

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED TRANSPORTATION UNION :
 :
 v. : Case No. PERA-C-09-128-E
 : (PERA-R-09-36-E)
 :
 SOUTHEASTERN PENNSYLVANIA :
 TRANSPORTATION AUTHORITY :
 VICTORY DISTRICT :

PROPOSED DECISION AND ORDER

On April 6, 2009, the United Transportation Union (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board), alleging that the Southeastern Pennsylvania Transportation Authority Victory District (SEPTA) violated Section 1201(a)(1) and (2) of the Public Employe Relations Act (PERA).

On April 16, 2009, the Board Secretary issued an Order and Notice of Hearing, wherein a hearing was scheduled for April 30, 2009, in Philadelphia. The hearing was held on that date, at which time all parties in interest were afforded a full opportunity to present evidence and to cross examine witnesses. Neither party filed a post-hearing brief.

The hearing examiner, on the basis of the evidence presented at the hearing, and from all matters of record, makes the following:

FINDINGS OF FACT

1. The Union is the current collective bargaining representative for the SEPTA Victory District employes.

2. SEPTA is a public employer.

3. Sometime in March of 2009, Victor Baffoni, Vice-President of the Union, was on SEPTA property; more specifically, in the drivers' room, located at 110 Victory Avenue, near the 69th Street Station. Baffoni had come to Philadelphia because of the upcoming, April 1, 2009, election. That election was to determine whether the Union or the Association of Transit Operators (ATO) would represent the Victory District's operators for purposes of collective bargaining. Baffoni never sought SEPTA's permission to be on SEPTA property. The drivers' room was specifically posted as an area for authorized SEPTA employes only. Baffoni was not a SEPTA employe. SEPTA drivers are paid from the time they report to the dispatcher's window in the drivers' room. SEPTA allowed no ATO, non-employes in the drivers' room. (N.T. 6, 7, 11-15, 18, 24, 49, 63, 64, 66-69; SEPTA Exhibit 1, SEPTA Exhibit 2).

4. James Michael Lewis, an International Organizer for the Union, on April 1, 2009, the day of the election, was at the intersection of the trolley and bus platforms in 69th Street Station. That location is private property owned by SEPTA, where the riding public is allowed. He was there to speak to SEPTA employes. SEPTA representatives ordered Lewis off the property with the threat of arrest if he failed to comply. The Union also had a van parked on SEPTA property, immediately under a "No Parking" sign. The Union did not have SEPTA's permission to park there. SEPTA ordered the Union to move their van from that location, which was specifically reserved for SEPTA vehicles. (N.T. 20, 34, 37, 40, 54, 65, 66, 72, 75; SEPTA Exhibit 2).

DISCUSSION

The Union charges SEPTA with violating Section 1201(a)(1) and (2) of PERA when SEPTA refused access to a non-employe, Union representative, in a work area, during work time. The Union also alleges an unfair practice when SEPTA made a non-employe, Union representative, both leave 69th Street Station and move a van parked on SEPTA property, in

a space clearly marked as a no-parking area.¹ Because the Union has not proved any violations of PERA, this charge is dismissed in its entirety.²

The Union charges that SEPTA "tainted laboratory conditions" when it refused to allow a Union representative, who was not a SEPTA employe, to remain in a work area, during work time. The Union levels the same charge against SEPTA when SEPTA also refused to allow non-employe, Union representatives to talk with SEPTA employes, during work time. The employes in question were walking from their initial reporting location to 69th Street Station where they acquired their trolley or bus. Those employes were "on the clock," from the time they arrived at the reporting location.

Aside from making the bald assertion that SEPTA violated "laboratory conditions," the Union makes no arguments, recites no law, and highlights no facts to support its conclusory assertion. The bare facts presented by the Union simply don't establish a violation of PERA. A review of what the Union has proved, matched with the applicable law, makes it clear that no unfair practices occurred.

The Union has proved that SEPTA denied a non-employe, Union representative, access to SEPTA employes during work time, in a work area. But, that is not an unfair practice. The Third Circuit has plainly recognized as an "easily understandable rule of law [that] a nonemployee does not have a right of access to the employer's property, at least if he has reasonable alternative means to exercise his section 7 rights...."³ Metropolitan District Council of Philadelphia and Vicinity United Brotherhood of Carpenters and Joiners of America v. NLRB, 68 F.3d 71 at 75 (3d Cir. 1995). The Union makes no argument that it has been denied "reasonable alternative means" of exercising its rights under PERA. How this action by SEPTA might constitute an unfair practice remains a mystery, since the Union made no effort to construct any argument, highlight any facts, or cite any law in support of this allegation.

The Union has also proved that SEPTA denied Union representatives, who were not SEPTA employes, access to employes during their work time in 69th Street Station. That location is SEPTA property that is open to the public. Also, at 69th Street Station, SEPTA forced the Union to remove its van from a no-parking zone that was reserved for SEPTA vehicles. A review of the law shows that these actions by SEPTA do not violate PERA.

In allowing an employer to expel non-employe, union organizers from private property open to the public, the Supreme Court has ruled that only where the Union shows it otherwise lacks access to the employes sought to be organized, can the union compel the employer to allow non-employe, organizers access to the property. Lechmere, Inc. v. NLRB, 502 U.S. 527 at 538, 139 L.R.R.M. 2225 at 2230(1992).

Stunningly, not only did the Union have access to the employes in question, *it already represented them as their bargaining representative!*

Based upon the Union's mere allegation that "laboratory conditions" had been violated, the scant facts elicited at the hearing do not come close to proving a violation of PERA. The complete lack of any legal arguments or case citations merely highlights the vacuous nature of this charge. Consequently, it is dismissed in its entirety.

CONCLUSION

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

¹ The Union withdrew that portion of the charge alleging an unfair practice by SEPTA because SEPTA forced the Union to move its van from SEPTA private property. (N.T. 55-56).

² There were no opening or closing statements made at the hearing, and neither party filed a post-hearing brief. Since the Union chose not to file a post-hearing brief, and without the guidance of any arguments at the hearing, I have absolutely no idea upon what legal theory, if any, the Union bases its charge. Moreover, the Union has waived all issues not raised before me. City of Wilkes-Barre, 25 PPER ¶ 25196 (Final Order, 1994); Philadelphia School District, 25 PPER ¶ 25090 (Final Order, 1994).

³ Section 7 of the National Labor Relations Act, 29 U.S.C. § 157 (NLRA), is mirrored by Section 401 of PERA. 43 P.S. § 401.

1. SEPTA is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. SEPTA has not committed unfair practices within the meaning of Section 1201(a)(1) and (2) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventh day of July, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, HEARING EXAMINER