

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

KEYSTONE MOUNTAIN LAKE REGIONAL
COUNCIL OF CARPENTERS¹

v.

PENNSYLVANIA CONVENTION
CENTER AUTHORITY

Case No. PERA-C-14-218-E

PROPOSED DECISION AND ORDER

On July 21, 2014, the Metropolitan Regional Council of Carpenters (MRCC, Carpenters or Union), which subsequently merged into the Northeast Regional Council of Carpenters (NRCC), which subsequently merged into the Keystone Mountain Lake Regional Council of Carpenters, filed a charge of unfair practices, at Case No. PERA-C-14-218-E, with the Pennsylvania Labor Relations Board (Board) against the Pennsylvania Convention Center Authority (Authority or Convention Center). In the charge, the Carpenters alleged that the Authority violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA). Specifically, the Union alleged that the Authority discriminated against employees represented by the MRCC by unilaterally setting an unreasonable deadline for the Union's representatives to sign a new customer satisfaction agreement (CSA), by subsequently banning employees represented by the Union from entering Authority property and by redistributing their work to other represented workers when the MRCC failed to sign the 2014 CSA by the deadline. The MRCC's charge was initially consolidated with a charge filed by the Teamsters averring similar allegations, but the Teamsters have since withdrawn their charge and only the Carpenters remain as a complainant herein.

On August 1, 2014, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of October 14, 2014, in Harrisburg. On October 9, 2014, the Authority filed a Motion to Dismiss. The Hearing Examiner continued the October 14, 2014 hearing to give the Union an opportunity to respond to the Authority's motion. The hearing was rescheduled for January 6, 2015 and January 7, 2015. On October 31, 2014, the Union filed a response to the Authority's Motion. On November 14, 2014, the Authority filed a reply. The parties agreed that the facts as presented in their prehearing

¹ During the hearing, the Complainant moved to amend the caption to reflect that the Metropolitan Regional Council of Carpenters, which filed the initial charge, was merged into the Northeast Regional Council of Carpenters (NRCC) in February of 2016. I amended the charge on the record without objection from the Respondent. On July 6, 2018, the NRCC filed an unobjected to motion to amend the pleadings to reflect that, on May 30, 2018, the NRCC merged into the Keystone Mountain Lake Regional Council of Carpenters (Keystone). I hereby grant that motion and amend the caption to reflect the Keystone Carpenters as the complainant. At all times relevant to this dispute, however, the Carpenters were represented by the Metropolitan Regional Council of Carpenters (MRCC). (N.T. 4-5, 8, 10-11)

submissions were not in dispute and that a hearing on the jurisdictional question raised by the Authority in its prehearing motion to dismiss was unnecessary.² On December 22, 2014, the Examiner continued the hearings scheduled for January 6th and 7th, 2015, and rescheduled the hearings for February 11, 2015 and February 12, 2015. On February 2, 2015, I granted the motion to dismiss, limited to the jurisdictional question only, pending a written order, and cancelled the scheduled hearing dates. However, I reconsidered that decision and reversed the prior ruling. On April 16, 2015, I issued an Order Denying Pennsylvania Convention Center Authority's Motion to Dismiss and therein concluded that the Board did have jurisdiction to entertain the Union's claims and that the facts alleged in the specification of charges were legally sufficient to state a cause of action upon which relief could be granted, surviving a demurrer. Accordingly, the motion to dismiss was denied and hearings were rescheduled.

On May 1, 2015, the Authority filed with the Board an Emergency Motion to Vacate Hearing Examiner's Order Denying Motion to Dismiss (Emergency Motion). In its Emergency Motion, the Authority requested that the Board vacate my April 16, 2015 order and reinstate my February 2, 2015 letter or, alternatively, remand the case to "a new and independent hearing examiner, not employed by the PLRB, who is knowledgeable in the field of labor relations." (Emergency Motion ¶ 32).

On May 8, 2015, the Secretary of the Board issued a letter to the parties stating that the Emergency Motion constituted an interlocutory appeal and that the matter remained pending before the Hearing Examiner. The Secretary of the Board explicitly stated that "the Examiner has the authority under the Board's Rules and Regulations to rule on motions and objections in the first instance. 34 Pa. Code § 95.91(f)." In that same letter, the Secretary of the Board further directed as follows: "to the extent that the Authority's Emergency Motion seeks recusal of the Hearing Examiner in this matter, it shall be directed to the Hearing Examiner for consideration."

On May 11, 2015, I issued a letter to the parties scheduling a hearing on the issues raised by the Authority's Emergency Motion. On May 15, 2015, the International Alliance of Theatrical Stage Employees, Local No. 8 (IATSE) filed with the Board a letter, in the nature of an amicus submission (Amicus Letter), which I determined was also before me for consideration with the Authority's Emergency Motion.

On or about May 13, 2015, the Authority filed a right-to-know (RTK) request with the Department of Labor and Industry (Department). On or about July 8, 2015, the Authority filed a second RTK request with the Department. The RTK requests sought specific detailed documentation and records of any and all electronic and non-electronic meetings, appointments or communications with, by, between and among Board members, Board employees and any officers, agents, employees or attorneys of the Unions.

² Accordingly, the motion, the parties' briefs and the documents accompanying those submissions became the undisputed source for the findings of fact to rule on jurisdiction and demurrer.

On September 18, 2015, the Authority filed its Brief in Support of Recusal of the Hearing Examiner and Vacatur of the Hearing Examiner's Order Denying Motion to Dismiss. On October 5, 2015, the MRCC filed its Brief in Opposition to the Recusal of the Hearing Examiner and Vacatur of the Order Denying Motion to Dismiss. On Monday, November 2, 2015, I heard oral arguments from the parties regarding their respective positions on the Emergency Motion. The oral arguments were transcribed by a court stenographer.

On April 8, 2016, I issued an Order Denying the Authority's Emergency Motion to Vacate Hearing Examiner's Order Denying Motion to Dismiss, as joined by IATSE, containing a request for recusal.

Three consecutive days of hearings on the merits of the Union's claims were held in Philadelphia from February 28, 2017, through March 1, 2017. During the hearing on those dates, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On July 10, 2017, the Union filed its post-hearing brief. The Authority filed its post-hearing brief on October 10, 2017. On December 6, 2017, the Union filed a reply brief, and on February 5, 2018, the Authority filed a sur-reply brief.

The examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

A. Union's Case-in-Chief

1. The Authority is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4)

2. The Union is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 4)

3. John McNichol is the President and CEO of the Authority. (N.T. 248)

4. Bob McClintock is the Senior Vice President of SMG, and the Chief Operating Officer of the Convention Center. SMG is a management company that manages the operations of stadia, convention centers and theaters owned by public entities in the United States, Europe and Canada. Lorenz Hassenstein works for Mr. McClintock at SMG. (N.T. 50, 179, 369-370; Complainant Exhibit 12)³

5. Ed Coryell, Sr., at all times relevant hereto, was the Executive Secretary-Treasurer and Business Manager for the MRCC and a member of the Authority's Board of Directors. He was the MRCC principal who signed memoranda of understanding, contracts and agreements. (Complainant Exhibits 3, 10, 15, 62, 169; Employer Exhibit 28)

6. Ed Coryell, Jr., was a council representative for the MRCC, at all times relevant hereto, and is currently a council representative

³ Some findings contain uncontested background information, which is not pertinent to either party's burden of proof, that was presented during the Authority's case.

for the NRCC.⁴ He oversees enforcement of the collective bargaining agreements the Carpenters have with various employers and engages in negotiations. (N.T. 9, 38; Complainant Exhibit 4)

7. There are six show labor unions that were permitted access to the Authority's building to perform show labor work. The labor is supplied by a labor supplier/broker named Elliot-Lewis. Elliot-Lewis has been the labor broker since 2003. The six labor unions represent six types of employees/show labor work, commonly referred to as follows: the MRCC or Carpenters; the Teamsters, Local 107; the Riggers, Local 107, the Electricians, Local 98; the Stage Hands, Local 8; and the Laborers, Local 332. (N.T. 12-15, 75-77; Complainant Exhibit 1)

8. The Authority does not pay any represented show labor workers. The Authority does not pay Elliot-Lewis. The Authority requires contractors to pay show labor at established rates through Elliot-Lewis. (N.T. 144, 150-152)

9. On January 19, 2001, all six unions agreed to a document known as "Jurisdictional Decisions" outlining the work jurisdiction of the show labor at the Authority's building. (N.T. 14; Complainant Exhibit 2)

10. On July 14, 2003, the Authority, Elliot-Lewis and the six show labor unions signed a Customer Satisfaction Agreement (CSA). The 2003 CSA was a 10-year agreement negotiated between the Authority and all six unions. After 10 years, the CSA was effective from year to year. Under the 2003 CSA, show labor work was required to be supplied through Elliot-Lewis. (N.T. 13-15, 30)

11. The 2003 CSA was sent to each trade union, with a signature deadline, by the Mayor of the City of Philadelphia at the time and the Authority's then CEO. (N.T. 110-113; Complainant Exhibit 1)

12. The 2003 CSA provided, in relevant part, as follows: "This Agreement can only be accepted by delivering an executed copy of the Agreement to Elliot-Lewis on or before 5:00 p.m. on the 15th day of July, 2003, after which time this Agreement is withdrawn as to all non-signatory parties." (Complainant Exhibit 1 at 10, Article Q)

13. PESCA is the Philadelphia Exposition Service Contractors Association. On October 17, 2003, the MRCC signed a Memorandum of Agreement with Elliot-Lewis for 2004, 2005 and 2006, agreeing to comply with requirements established by PESCA. The PESCA agreement contains a grievance procedure and work jurisdictions for signatory trade unions. The Authority is not a signatory to the PESCA agreement. (N.T. 15-18, 117-119; Complainant Exhibit 3)

14. The 2003 CSA was used in conjunction with the Jurisdictional Decisions and the PESCA Agreement spelling out specific work jurisdictions among the unions that were not specifically addressed by the CSA. (N.T. 14)

15. PESCA applies to trade unions and not building operators like the Authority. Although the Authority was not contractually obligated to follow the PESCA Agreement, it did historically follow it. Under the PESCA Agreement, the unions' collective bargaining agreements and the 2003 CSA, grievances were filed with Elliot-Lewis, not the

⁴ The record does not reflect whether Mr. Coryell, Sr., and Mr. Coryell, Jr., have roles with the Keystone.

Authority, which remains the case under the 2014 CSA. (N.T. 119-120, 126-127)

16. When a trade show comes to the Authority's building, the Carpenters were involved in setting up and dismantling the show. They would mark the floor layout, set up pipe and drape, hang signs, lay carpeting, erect and dismantle booths for exhibitors and perform decorating work. (N.T. 19-20)

17. The Carpenters worked directly with the show exhibitors and received direction from them. (N.T. 20)

18. The MRCC had filed grievances under the 2003 CSA with Elliot-Lewis. The MRCC grieved that the Carpenters had not been used for work that should have been performed by the Carpenters and that exhibitors were being allowed to perform their own show labor work. (N.T. 18-19, 172)

19. On February 26, 2012, the Carpenters filed a grievance with Elliot-Lewis regarding exhibitors' use of non-represented employees to erect and dismantle show exhibits at the Inflatable Air Show, which included the crating and uncrating of machinery and the erection of tents. (N.T. 23; Complainant Exhibit 5)

20. On May 22, 2012, the Carpenters filed a grievance with Elliot-Lewis regarding the crating and uncrating of machinery which the PESCA agreement designates as Carpenters' work. (N.T. 21-22; Complainant Exhibit 4)

21. On October 4, 2012, the Carpenters filed a grievance with Elliot-Lewis grieving the use of Stage Hands at the Wendy's Show that allegedly belonged to the Carpenters. (N.T. 24; Complainant Exhibit 6)

22. On December 14, 2012, the Carpenters filed a grievance with Elliot-Lewis regarding the use of non-represented labor at the Novo Nordisk Show to install decorations to a ground supported entryway. (N.T. 28; Complainant Exhibit 28)

23. These grievances all went to grievance arbitration and representatives from the Authority attended those arbitrations, even though the Authority did not know of their initial filings. (N.T. 123, 173)

24. On May 10, 2013, the Authority's labor counsel sent to all show labor unions the Authority's notice of intent to renegotiate the 2003 CSA. (N.T. 30; Complainant Exhibit 8)

25. After notifying the unions of its intent to renegotiate the 2003 CSA, the Authority met with representatives from all six show labor unions, Elliot-Lewis, Philadelphia Area Labor Management (PALM) and SMG. (N.T. 31-32)

26. Mr. McClintock did most of the management side negotiating in the spring of 2013. The parties reached agreement on some items. (N.T. 32)

27. Most of the focus during negotiations was on exhibitors' rights, i.e., what duties the non-represented labor working for exhibitors would be permitted to perform without contribution from any of the six trade unions. The Carpenters were responsible for the bulk of the work that the Authority sought to give to exhibitors to perform. (N.T. 33)

28. As reflected in the Authority's red-line proposal dated July 31, 2013, Mr. McClintock explained to the unions that exhibitors' rights were important to the Convention Center's market for attracting more business to the building. Most of the proposed changes affected the Carpenters because they were the only show labor force with direct contact with exhibitors. (N.T. 34-36; Complainant Exhibit 9)

29. The Authority wanted to permit exhibitors to use power tools inside the building, increase booth sizes, perform their own decorating and signage work. These changes impacted the Carpenters more than the other five show labor unions. (N.T. 36-37)

30. No agreement on a new CSA was reached in 2013. The Carpenters and three other unions picketed on a line in front of the building. The Laborers did not picket but signed into the building and sat down without working. The Electricians were not on the picket line and stayed across the street honoring the line.

