and regular trainpersons or buspersons to be assigned work or reporting times on such reporting list will be placed on the reporting list in the following order:

1. New trainpersons or buspersons appointed that day.
2. Extra persons returning from sick leave of five (5) or more days.
3. Extra persons borrowed from other districts on that day.
4. Extra persons who have made their reports for the day and received less than a days [sic] work.
5. Extra persons who return from sick leave of less than five (5) days.
6. Extra persons whose day off was that day.
7. Extra persons who were excused from making their reports for the day.
8. Extra persons returning from vacation.
9. Extra persons who were excused at the time they made their report.
10. Extra persons who received a days [sic] work or more for the day and extra persons who missed less than one hour.
11. Extra persons who lose hold-down runs that have been assigned to them for five (5) or more days.
12. Extra persons returning from disciplinary suspension.

(Union Exhibit 1)

7. Each day, SEPTA dispatchers at each location post a copy of the assignments for slate operators for the following day. This reporting list tells the slate operators whether they have a run or receive a report, which means coming in at a specific time in the morning. The slate operators may also receive a 12:30 report, which means they have to call by 11:00 am to get their assignment for that afternoon or evening. (N.T. 23, 34, 66)

8. If an operator receives a 12:30 report, there is no way to tell what position he or she should be in the rotation simply from the reporting list. The reporting list that says 12:30 instructs the slate operators to contact the dispatcher by 11:00 am, at which time the dispatcher will inform the operator what run he or she has and what time it reports. (N.T. 23-24)

9. By the end of the business day, the dispatchers create a marked-up version of the reporting list showing what work each operator actually performed, i.e. what run those who were only given a reporting time were assigned; if an extra operator called out sick and did not perform his or her assigned run, etc. This all affects the rotation of the slate for the next day according to Section 417(A)(2) of the CBA. (N.T. 24-26; Union Exhibit 1)

10. The only way for the Union to determine if the dispatchers assigned the work properly in accordance with Section 417(A)(2) of the CBA is to review both the reporting list and the marked-up version that the dispatchers use as a worksheet. The reporting list that is posted every day at 2:30 p.m. does not contain enough information to determine if the dispatchers are properly rotating the slate because it does not show what actually transpired. (N.T. 26-28, 37-38, 51-52, 57)

11. On February 26, 2019, the Union filed grievance number 19-03, alleging that SEPTA violated the CBA by failing to assign open runs to extra people first and in the correct order, while using regular overtime and straight time operators, as if they were part of the contractual rotation used to assign runs to extra people. The Union demanded that the practice stop immediately and the number of extra people at each location should be adjusted, so that there are a sufficient number of operators on the slate to fill runs that open on a daily basis due to sickness, injuries on duty, vacations, and personal days. (SEPTA Exhibit 2)³

12. On February 19, 2020, the Union filed grievance number 20-01, alleging that SEPTA violated the CBA by refusing to provide the Union with copies of the slates (the reporting list and the marked-up worksheet used by the dispatchers) on a weekly basis at the surface transportation locations. Specifically, the Union alleged that access to the slates is required to monitor and enforce the contractual rights of extra operators, which were being violated on a regular basis. (N.T. 56; SEPTA Exhibit 1)

13. Local 234 Business Agent Ronald Newman testified that he filed grievance 20-01 after processing a separate grievance filed in December 2019, which alleged that a specific operator was improperly rotated on the slate. As part of that grievance procedure, SEPTA agreed that the operator was harmed and paid her time for a missed run. However, SEPTA refused to provide copies of the dispatcher's worksheet on January 22, 2020, and then again on January 31, 2020, at succeeding steps of the grievance process. (N.T. 56; Union Exhibit 5)

14. Newman testified that, following that determination by SEPTA, he met with Michael Feinberg, SEPTA's Manager of Labor Advocacy, who told Newman that grievance was specific to that individual employe. Feinberg advised Newman that he needed to file a general grievance relative to the dispatchers' reporting list and worksheet, which was the impetus for grievance 20-01. (N.T. 56-57; Union Exhibit 5)

15. SEPTA refused to provide the Union with copies of the dispatchers' reporting list and worksheet after the Union filed general grievance 20-01. (N.T. 60-61)

³ The parties eventually processed grievance number 19-03 to arbitration and were waiting for an award at the time of the hearing. The Union stipulated that it was no longer seeking any relief relative to grievance 19-03. (N.T. 40-42).

DISCUSSION

In its charge, the Union specifically alleged that SEPTA violated Section 1201(a) (1) and (5) of the Act⁴ by refusing to provide information essential to the processing of grievances and to monitor and enforce the CBA. SEPTA contends that the charge should be dismissed because the information is irrelevant to the grievances, and SEPTA already provides the information to the Union when it posts the reporting list at 2:30 p.m. SEPTA further maintains that, in the alternative, the charge should be deferred to the grievance arbitration process in light of the Union's pending grievance in case 20-01.

