

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :
 :
v. : Case No. PERA-C-98-280-E
 :
TRANSPORT WORKERS UNION OF :
AMERICA, LOCAL 234 :

FINAL ORDER

On March 18, 1999, the Southeastern Pennsylvania Transportation Authority (SEPTA) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO) entered on February 26, 1999. In the PDO, the hearing examiner concluded that the Transport Workers Union of America, Local 234 (Union) did not engage in a secondary boycott in violation of Section 1201(b)(7) of the Public Employee Relations Act (PERA). Also enclosed with SEPTA's exceptions was a request for oral argument.¹ On April 5, 1999, the Union filed a response to SEPTA's exceptions and a supporting brief.

The hearing examiner found that the Union represents employes in SEPTA's City Transit Division (CTD) and that during a strike by the employes of the CTD in June 1998, the Union conducted picketing at SEPTA's regional rail facility. However, the hearing examiner dismissed SEPTA's charge that such conduct by the Union was an unlawful secondary boycott under Section 1201(b)(7) of PERA because: (1) SEPTA's Regional Rail Division (RRD) and its employes are covered by federal collective bargaining legislation, i.e. the Railway Labor Act (RLA),² and therefore the Board is preempted from exercising jurisdiction over the RRD as a "public employer" under Section 301(1) of PERA; (2) the RRD is not a separate, independent employer as is necessary to find a secondary boycott; and (3) the RRD was allied with SEPTA during the strike and thus did not have secondary boycott protection.

Although SEPTA argues in its exceptions that the RRD is a "public employer" under Section 301(1) of PERA, it does not specifically except to the hearing examiner's conclusion that the federal preemption doctrine prevents the Board from exercising jurisdiction over the RRD and its employes. This conclusion is consistent with the Board's decision in Southeastern Pennsylvania Transportation Authority, 30 PPER ¶ 30117 (Final Order, 1999), in which the Board stated:

"[O]ur review of the law leads us to the conclusion that Complainant has overlooked the fact that enactment of federal labor laws addressing the subject matter at issue here (a statutory scheme for collective bargaining) effectively preempts state legislation dealing with the same subject matter. [The RLA] sets forth a comprehensive scheme for collective bargaining which is very different than that set forth in PERA. It is for this

¹ The request is denied because this case does not involve novel issues of fact or law.

² SEPTA and the Union stipulated before the hearing examiner that the employes of the RRD are covered by the RLA (N.T. 11).

reason that federal preemption operates to preempt state

government assertion of jurisdiction over the same subject matter"

30 PPER at 253.

Here the Board is likewise preempted from exercising jurisdiction over the RRD and its employes. Therefore, SEPTA's unfair practice charge was properly dismissed by the hearing examiner. Indeed, even if the federal preemption doctrine did not apply, for the reasons stated by the hearing examiner, the RRD lacked secondary boycott protection because it is not a separate, independent employer and/or was allied with SEPTA during the strike. Consequently, we must dismiss SEPTA's exceptions to the PDO.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed and the Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED in Harrisburg, Pennsylvania, pursuant to the Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Edward G. Feehan, Member, this eighteenth day of January, 2000. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81 (a), to issue and serve upon the parties hereto the within Order.

CHAIRMAN JOHN MARKLE, JR., DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THIS CASE.