31. On May 1, 2013, the MRCC signed a Memorandum of Understanding with Elliot-Lewis extending its collective bargaining agreement with Elliot-Lewis until April 30, 2014. (N.T. 39; Complainant Exhibit 10)

32. In January or February 2014, the parties met again to negotiate a new CSA. Mr. McClintock from SMG represented management. Elliot-Lewis did not send a representative to the 2014 negotiations. (N.T. 40)

33. Mr. McClintock met individually with each of the show trade unions for the early 2014 CSA negotiations. In March or April 2014, Mr. McClintock met with all the trade union representatives together. Occasionally, Mr. McNichol would accompany Mr. McClintock, and sometimes the attorneys representing the various parties would also attend. (N.T. 40-41)

34. During the early 2014 negotiations, the MRCC opposed proposals from SMG and the Authority to give exhibitors more rights to perform their own booth construction. The MRCC rejected these same proposals when they were made during negotiations in 2013. (N.T. 42)

35. On April 30, 2014 past midnight into May 1, 2014, the parties engaged in extensive bargaining with SMG and the Authority in a marathon bargaining session. (N.T. 44-46)

36. Sometime during the early morning hours of May 1, 2014, all parties reached a tentative agreement. The Authority's Board must ratify all contracts and agreements. (N.T. 47-49, 133-134, 138, 159)

37. Although SMG and the Authority do not pay show labor employes, the parties bargained for a 3% wage increase to be included in the 2014 CSA in addition to the wage package provided in the unions' agreements with Elliot-Lewis. (N.T. 158, 178-179)

38. On May 1, 2014, Mr. McNichol informed Ed Coryell, Sr. of the MRCC that the CSA Committee of the Authority Board rejected the tentative agreement. (N.T. 47-49, 134)

39. At a meeting with all union representatives at Local 98's Hall, Mr. McNichol persuaded the unions, whose contracts had expired or were about to expire, to sign extension agreements so the parties would continue bargaining without striking. (N.T. 162-165)

40. The MRCC went on a one-day strike at approximately at 2:00 p.m. on May 1, 2014. The Teamsters did not strike but they honored the picket line established by the MRCC. No other unions joined the strike or honored the picket line. (N.T. 49-50, 163-165, 212; Complainant Exhibit 12)

41. By letter May 1, 2014, Mr. Hassenstein of SMG wrote to Mr. Coryell, Sr., informing him that there was work for the Carpenters at the building on May 2, 2014 and requesting that the MRCC sign an extension of its collective bargaining agreement with Elliot-Lewis. (Complainant Exhibit 12)

42. On the evening of May 1, 2014, Mr. Coryell, Jr., informed Mr. McClintock that the Carpenters would return to work on May 2, 2014. At the 8:00 a.m. call, the Authority refused entrance into the building to the Carpenters without the collective bargaining agreement extension. (N.T. 52-53)

43. The MRCC then signed an extension agreement with Elliot-Lewis, effective May 1, 2014 through May 10, 2014, and returned to work at the building on May 2, 2014. (N.T. 55-56, 167-168)

44. On Sunday May 4, 2014, Mr. McClintock telephoned Mr. Coryell, Jr., and informed him that he was receiving an important document that he needed to review and give to his attorney. Mr. McNichol emailed the final 2014 CSA proposal and cover letter to Mr. Coryell, Jr., and the other unions for review while Mr. Coryell, Sr., was in Washington D.C. Mr. Coryell, Jr., did not actually review the document until Monday, May 5, 2014. (N.T. 57-58, 62; Complainant Exhibit 16)

45. In the cover letter, Mr. McNichol explained, in relevant part, as follows:

Over the past several months, we had worked cooperatively and had made significant progress on some issues such as specifically outlining and agreeing to work jurisdictions. This agreement on work jurisdictions provides clear guidance to our customers and will significantly diminish any potential conflicts on the show floor.

The strike on May 1, 2014, however, has irrevocably changed the dynamics of what is an acceptable Customer Service Agreement. We will lose significant business as a result of the May 1st strike. The damage caused by this strike is immediate, far reaching and quantifiable by comparison with lost business directly resulting from the previous strike last summer. Our competitors are notifying potential customers of this strike and reminding them that we have had two strikes within the span of one year. We now face even more significant challenges to convince committed customers that they should still bring their shows to the Pennsylvania Convention Center and to convince potential customers that it is worth the investment and risk to select the Pennsylvania Convention Center. As a result, the proposal that we provided on the morning of April 30th [2014] is now not sufficient to

meet our challenges moving forward in light of the damage caused by the strike.

The attached document includes the terms necessary for the Pennsylvania Convention Center to remain a viable entity in light of these developments. This document removes arcane limitations upon Exhibitors' rights, reduces Exhibitors' potential costs, and provides a skilled, experienced and coordinated workforce to serve our Customers' needs. By providing a long-term Customer Satisfaction Service Agreement with these elements, we will be well positioned to sell Philadelphia and the Pennsylvania Convention Center and meet the steepened challenges we now face. This is our only opportunity to save the tens of thousands of man-hours and millions of dollars in union wages and benefits inside the Center (not to mention the hundreds of millions of dollars in economic benefit to the region, the City of Philadelphia, and the Commonwealth of Pennsylvania.) that will certainly be lost due to the cancellation of shows and refusal of other shows to consider Philadelphia as a destination.

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Now is the time for unified action to salvage the Center and move it forward. The Pennsylvania Convention Center Authority Board of Directors intends to meet at 8 a.m. on May 6, 2014 to approve this Customer Service Agreement. If all of the unions are not willing to sign this Customer Service Agreement, it is management's intent to work with the unions who accept these terms and conditions to implement the Customer Service Agreement.

