

PENNSYLVANIA LABOR RELATIONS BOARD

Case No. PERA-F-11-293-E
Ralph H. Colflesh, Jr., Esq.
Fact Finder

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY and FRATERNAL ORDER OF TRANSIT POLICE

Appearances

For SEPTA:

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FACT FINDER'S REPORT AND RECOMMENDATIONS FOR SETTLEMENT

Pursuant to 43 P. S. 1101.802, and 34 Pa. Code Section 95.61, the Pennsylvania Labor Relations Board ("the Board") appointed the undersigned as Fact Finder on September 20, 2011, after the Board found collective bargaining between the parties hereto, the Southeastern Pennsylvania Transportation Authority ("SEPTA") and the Fraternal Order of Transit Police ("the FOTP"), had reached an impasse.

At 2:00 p.m. October 24, 2011, the undersigned convened an evidentiary hearing between the parties in the offices of Ballard Spahr LLP in Philadelphia, Pennsylvania. At that time and place, both parties had an opportunity to call and confront witnesses, introduce documentary and all other forms of non-testimonial evidence, and present arguments in support of their various proposals.

At the conclusion of the hearing the undersigned invited the parties to engage in further, informal efforts to resolve their impasse. The parties were mutually of the opinion that such efforts would be fruitless. Therefore, the undersigned issues the within Report with Recommendations for Settlement based upon *proposals presented by each respective side on its behalf* and the parties' evidence at the October 24th hearing.

Background:

SEPTA operates America's sixth largest public transportation system and the largest such system in the Commonwealth of Pennsylvania. Its motorized, electric, light rail and regional rail service cover about 2, 200 square miles throughout the City of Philadelphia and Bucks, Chester, Delaware, and Montgomery Counties. SEPTA's regional rail lines go as far as Trenton and West Trenton, New Jersey and Newark, Delaware. (AX 4; UX "Background" pp. 12-15).¹ Over 9,000 employees work for SEPTA, including the approximately 217 transit police who are involved in this matter. (AX 5).

Besides the FOTP, which consumes about 2.16% of its total budget (UX "Background" pp. 17-18), SEPTA has contracts with 13 other unions with a total of 17 separate collective bargaining agreements. Negotiations with those unions have traditionally been shaped by SEPTA's settlements with Transport Workers Union Local 234 ("Local 234"), which represents 5,000 bus and train operators, maintenance personnel, and cashiers among other positions. (See, AX 5). As has frequently been the case, Local 234's current contract was reached after a strike that effectively paralyzed SEPTA's mission. And, as has historically been true, the Local 234 contract that was reached after that strike formed the pattern for all of SEPTA's ensuing labor contracts from 2009 forward.

The parties' bargaining for successor contract commenced April 5, 2011, five days after the previous pact nominally expired. Further sessions were held May 6, June 15, July 22, and August 12. On August 29, 2011 the parties met for sixth time, and when no agreement was reached the FOTP informed SEPTA it was going to ask the Board to invoke Fact Finding. After the undersigned was appointed, a seventh and final meeting was held on October 14, 2011. It too, was fruitless. Most or all of the negotiating sessions were attended by Richard P. Stover, a full-time labor mediator employed by the Pennsylvania Bureau of Mediation. Despite his presence and the number of meetings convened, the total amount of bargaining, excluding health care presentations, was only about 5 ½ hours.

Because of the few hours spent in bargaining, SEPTA raises the argument that Fact- Finding is premature at this time. The FOTP disagrees.

The undersigned rejects SEPTA's position on two grounds. First, the Board has authorized fact-finding, having been convinced that the process is in order, pursuant to 43 PS 1101 *et. seq.* ("Act 195"). Second, SEPTA made clear through the presentation of counsel and its testimony that it is strongly opposed to any wage settlement that would surpass the pattern of increases accorded to Local 234 , and the FOTP made clear through the presentation of its counsel and witnesses that the FOTP is strongly opposed to the Local 234

¹ Exhibits admitted at hearing and referenced herein are designated as "AX_____" for SEPTA Exhibits and "UX_____" for Union Exhibits.

pattern. This makes it very unlikely these parties could reach agreement without the possible assistance fact – finding might afford them.