It is well settled that an employer has a duty to provide requested information to the union, which is relevant to the union's policing of the collective bargaining agreement, even where no grievance is pending. Bristol Township, 27 PPER ¶ 27046 (Proposed Decision and Order, 1996). The standard for relevance is a liberal discovery type standard that allows the union to obtain a broad range of potentially useful information. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987).

The Union has sustained its burden of proving a violation of the Act. Indeed, the record shows that the Union has filed grievances and requested copies of the reporting list, as well as the dispatchers' marked-up version of the reporting list, to police the CBA. Likewise, the record clearly demonstrates that, without access to this information, there is no way for the Union to determine whether SEPTA's dispatchers are assigning work properly in accordance with Section 417(A) (2) of the CBA. Further, the record shows that SEPTA refused to provide the requested information to the Union even after the Union filed general grievance number 20-01 in February 2020, as requested by SEPTA. As a result, SEPTA has committed unfair practices under the Act.

SEPTA maintains that the charge should be dismissed because the information sought by the Union is irrelevant to the two grievances filed in February 2019 and February 2020. According to SEPTA, the grievance filed at case number 19-03 has already been processed to arbitration, and the Union is no longer seeking relief as it relates to that specific grievance. In addition, SEPTA points to the relief sought by the Union in grievance 20-01, which is to be provided with copies of the slates from all surface transportation locations on a weekly basis. SEPTA asserts that, since the Union is seeking the same remedy in the instant unfair practices charge, that information cannot be relevant to processing of grievance 20-01. Put simply, SEPTA claims that the Union does not need copies of the slates to prosecute a grievance that seeks copies of the slates. (SEPTA's brief at 6).

SEPTA's argument lacks merit, as it overlooks the fact that an employer has a duty to provide requested information to the union, which is relevant

⁴ Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act...(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

to the union's policing of the collective bargaining agreement, even where no grievance is pending. The Union alleged in the charge that the dispatchers' worksheet or the marked-up version of the reporting list is necessary to monitor and enforce Section 417(A)(2) of the CBA, which is being violated on a regular basis. Since the dispatchers' worksheet or the marked-up version of the reporting list shows exactly what hours the bargaining unit members worked, and is the only way to determine whether SEPTA is complying with the rotation of the slate governed by the CBA, it is beyond dispute that the requested information is relevant, and not just a "fishing expedition," as alleged by SEPTA in its post-hearing brief. Indeed, the record is replete with references to several other potential grievances, alleging that SEPTA is violating the CBA in this regard. (N.T. 67-68; Union Exhibits 5 & 6). Moreover, the Union specifically alleged in general grievance 20-01 that the contractual rights of the extra operators were being violated on a regular basis. (SEPTA Exhibit 1). Therefore, the marked-up version of the reporting list is certainly relevant to grievance 20-01, as it would undoubtedly assist the Union in determining whether to file additional grievances and/or process them to arbitration.

To the extent SEPTA also argues that it already provides the requested information by posting copies of the slate at 2:30 p.m. in accordance with Section 417(A)(2) of the CBA, this argument is similarly rejected. As previously set forth above, SEPTA posts the reporting list which shows the assignments for slate operators for the following day. This reporting list tells the slate operators whether they have a run or receive a report, but it does not show what actually transpired. Only the dispatcher's marked-up version of the reporting list shows what work each operator actually performed, i.e. what run those who were only given a reporting time were assigned; if an extra operator called out sick and did not perform his or her assigned run, etc., which all affects the rotation of the slate for the next day.

Finally, SEPTA's argument that the charge should be deferred to the grievance arbitration process is equally lacking in merit. The Commonwealth Court long ago rejected such a notion when it recognized that the duty to provide information is a statutory obligation, which exists independent of the agreement between the parties. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987). Indeed, by refusing to provide information relevant to the processing of grievances and to policing the CBA, SEPTA is interfering with the very grievance arbitration process, to which it now seeks deferral. Accordingly, the charge will not be deferred, and SEPTA will be found in violation of Section 1201(a)(1) and (5) of the Act.

CONCLUSIONS

The Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. SEPTA is a public employer within the meaning of Section 301(1) of PERA.
2. Local 234 is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.

4. SEPTA has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

HEREBY ORDERS AND DIRECTS

That SEPTA shall:

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to bargain collectively in good faith with the employee organization which is the exclusive representative of employees in the appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Immediately provide the Union with copies of the dispatchers' worksheets or marked-up versions of the reporting list, as requested in grievance 20-01 and on an ongoing basis;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place, readily accessible to its employees, and have the same remain so posted for a period of ten (10) consecutive days;

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this 23rd day of December, 2020.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

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SEPTA :

AFFIDAVIT OF COMPLIANCE

SEPTA hereby certifies that it has ceased and desisted from its violations of Section 1201(a) (1) and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein by immediately providing the Union with copies of the dispatchers' worksheets or marked-up versions of the reporting list, as requested in grievance 20-01 and on an ongoing basis; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid

Signature of Notary Public