(Complainant Exhibit 16)

46. In the cover letter, Mr. McNichol expressly identified the backlash from the strike as necessitating final changes to the 2014 CSA to attract customers who were cancelling commitments as a result of the past work practices and the strike. (N.T. 60-61; Complainant Exhibit 16)

47. SMG and the Authority needed to sell and advertise changes to work jurisdictions to exhibitors giving them the right to perform more of their own work to save money and to be competitive with other convention centers. The Authority wanted to compete with other centers that gave exhibitors greater rights regarding booth sizes, power tools and ladders. The Authority and SMG conveyed these goals to the unions throughout negotiations for the 2014 CSA. (N.T. 129-130)

48. During 2014 negotiations, Mr. McNichol explained that increasing booth sizes would result in increased work for the Carpenters by attracting more exhibitors. Mr. McClintock compared operations at the Chicago Convention Center, which had increased booth sizes and resulted in an increase in work for its carpenters. Mr. Coryell, Jr., understood during negotiations that Mr. McClintock was trying to procure more work for the Carpenters. (N.T. 179-181)

49. As of April 30, 2014, the Authority was no longer asking for unlimited booth sizes and settled for 600 linear feet for booths. (N.T. 132)

50. The Authority placed a 36-hour signature deadline on all the unions requiring the return of the 2014 CSA signature page by 11:59 on May 5, 2014. The 2014 CSA deadline was longer than the 2003 CSA deadline. Four of the six show labor unions signed the CSA by the deadline (Electricians, Show Hands, Laborers and Riggers). The Carpenters and the Teamsters did not sign by the deadline. Under both CSAs, any union that did not sign, could not work at the Authority. As an Authority Board member, Mr. Coryell, Sr., returned from Washington D.C. to attend the special meeting of the Authority's Board for the 2014 CSA ratification vote. (N.T. 61-63, 112-113, 169; Complainant Exhibit 16 at 26)

51. Due to the collective bargaining agreement extension with Elliot-Lewis, the Carpenters continued working at the Authority's building until May 10, 2014. After the May 10, 2014 contract expiration, the Authority locked out the Carpenters and the Teamsters. (N.T. 63-66)

52. Mr. Coryell, Sr., eventually signed the 2014 CSA on May 7, 2014, and delivered it on May 9, 2014, after the Authority's Board ratified the 2014 CSA, as timely signed by the deadline by the four other show labor unions. The Authority did not accept the MRCC's signed CSA and informed Mr. Coryell Sr., that it was too late. (N.T. 63-65, 168; Complainant Exhibit 17)

53. The Stage Hands and the Laborers are currently performing the work formerly performed by the Carpenters. (N.T. 66)

B. Authority's Case-in-Chief

54. The 2003 CSA originated from customers, the Greater Philadelphia Hotel Association and the Convention Center Business Bureau calling for a more organized set of operating rules. After much negotiating and based on a study performed by Econsult Corporation, the Authority representatives felt the need to move forward with a final best offer that they presented to the trade unions and Elliot-Lewis. (N.T. 250-251, 253, 263, 372-373; Employer Exhibit 1)

55. The 2003 and 2014 CSAs are right-of-entry documents that , ~~like its revision in 2014, was a roadmap~~ outlining work jurisdictions for the trade unions, the role of contractors leasing labor from Elliot-Lewis, the code of conduct, insurance requirements for contractors and customer rights for operations within the Convention Center. (N.T. 254-256, 263, 3745)

56. The 2003 CSA became stale and difficult to manage. Gray areas in the agreement resulted in conflicts and frustration among labor which interfered with work flow, efficiency and cost. The Chicago Convention Center unilaterally procured work rule changes from the Illinois State Legislature. The Authority instead sought a multi-lateral, cooperative approach and negotiated work rule changes with the show labor unions and other stake holders. The goal was to attract more

customers and business. Chicago achieved a more customer friendly work environment. (N.T. 263-262, 266, 372-373)

57. Three years prior to the expiration of the 2003 CSA, Crossroads Consulting Services evaluated best practices at other convention centers around the country and recommended that the Authority renegotiate that CSA to become more competitive in the marketplace. (N.T. 270-271; Employer Exhibit 3 at 40-41)

58. The same group of companies are involved in conventions throughout the country. They know the operating rules and costs at other convention centers. They informed Authority representatives that work flow was more efficient and cost effective at other convention centers. (N.T. 265-266)

59. In 2003, the Stage Hands were presented with the first CSA and told that if they did not sign the agreement, the Authority would have show labor performed without them. With one hour to sign the 2003 CSA, the Stage Hands signed the 2003 CSA, as presented, to remain working at the Authority's Convention Center Building. All six trade unions signed that agreement in 2003. Any trade union that would not have signed the 2003 CSA could not have worked at the Convention Center. If only one union had signed the CSA, then only that union would have been granted right of entry and all the show labor work at the Convention Center. (N.T. 209-213, 233-234, 405-406)

60. The one-day deadline for signing the 2003 CSA imposed by the Authority applied equally to all show labor unions. The 36-hour deadline imposed by the Authority to sign the 2014 CSA was equally imposed on all show labor unions and not just the Carpenters. All the Unions signed on time, except the Carpenters and the Teamsters. Mr. McNichol credibly testified that the deadline was necessary because the Authority was reacting to wild pressure from the industry with respect to the effect of the Carpenters' strike. (N.T. 210-212, 223, 254, 330, 352-353, 387)

61. Philadelphia hotels, restaurants and unions and the Authority's appointing authorities were applying pressure to management and questioning the Authority about the stability of the work process and the final CSA. (N.T. 331-332; Employer Exhibit 26)

62. Michael Barnes was the President and Business Manager for the Stage Hands who took the lead role for negotiating on behalf of the Stage Hands, Riggers, Electricians and Laborers. The consensus among those four show labor unions was to sign as in "the best interest of the industry." Mr. Coryell, Jr., asked Mr. Barnes not to sign, but Mr. Barnes said they were signing, and signed the 2014 CSA by 10:00 p.m. two hours before the midnight deadline. (N.T. 207-208, 211-213, 225-227, 245; Complainant Exhibit 16)