Proposals:

Although some tentative agreements were reached during the parties’ short negotiations, in the absence of a full and final agreement the parties presented the following as their proposals in fact- finding:

FOTP

1. TERM: 5 years, beginning upon ratification in 2011 and ending March 31, 2016
2. WAGES: Increases in base wages of 4% per year over the previous year’s base wages, with the first 4% increase effective upon ratification of the new contract and additional increases of 4% effective March of 2012 and each year thereafter through March 2016.
3. LONGEVITY: A new longevity schedule paying 2.5% of base pay in years 3-4; 5% of base in years 5-9; 6.25% of base in years 10-14; 7.25% of base in years 15-19; 8.25% of base in years 20-24; and, 9% of base in years 25 and later.
4. WAGE SCALE: A new wage scale that would have officers hired after ratification of the new agreement paid at 66% of the top rate until graduation from the Police Academy and 69% of top rate for the balance of their first 12 months of service, then 75%, 81% and 94% of top rate in each of years 2-4, respectively, before reaching the top rate after 4 years of service.
5. SHIFT DIFFERENTIAL: Increase of 2% in shift differential to the existing differentials of 2% and 4% for each shift where the majority of hours fall between 11:00 p.m. and 7:00 a.m. and 3:00 p.m. and 11:00 p.m., respectively.
6. MEAL ALLOWANCE: An increase of \$4.50 over the existing \$5.50 in meal allowance for scheduled overtime worked for 10 or more consecutive hours.

7..CLOTHING ALLOWANCE:

(a) Add \$790 to the existing \$710 for the purchase of required uniforms, equipment and add “clothing” to authorized expenditures.

8. SPECIAL UNIT PAY: Increase over base wages of \$2.50 per hour for detectives, \$2.00 per hour for Special Response Team members; \$1.50 per hour for Training Unit members; and \$0.50 per hour for Bicycle Patrol Unit members.

9. HOLIDAYS: Add Police Memorial Day as a holiday on which members are paid time and one-half for all hours worked.

10. VACATIONS: Modify the vacation schedule so officers have 20 days, 25 days and 30 days of vacation upon completion of 10th , 15th , and 20th years of service, respectively.

11. SICK PAY: Add a provision for officers to be compensated at 50% of regular pay for unused sick days upon retirement; or, at the officer’s option, add of 1 month of medical benefits for every 20 days of unused sick pay.

12. PENSION:

(a) Allow normal retirement at 25 years of service regardless of age and increase the pension benefit to 2.5% per year of service up to 25 years.

13. HEALTH AND WELFARE:

(a) Provide a \$1,000 payout to employees who switch health coverage to the Keystone HMO Plan within a designated “window” period.

(b) Extend retiree prescription benefits for life for employees hired prior to ratification and continue retiree prescription benefits up to Medicare eligibility for those hired after ratification.

(c) Provide a retiree group life insurance benefit of \$30,000 more for a total benefit of \$40,000 .

(d) Provide an additional life insurance benefits of \$750,000 more for a total of \$1,000,000 for officers killed in the line of duty

14. ATTENDANCE POINT SYSTEM: Forbear from assessing attendance points for absences caused by any injury incurred on duty, rather than only forbearing for those injuries associated with “heroic” action.

15. PAC/VENDOR CHECK OFF:

(a) Allow for payroll deduction of voluntary contributions to the FOTP’s PAC upon written authorization from employees.

(b) Allow for payroll deduction of voluntary payments to private vendors conducting business with FOTP members upon written authorization from employees.

16. UNION NOTIFICATION: Require a good faith effort from SEPTA to notify the FOTP within 10 days of orders and memorandums issued by management or supervisory personnel holding the rank of lieutenant or higher that affect working conditions of officers other than those working in one particular zone or unit.

17. WORK SCHEDULE:

(a) Allow all officers, including those on medical, injury, or other types of leave, the opportunity to pick shifts, days off, and assignments at least once per year in seniority order. (b) Provide overtime pay if less than five days of notice of a shift change, except changes of one hour or less to accommodate court appearances.

18. GRIEVANCE PROCEDURE: Change references to “working” days in the grievance procedure to calendar days.

19. OFFICERS’ RIGHTS: Change reference to “working” days in the officer rights provision to calendar days.

SEPTA

1. TERM: Five years from ratification date through March 31, 2016.

2. WAGES:

(a) One-time bonus of \$1,250 per officer, paid March 2012.

(b) An additional increase of 1.5% over base wages effective in October 2012.

(c) Additional increases of 1.0%, 2.5%, 3.5%, and 3.0% effective March of 2013, 2014, 2015, and 2016, respectively.