63. After the Authority Board ratified the 2014 CSA, there were three meetings between May 6, 2014 and May 8, 2014, to reallocate the work jurisdictions among the signatory unions. All signatories to the 2014 CSA must agree to amend the CSA. After the deadline for signing, none of the four signatory trade unions agreed to allow the Carpenters to accept the 2014 CSA, and they all met to split up the work formerly performed by the Carpenters. Absent such a consensus from all the

signatory trade unions, the Authority cannot reallocate the work back to the Carpenters. (N.T. 215, 220, 237, 246, 338-339, 393-394)

64. There was never any discussion between representatives from the Authority and representatives from the trade unions to exclude the Carpenters. Indeed, Mr. Barnes made every effort to persuade the Carpenters' representatives to participate in the revised 2014 CSA. There was never a goal to operate the building with fewer than six trade unions. The Board of the Authority never discussed excluding the Carpenters, even after the May 1, 2014 Strike. (N.T. 235, 244, 247, 308)

65. John Dougherty, Business Manager of the Philadelphia Building Trades and the International Brotherhood of Electrical Workers, Local 98, met with Mr. Coryell, Sr. for weeks prior to the deadline to persuade the Carpenters to compromise their position. Between 10:00 p.m. and the Midnight deadline, Mr. Barnes repeatedly spoke with Mr. Coryell, Sr. and Mr. Coryell, Jr., and Congressman Brody to convince the Carpenters to sign by the deadline. (N.T. 231, 236)

66. The Electricians also filed an estimated 40 grievances regarding alleged work jurisdiction violations, significantly more grievances than the Carpenters filed. The Electricians and Elliot-Lewis entered into a monetary settlement in 2013 resolving those grievances. (N.T. 238, 272)

67. Ryan Boyer is the Business Manager of the Laborers and has been a Board Member of the Authority since 2008. As a Board Member, he knows the intent and objectives of the Authority in negotiating for certain necessary terms to be included in the 2014 CSA. (N.T. 242-244)

68. In 2012, the Authority was facing a bleak business future with few bookings "in the funnel." Customers cancelled shows, based on the perception that costs and hassles at the Convention Center were too burdensome, even though they were charged a cancellation fee because it was more cost effective to pay the penalties. Between 2012 and 2014, there were approximately 17 show cancellations due to labor costs and work stoppages. (N.T. 283-285, 412; Employer Exhibit 55)

69. The Authority disseminates surveys to determine customer satisfaction with the Convention Center. The Authority's objectives in revising the CSA in 2013 and 2014 was to provide a more customer friendly building to increase bookings, which had decreased. Authority officials were informed of concerns from customers about labor costs and strikes. As a Board Member of the Authority and labor leader interested in maintaining work for his workers, Mr. Boyer wanted the Convention Center to be more competitive with other facilities. The goal was to make operations more efficient. (N.T. 243-244, 292-293)

70. At no time did the Authority Board assign or blame the high costs to customers and exhibitors for participating in a show at the Convention Center to the labor unions. The Authority became aware that the contractors would "mark-up" the price for labor charged by Elliot-Lewis. The Authority Board did become concerned that the contractors were creating the perception that labor costs were too high to justify their inflated labor prices. The Authority representatives defended

labor to its customers and set out to change the perception that the unions were charging too much money. (N.T. 276-277)

71. The Authority Board developed a plan to improve costs for customers which included privatizing management by contracting with SMG, changing the labor supplier agreement, changing the CSA and increasing billing transparency for customers. (N.T. 279-280, 286-288; Employer Exhibits 4 & 60 at 2)

72. By May 2012, the Authority renegotiated its labor agreement with Elliot-Lewis and eliminated an 8% mark-up on labor. The authority also saved money by privatizing management and eliminating approximately 80 staff positions. SMG manages the facility operations including administration, building and equipment maintenance, security and housekeeping services. (N.T. 285-288; Employer Exhibits 4 & 11)

73. The Convention Center is an economic engine, and the Authority's Board feels responsible for approximately 70,000 workers employed in the hospitality industry, i.e., restaurants, hotels, taxis and retailers in the City of Philadelphia. During the runup to the 2014 CSA deadline, customers were cancelling due to labor costs. The perception among customers was that costs are higher in Philadelphia than Chicago, Boston or New York. SMG manages the Chicago McCormick Convention Center, and Mr. McClintock knows its operations. He used the Chicago McCormick Convention Center as a model for renegotiating the CSA in 2014. Some customers book events for multiple years. After they had suffered the high costs of a show at the Convention Center in Philadelphia, they cancelled or threatened to cancel subsequent shows and their bookings for subsequent years. (N.T. 269-273, 275, 301-302, 309-310, 325)

74. In 2013, the day after the 2003 CSA expired, the Carpenters went on strike during a show hosted by the "Diabetes Educators." The strike had an immediate financial impact on the customers inside the building, who were unable to receive freight and deliveries. Elliot-Lewis was forced to make whole the exhibitors for the overtime labor that became necessary after the strike. The Diabetes Educators cancelled the booking for their next show at the Convention Center. (N.T. 304-307)

75. Throughout negotiations from 2013-2014, the Carpenters had engaged in regressive bargaining, which concerned the Authority because the deadline for a new CSA was approaching. During the final negotiations on April 30, 2014 into May 1, 2014, Mr. McNichol made it clear to Mr. Coryell, Jr., that he did not have authority to sign the 2014 CSA without Authority Board ratification and approval. Throughout negotiations, Mr. McClintock made it "abundantly clear" that he also had to obtain approval from the Authority Board and that he could not unilaterally bind the Authority to an agreement. By this time, the Authority was hemorrhaging business and time was of the essence. (N.T. 318-319, 334-335, 375-378)

76. On May 5, 2014, Mr. Coryell, Sr., emailed a letter to Mr. McNichol rejecting the final 2014 CSA as modified from the parties' tentative agreement of May 1, 2014. (N.T. 332; Employer Exhibit 28)

77. During the Authority's Board deliberations on May 6, 2014, Board Member, Coryell, Sr., said: "I'll never sign that agreement." The Authority Board Members, after the deadline, gave the Carpenters another chance to agree to the modified 2014 CSA immediately prior to the ratification vote and informed Mr. Coryell, Sr., that, once the Authority Board vote was taken, which was already after the four unions signed the 2014 CSA, the Carpenters would have no more chances to sign. Mr. Coryell, Sr. absolutely understood that the Carpenters could not be part of the 2014 CSA and work at the Convention Center if they did not sign before the Authority Board ratification vote. (N.T. 245-246, 335-337, 358)

78. The changes affecting the Carpenters in the final 2014 CSA were de minimis and would have increased the number of customers and consequently the amount of permanent work for the Carpenters, rather than the "roller coaster" schedule they had been experiencing. (N.T. 328-329)

DISCUSSION

In a discrimination claim, the complainant has the burden of establishing that the employee(s) engaged in protected activity, that the employer knew of that activity and that the employer engaged in conduct that was motivated by the employee's involvement in protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996); York City Employees Union v. City of York, 29 PPER ¶ 29235 (Final Order, 1998). An employer's lack of adequate reason for the adverse action taken may be part of the employee's prima facie case. Stairways, supra; Teamsters Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994). Examining the entire background of the case, other factors include: any anti-union activities or statements by the employer that tend to demonstrate the employer's state of mind, the failure of the employer to adequately explain its action against the adversely affected employee(s), the effect of the employer's adverse action on other employees and protected activities. PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978). Although close timing of an employer's adverse action alone is not enough to infer animus, when combined with other factors, close timing can give rise to the inference of anti-union animus. Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004); AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry, 16 PPER ¶ 16020 (Final Order, 1984).