3. CLOTHING ALLOWANCE: Increase amount by \$5 per year for calendar years 2011, 2012, 2013, 2015.

4. HEALTH CARE: Provide that all employees who took advantage of the \$1,000 one-time payout for switching to the Keystone HMO Plan remain in that Plan for the duration of their employment.

Relevant Findings of Fact:

The FOTP represents a unique group of SEPTA employees in that they are law enforcement officers. Transit police are initially trained at the Philadelphia Police Academy² and must meet the Commonwealth's Municipal Police Officer Education and Training Commission standards for employment. Thus, the officers are fully qualified under the requirements of Act 120, the Commonwealth's police training statute. Moreover, annual training requirements continue throughout an officer's career. (UX Background, pp. 70-71).

The reason for this extensive training is obvious. FOP members are charged with not only securing SEPTA's equipment and real property, but with enforcing the law on or near SEPTA's more than 280 locations, its 450 miles of track, nearly 3,000 vehicles and 196 routes. (UX Background, p. 14). In doing so, officers exercise jurisdiction in three states and five Pennsylvania counties. (UX Background, p. 21) Like all police, they are empowered and expected to take police action in appropriate off-duty situations. And, like police everywhere, they are sometimes injured in the line of duty. In an apt phrase, SEPTA police—like all guardians of the law—may be required to “save a life, take a life, or give a life” everyday of their careers. As the FOTP's presentation makes abundantly clear, SEPTA officers have had to do just that throughout the department's history. (UX Background, pp. 93-152).

Their wages, however, are lower than the average of contiguous transit and Philadelphia police. (UX 16).³ A comparison of salaries for local college and university police, Philadelphia School District police, Philadelphia Housing Authority police, and the Pennsylvania Capitol Police. (AX 60) show that except for entry

² Actually, SEPTA officers receive several more weeks of training at the Academy than Philadelphia police recruits and five more weeks than Pennsylvania State Trooper recruits receive at their academy. (UX Background, pp.64, 66).

³ It should be noted that none of the local transit police comparable to FOTP members enjoy shift differential pay, and of non-local transit police, only the Washington DC metro force has this benefit. (UX, Proposals, pp. 44, 45).

level salaries, FOTP members rank 2nd to the Philadelphia police through years 5-20 of service and 3rd to Philadelphia and Pennsylvania Capitol police in the 25th year of service. Because the jurisdiction of college and university police is restricted and the Philadelphia Housing Authority police have not a contract since March 31, 2008, these groups are not similarly situated to the FOTP. Thus, the only valid Pennsylvania comparators are the Philadelphia police, which are the most similar officers, and the Commonwealth's Capitol police. As stated above, SEPTA police trail the former throughout their careers and by the end of their careers, SEPTA officers are paid lower than the Capitol police.

Some of the reasons for these differentials are obvious. Unlike the City or the Commonwealth, SEPTA does not have taxing authority so its ability to increase income is compromised. Even the 41% of its operating budget that is mostly raised through fare box revenue (AX 36) is subject to political considerations with legislative bodies in both the Commonwealth and the counties carefully monitoring fare increases.

The remainder of SEPTA's \$1.23 billion operating budget comes from local, state, and federal subsidies. (AX 36-38). Of these, about 78% comes from the Commonwealth. (AX 38, 41). All those sources have come under considerable pressure during the economic downturn. (AX 24-34).

Specifically, the City of Philadelphia is suffering from a 2.5% deficit in projected revenues (AX 34) and an annual deficit of \$47 million (*Id.*). Commonwealth general fund collections were 3.5% below estimates for the current fiscal year through September and down 6.1% for that month. (AX 30). The Commonwealth has reduced actual spending by 4.1% from the last fiscal year (AX 29), and the governor has deferred decisions on state transportation subsidies. (AX 42). Nationally, GDP growth is an anemic 1.6% (AX 20), unemployment is currently 9.1% and unlikely to improve soon⁴ (AX 18-19, 21-22), and the chamber of Congress that initiates spending and tax measures—the House of Representatives—has proposed a 34% reduction in transportation funding. (AX 40).

At the same time, SEPTA has incurred more than \$5 million in expenses from damages caused by Hurricane Irene and Tropical Storm Lee. (AX 47). Future worries for SEPTA include a \$90 million decline in its pension fund assets this year alone (AX 45), a greater than 7% increase in health care and prescription costs (*Id.*), and a gargantuan \$1.42 billion in actuarial accrued liability for retiree health and prescription benefits, including \$950 million in prescription benefits alone. (AX 83).

In addition to these factors suppressing the sources of wages and benefits, SEPTA has resolutely followed the concept of “pattern bargaining” when dealing with the FOTP and all of its other unions. As referenced above, SEPTA is faced with 14 separate unions and 17 different collective bargaining agreements.

⁴ Unemployment in the City of Philadelphia was 11.5 % in August 2011

Given that Local 234 is by far its largest Union, SEPTA rigorously adheres to the principle that whatever is good for its operators, maintenance personnel, cashiers, and related personnel is good enough for the rest of its employees. Indeed the Local 234 pattern has been imposed and/or accepted by the FOTP in other contracts, including the recently expired one (AX 51), and Presidential Emergency Boards which come into play with SEPTA's regional rail operations have endorsed the "pattern" approach. (AX 53).

Currently, eight other unions have accepted the pattern of wage increases set forth in Local 234's most recent (2009) contract wage package, which, as set forth in SETPA's wage proposal above, consisted of a one-time bonus in the first year of \$1,250, and increases of 1.5%, 1.0%, 2.5%, 3.5% and 3.0% effective the last month of each year of the contract. (AX 51). SEPTA argued through the testimony of its long-time former Director of Labor Relations, Pat Battel, that were any union—including the FOTP—to be granted higher wage increases, SEPTA's bargaining *bona fides* with Local 234 would be destroyed. That in turn, Mr. Battel testified, would make future settlements with a Local 234 more difficult and most likely lead to prolonged strife and, by inference, longer and costlier Local 234 strikes. The impact in terms of lost fares is obvious, and costlier Local 234 settlements might have a negative influence on the Commonwealth's considerations for additional subsidies.

Finally, the additional cost to SEPTA of the FOTP wage proposal alone over a five year term would be \$8.21 million, and its other economic proposals would create an nearly \$3.3 million cost addition over the contract term. (AX 67) The FOTP's pension proposals would add another \$2.85 million cost to SEPTA. The FOTP's entire non-wage, benefit proposal would increase SEPTA's costs by nearly \$3.3 million. (AX 71).

With those all the above considerations taken into account, I offer the following recommendations.

Recommendations for Settlement

1. TERM: Five years commencing April 1, 2011 and ending March 31, 2016.

2. WAGES: SEPTA's proposed pattern increases as settled with Local 234.

3. SHIFT DIFFERENTIAL:

(a) Effective March 2013, 4.75 percent for officers working shifts that have the majority of hours between 11:00 p.m. and 7:00 a.m.

(b) Effective March 2013, 2.75 percent for officer working shifts that have the majority of hours between 3:00 p.m. and 11:00 p.m.

4. MEAL ALLOWANCE: Effective March 2012, \$10 on and after the 10th consecutive hour of scheduled, emergency and authorized overtime work.⁵

5. CLOTHING ALLOWANCE: \$1300, payable on or before July 30, 2012 and each year thereafter, for purchase, replacement, and repair of required uniforms, equipment, and clothing (for plain clothes officers).⁶

6. ATTENDANCE POINT SYSTEM: No points assessed for any injury that occurs on duty.*

7. CHECK OFF: Allow check off upon voluntary, written authorization for deductions to the Union's PAC.*

8. WORK SCHEDULE: Allow all officers on medical leave, injured on duty or other short or long term leave the right to pick work schedules for period during which they are expected to return to full duty.*

9. ALL OTHER PROPSALS AND CONTINUATION OF EXPIRED PROVISIONS: All other proposals of either party should be rejected based on cost and/or a lack of demonstrated need or rationale for acceptance. All provisions of the expired contract not affected by the foregoing recommendations should be continued.

Respectfully submitted this 24th day of October, 2011,

Date

Ralph H. Colflesh, Jr., Esq.

⁵ In addition to the considerations discussed above, I wish to specifically point out that this benefit has not been increased from the current amount of \$5.50 since 1981, and the 30-year-old amount in terms of today's dollars would actually be \$14.54. (UX Proposals, p. 51).

⁶ In addition to the considerations discussed above, I note that this benefit is well below the total of \$1,000 paid for uniform purchase and replacement paid to Philadelphia police officers. (UX Proposals, p. 63). As with the Philadelphia department, SEPTA police are responsible for maintenance and replacement costs. (UX Proposals, p. 61).

*No direct costs are associated with these items.