Immediately following the Union's case-in-chief at the hearing, the Authority moved to dismiss the Union's retaliation claims. The Authority argued, in support of its motion, that the evidence failed to demonstrate unlawful or discriminatory motive. (N.T. 183-201). I agree with the Authority and, therefore, grant the Authority's motion to dismiss the charge.

Assuming without concluding that the Carpenters engaged in protected activity known to the Authority, there is an insufficient nexus between the Carpenters' activities and the Authority's decision to impose a 36-hour signature deadline, refuse to permit them to become part of the 2014 CSA after the deadline, lock out the Carpenters after their extension agreement expired on May 10, 2014 and distribute the work formerly performed by the Carpenters to other show labor unions.⁵ Understanding the Authority's behavior in 2014, requires a comparison to the Authority's consistent behavior in 2003 as well as its consistent and equal treatment of all show labor unions and show labor employees who are not directly paid or employed by the Authority.

There are no collective bargaining agreements between show labor and the Authority. Show labor unions have collective bargaining agreements with Elliot-Lewis. However, as the owner/operator of the building, the Authority has the absolute right to control business operations, work jurisdictions and behaviors in that building. The Authority does not have a collective bargaining obligation to show labor. However, in the interest of good labor relations, the Authority has engaged, for many years, in negotiations with show labor to reach mutually agreeable, well defined and predictable work jurisdictions. The Authority's multilateral, inclusive agreements decreased confusion, increased efficiency and defined for exhibitors, decorators and outside contractors the limits, boundaries and expectations regarding work jurisdictions.

In January 2001, all six show labor unions agreed to define the limits of their respective work jurisdictions in a document known as "Jurisdictional Decisions." Also, without a bargaining obligation to the show labor unions, the Authority negotiated the 2003 CSA for a 10-year term with the six show labor unions.⁶ In 2003, the Authority's then CEO and the Mayor of the City of Philadelphia imposed a signature deadline on all show labor unions. The signature deadline in 2003 provided less time for signature returns than the deadline set in 2014. In 2003 and in 2014, all six show labor unions were treated the same under the same deadline. Any union that did not sign the 2003 CSA by 5:00 p.m. on July 15, 2003, would not have their signature accepted and their work would have been divided among the other unions. The same consequence obtained for any union that did not sign the 2014 CSA by 11:59 p.m. on May 5, 2014.

⁵ The Authority argues in its brief that the Carpenters' strikes and grievances were not protected under PERA and that the Authority did not take adverse employment action against the Carpenters. The Authority specifically contends that the strikes are unprotected because they did not meet the statutory requirements for mediation and notice under PERA and the grievances were unprotected because they were not filed with or against the Authority. Additionally, the Authority's actions were not adverse because the Authority did not have any bargaining obligation to or employment relationship with the Carpenters. However, I need not resolve these issues because I conclude that there is no substantial, credible evidence from which to infer unlawful motive.

⁶ Elliot-Lewis, which does have a collective bargaining obligation to the show labor unions, was a party to the 2003 CSA, but it does not have direct control or authority inside the Authority's building.

Despite the Union's emphasis on the 36-hour deadline for signing the 2014 CSA, while Mr. Coryell, Sr. was in Washington D.C., Mr. Coryell Sr., attended the Authority's Board ratification vote, as a Board member, on May 6, 2014, when he was given another opportunity to agree to the 2014 CSA, which he did not do. The Authority was left with no choice, after months of bargaining with no obligation to do so, to immediately establish clear guidelines for its customers who, at this time were cancelling engagements. The Authority had been losing business and immediately needed to obtain a 2014 CSA that permitted exhibitors to save money by allowing them to perform their own work and construct bigger booth sizes, which would induce them to choose the Convention Center rather than other convention centers nationally. Significantly, the Authority honored the collective bargaining agreement extension that the MRCC signed with Elliot-Lewis and permitted the Carpenters to work in the building until May 10, 2014. Additionally, as with the 2003 CSA, the 2014 CSA prohibited the Authority or any other single party to accept the Carpenters' signature on the 2014 CSA after the deadline and Authority Board ratification vote, without the consent of all the signatories.

The Carpenters had filed several grievances with Elliot-Lewis under the CSA and/or the PESCA Agreement (N.T. 123, 127) involving, for the most part, encroachments on their work jurisdiction. The Authority was not a party to those actions, but it eventually learned of the grievances and attended those arbitrations. However, there is no nexus between the Carpenters' grievance activities and the Authority's rejection of the Carpenters' post-deadline signing of the 2014 CSA and subsequent lockout, after May 10, 2014. Those grievances were filed with Elliot-Lewis and not the Authority. Elliot-Lewis is responsible for enforcing the work jurisdictions for its show labor unions, not the Authority. Also, the grievances presented in this case were filed in 2012, which is significantly removed in time from the complained of actions here. The Authority demonstrated multiple, consistent good faith efforts to compromise and bargain with the Carpenters after those grievances were litigated by Elliot-Lewis. Accordingly, the record is devoid of any inference that the Authority discriminated or retaliated in any way against the Carpenters for the filing of grievances. The Authority's actions are unrelated to grievance filing.

Furthermore, I credit the evidence advanced by the Authority prior to the motion to dismiss during the Union's case that the sole motivation was the Authority's legitimate business reasons to rescue the Convention Center, not the Carpenters' union activities. From the beginning of negotiations in 2013, the Authority clearly and consistently expressed its need to modify exhibitors' rights to attract more business to the Convention Center. Most of the proposed changes affected the Carpenters because their work deals most directly with exhibitors. The Authority wanted to permit exhibitors to use power tools inside the building, increase booth sizes, perform their own decorating and signage work.

The Authority and show labor did not reach an agreement on increasing exhibitors' rights in 2013. The Carpenters and three other unions picketed on a line in front of the building. The Laborers did not picket but signed into the building and sat down without working. The Electricians were not on the picket line and stayed across the street honoring the line. The Authority continued to negotiate with all

the show labor unions without any retaliation as related to the picketing or work stoppage.

The parties continued to negotiate through 2014. The Authority relied on Mr. McClintock from SMG who was experienced and knowledgeable about large venue operations as well as the nature of the Authority's competition with other convention centers nationally. Mr. McClintock met with each of the show labor unions individually and collectively throughout negotiations for a new CSA in 2014, sometimes accompanied by Authority CEO, Mr. McNichol. Considering the Authority's competition, the Authority wanted to give exhibitors more rights to perform their own booth construction. The MRCC consistently rejected these proposals throughout 2013 and 2014, and the Authority continued negotiating in good faith even though it did not have a bargaining obligation.

Through the late-night hours of April 30, 2014, into the early morning hours of May 1, 2014, the parties engaged in extensive bargaining and eventually reached a tentative agreement. Any and all agreements must be ratified by the Authority's Board. Later in the morning of May 1, 2014, Mr. McNichol informed Ed Coryell, Sr. of the MRCC that the CSA Committee of the Authority's Board rejected the tentative agreement. In good faith and with an effort to reach a mutually satisfactory agreement, Mr. McNichol reached out to all the union representatives at a meeting at IBEW, Local 98's Union Hall, and persuaded the unions, whose contracts had expired, to file extension agreements so the parties would continue bargaining without interrupting negotiations or striking so close to an agreement.

However, as a result, of the Authority's rejection of the tentative agreement, the MRCC went on a one-day strike at approximately at 2:00 p.m. on May 1, 2014. The Teamsters did not formally strike but they honored the picket line established by the MRCC. No other unions joined the strike or honored the picket line. Those unions were content with the post-May 1, 2014 tentative agreement modifications and the work jurisdictions as applied to them. After striking, the MRCC signed an extension agreement with Elliot-Lewis and returned to work at the building on May 2, 2014. Indeed, the Authority did not take any action against the Carpenters as a result of the strike and continued to give them work and access to the building once they signed an extension agreement with Elliot-Lewis, even though the strike affected a running show and the news of it caused ripples throughout the industry.

On Sunday May 4, 2014, Mr. McClintock telephoned Mr. Coryell, Jr., and informed him that he was receiving an important document that he needed to review and give to his attorney. Mr. McNichol emailed the final 2014 CSA proposal and cover letter to Mr. Coryell, Jr., and the other unions for review while Mr. Coryell, Sr., was in Washington D.C. Mr. Coryell, Jr., did not actually review the document until Monday, May 5, 2014.

In the cover letter, Mr. McNichol explained many of the problems and concerns for the Authority as a result of the strike and the Carpenters' position on exhibitors' rights. He again detailed the Authority's need to clearly define work jurisdictions for exhibitors, to diminish costly and time-consuming conflicts on the show floor and to increase the cost effectiveness for the exhibitors as compared to

other convention centers. Based on input from influential industry and political leaders, Mr. McNichol explained that the May 1, 2014 strike and the 2013 strike resulted in significant and immediate loss of business for the Authority. He further explained that competitors were exploiting the strike to redirect business away from the Authority. The business losses resulting from costs, strikes and a negative reputation in combination compromised the Authority's ability to convince customers to return to the Authority. Mr. McNichol further explained that "[w]e now face even more significant challenges to convince committed customers that they should still bring their shows to the Pennsylvania Convention Center and to convince potential customers that it is worth the investment and risk to select the Pennsylvania Convention Center." As a result, Mr. McNichol provided the Authority's final proposal giving all the show labor unions an opportunity to agree to a work jurisdiction document that would improve the marketability and business returns for the Authority which had developed a reputation of being too costly due to work stoppages and noncompetitive, "arcane" work jurisdiction rules. Mr. McNichol further explained that "[t]he proposal that [the Authority] provided on the morning of April 30th [2014] is now not sufficient to meet our challenges moving forward in light of the damage caused by the strike." (Complainant Exhibit 16).

Mr. McNichol's business concerns were palpable and certainly credible. Time was of the essence and Mr. McNichol was under extreme pressure to reverse a potentially disastrous economic slump for the Authority and its vast unused, unrented space. As Mr. McNichol further explained to the unions in his 2014 CSA cover letter:

The attached document includes the terms necessary for the Pennsylvania Convention Center to remain a viable entity in light of these developments. This document removes arcane limitations upon Exhibitors' rights, reduces Exhibitors' potential costs, and provides a skilled, experienced and coordinated workforce to serve our Customers' needs. By providing a long-term Customer Satisfaction Service Agreement with these elements, we will be well positioned to sell Philadelphia and the Pennsylvania Convention Center and meet the steepened challenges we now face. This is our only opportunity to save the tens of thousands of man-hours and millions of dollars in union wages and benefits inside the Center (not to mention the hundreds of millions of dollars in economic benefit to the region, the City of Philadelphia, and the Commonwealth of Pennsylvania.) that will certainly be lost due to the cancellation of shows and refusal of other shows to consider Philadelphia as a destination.

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Now is the time for unified action to salvage the Center and move it forward. The Pennsylvania Convention Center Authority Board of Directors intends to meet at 8 a.m. on May 6, 2014 to approve this Customer Service Agreement. If all of the unions are not willing to sign this Customer Service Agreement, it is management's intent to work with the unions who accept these terms and conditions to implement the Customer Service Agreement.

(Complainant Exhibit 16)

The Authority's motivation could not be clearer: **To salvage what was left of and to improve the Authority's business and reputation in the industry.** The strike and the delays in reaching a new CSA quantifiably damaged the Authority's business. The Authority was under pressure from the industry to quickly reverse the hemorrhaging. In response, the Authority had to represent to customers that there would be no more work stoppages and there would be exhibitor-friendly, well-delineated work jurisdiction rules. Imposing a signature deadline was necessary and reasonable, given the dire nature of the business circumstances, the fact that four other show labor unions agreed with the terms of the modified 2014 CSA and the Carpenters' intransigence after a year of bargaining. The Authority had bargained in good faith when it did not have a duty to do so and the time had come to act. These dire circumstances and the emergency need to give overdue life support to the economic viability of the Authority motivated the Authority's actions, not discrimination. Accordingly, the motion to dismiss is granted. The Union did not establish that the Authority was unlawfully motivated and, therefore, did not establish a prima facie case of discrimination. Indeed, I find that the overwhelming evidence of record clearly establishes that the Authority acted in good faith for lawful economic and business concerns under emergency circumstances.

Additionally, the evidence offered during the Authority's defense case corroborates the legitimate business motivation advanced during the Union's case-in-chief and makes it abundantly clear that no one from the Authority's Board or any of its representatives harbored even a hint of animus towards the Carpenters. Certainly none of the actions taken by the Authority were in any way the result of animus against the Carpenters. In this regard, I find that the testimonies of Mr. McNichol and Mr. McClintock were extraordinarily credible based on their demeanor, impressive command and knowledge of the subject matter and consistency after being challenged on cross-examination. Any conflicts in testimony between the Union's witness and either Mr. McNichol or Mr. McClintock I resolved in favor of Mr. McNichol and Mr. McClintock.

The Authority was strictly motivated by improving its business model to be more cost effective and competitive for its customers. It negotiated in good faith with the Carpenters for terms that would improve business for the Convention Center and increase man-hours for the Carpenters. In the face of evidence from other convention centers about the improvements the proposed changes would make for the Carpenters, the Carpenters refused to agree and engaged in regressive bargaining, putting the Authority under time constraints while it was hemorrhaging business. Mr. McClintock and Mr. McNichol repeatedly reached out the MRCC leadership to work through differences and persuade the Carpenters to sign on for the changes in the interests of all. Other union leaders and politicians also repeatedly attempted to persuade the Carpenters that it was in everyone's best interest and in the best interest of the industry to agree to the proposals advanced by the Authority and SMG. Attracting more customers and exhibitors meant more work for the show labor and the proposed changes would have

lowered costs for exhibitors and attracted more business. Indeed, that is exactly what happened after the 2014 CSA went into effect.

At no point in time did anyone from the Authority, its Board, SMG or the other unions try to exclude the Carpenters. Not only were the 2012 work jurisdiction grievances filed by the Carpenters with Elliot-Lewis unrelated to any actions taken by the Authority, but also the work jurisdiction grievances filed by the Electricians far outnumbered those of the Carpenters with no repercussions. Aside from the lack of nexus between the Carpenters' grievances and the Authority's actions in question, the overwhelming evidence shows that the motivation for imposing stringent deadlines on all the unions equally, not just the Carpenters, was a real business need to achieve hemostasis and reverse the industry perception that work stoppages and high costs would make shows at the Convention Center cost prohibitive. The grievances are simply unrelated to the Authority's imposition of a deadline and refusal to accept the Carpenters' post-deadline signature of the 2014 CSA.

The strike, however, did contribute to the imposition of a deadline, not for retaliatory purposes, rather because the business damage after the second strike created a desperate need for the Authority to produce a CSA that projected stability and predictability to the industry. Every union had the same deadline and the same consequences for not signing on time. Moreover, the Board still permitted the Carpenters a second chance to agree during the ratification deliberations prior to the vote, during which time Authority Board members again warned Mr. Coryell Sr., of the repercussions for not signing. In response, Mr. Coryell, Sr., publicly boasted that "he would never sign that agreement." There simply is no evidence of an effort to punish or retaliate against the Carpenters for striking, engaging in regressive bargaining or filing grievances. The evidence overwhelmingly establishes that the Authority went far out of its way to bring the Carpenters into the agreement and include them in the work force at the Convention Center. The Authority and SMG handled the Carpenters with velvet gloves, not animus. A reasonable person simply cannot not infer animus on this record.

The fact that Mr. McNichol cited the May 1, 2014 labor strike as a reason for obtaining signatures on the 2014 CSA as soon as possible did not constitute, in any way retaliation, for the strike. The Convention Center was losing business before the 2014 strike. Then customers learned, through competitors, of the strike, including the ones then involved in a show inside the building, which resulted in an immediate decline in bookings and damage to the Authority's reputation. The Authority's push for signatures came after many months of negotiating and compromise, without obligation, and after the Carpenters pushed the Authority against the deadline for operating without a new CSA. Operating without a new CSA would have been chaotic for business and operations and the threat of doing so forced the Authority to demand signatures for the CSA by May 5, 2014. The strike hurt the Authority and emphasized for the entire industry the need for a new CSA with cost effective work rules and jurisdictions and exhibitors' rights with no striking for 10 years. Predictability, reliability and dependability were key to marketing the Authority to improve its reputation and increase its bookings.

Even after the 2013 strike, the Authority engaged with the Carpenters and all the trade show unions in a multilateral cooperative manner to reach consensus on a new CSA with more business friendly work jurisdictions and rules. The Authority's impetus for making the changes were necessitated by customer complaints and cancelled bookings as well as the study completed by Crossroads Consulting that recommended a more competitive CSA. Everything the Authority did to get to a new timely CSA was absolutely motivated by the goal of reversing economic losses and to improve damage to its reputation. Even though the two strikes damaged the Authority's reputation among customers, the Authority was not at any time motivated by those strikes to retaliate against the Carpenters or any other union as evidenced by the constant and subsequent efforts by the Authority to include the Carpenters in every negotiation and the new 2014 CSA.

The Authority had compromised its position on exhibitors' rights to attempt to meet the Carpenters' demands. While the Authority was compromising, the Carpenters were engaged in regressive bargaining, yet the Authority continued to negotiate and continued to include the Carpenters among the workforce at the Convention Center. The lead representative for the other trade show unions believed that the Authority's proposals for the new 2014 CSA were in the best interest of the industry. There was never any intent to exclude the Carpenters before, during or after their strikes, and certainly there was no animus reflected in any of the Authority's decisions even in the face of regressive bargaining by the Carpenters. Indeed, the Authority's cost savings plan started with the Authority itself when it reduced its own staff by approximately 80 employees, contracted with a private management firm, SMG, and renegotiated its agreement with the labor supplier, Elliot-Lewis, to eliminate the 8% labor mark-up.

Accordingly, the Union did not meet its burden of proving the necessary elements of its claims under Section 1201(a) (1) and (3), and the charge of unfair practices is dismissed in its entirety.

CONCLUSIONS

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

1. The Authority is a public employer under PERA.
2. The Union is an employee organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Authority has not committed unfair practices within the meaning of Section 1201(a) (1) or (3).

ORDER

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

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is 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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this tenth day of July, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner