COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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| TRANSPORT WORKERS UNION LOCAL 234 | : | |
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| v. | : | Case No. PERA-C-21-194-E |
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| SOUTHEASTERN PENNSYLVANIA | : | |
| TRANSPORTATION AUTHORITY | : | |

**FINAL ORDER**

The Transport Workers Union Local 234 (TWU) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) on August 19, 2021, alleging that the Southeastern Pennsylvania Transportation Authority (SEPTA) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). In the Specification of Charges, the TWU alleges that on or about May 10, 2021, SEPTA contracted with the Easton Coach Company (ECC) to oversee SEPTA's Owl Link service, an on-demand ride hailing service, in Lower Bucks County. TWU filed a Charge of Unfair Practices, docketed by the Board at Case No. PERA-C-21-76-E alleging a failure of SEPTA to bargain in good faith over the assignment of bargaining unit work to ECC. A Compliant was issued by the Board on the charge at No. PERA-C-21-76-E, and the matter is pending a hearing. In the instant charge, TWU alleges that upon review of the contract between SEPTA and ECC regarding the Owl Link Service, that SEPTA and ECC are joint employers and that SEPTA has failed or refused to bargain with TWU regarding the wages, hours and working conditions of the ECC employes performing the Owl Link Service.

By letter dated September 23, 2021, the Secretary of the Board declined to issue a complaint and dismissed the charge. The Secretary stated, that based on the allegations that ECC is a private employer, ECC is not subject to the jurisdiction of the Board and thus there is no enforceable bargaining obligation under PERA with regard to the employes who are employed in whole or jointly by ECC. On September 30, 2021, the TWU filed timely exceptions with the Board challenging the Secretary's decision not to issue a complaint.

On exceptions TWU cites to Novembrino v. IAM, Lodge 2462, 601 A.2d 916 (Pa. Cmwlth. 1992), to support that SEPTA and ECC are joint employers. While Novembrino may speak to the elements for a joint employer relationship, Novembrino was a joint employer relationship between the City Controller and the City of Scranton, both of which are public employers under PERA and within the jurisdiction of the Board. Novembrino, however, does not address the jurisdictional issue in this case where one of the alleged joint employers is a private company within the exclusive jurisdiction of the National Labor Relation Board (NLRB).

Secondly, TWU cites to Steamfitters Local 449 v. PLRB, 613 A.2d 155 (Pa. Cmwlth. 1992) for the proposition that the Board may exercise unfair practice jurisdiction over the public employer in a joint employment relationship. Steamfitters however is limited to its facts, and the charge in that case was not a refusal to bargain, but a claim that the public employer violated Section 1201(a)(3) of PERA by discriminatorily exercising its authority in the joint employment relationship to have an employe terminated from employment with the private contractor for having engaged in a protected

union activity. No discrimination charge under Section 1201(a)(3) of PERA has been alleged in the TWU's Charge in this case.

Moreover, the Court in Steamfitters expressly held that the Board's ability to remedy the unfair practice was limited to only the public employer, and the Board could only direct relief that the public employer alone could implement. The Court therein recognized that the Board is without jurisdiction to direct any relief against a private company under the jurisdiction of the NLRB. *See* SEPTA (MV Transport), 48 PPER 59 (Final Order 2017)

Finally, TWU argues that SEPTA (MV Transport), *supra.*, is a representation case under Article VI of PERA and therefore is inapplicable to the present charge of unfair practices under Article XII. However, as the Board stated in SEPTA (MV Transport), "where there is a joint employer relationship, identifying the obligation to bargain over matters of wages, hours or working conditions by one of the employers necessarily affects the bargaining obligations with respect to the other employer…. [W]ere the Board to exercise jurisdiction and find that the employes … are in a joint employer relationship … for purposes of collective bargaining, the Board would in effect be usurping the purview of the NLRB…." *See* 43 P.S. §1101.301(1) (defining public employer to exclude employers covered under the National Labor Relations Act); and San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).

Indeed, as noted in SEPTA (MV Transport), when the Board cannot enforce collective bargaining obligations against one of the employers in a joint employer relationship there is no actual collective bargaining, or for that matter a binding collective bargaining agreement, and thus the unit of employes is not appropriate for purposes of collective bargaining under PERA. This is not to say, as TWU postulates, that a public employe representative has no recourse or remedy in the event a public employer enters into a joint employment relationship and refuses to bargain over the removal of the certified unit's work. *See* Wattsburg Area School District, 47 PPER 38 (Proposed Decision and Order, 2015), *affirmed*, PERA-U-12-240-W (Final Order, July 19, 2016) (employes of a joint employer are not included in an existing bargaining unit of the public employer). Indeed, here TWU's charge of unfair practices at Case No. PERA-C-21-76-E alleges just that, and a complaint has been issued by the Board. Secondly, to the extent that TWU seeks to bargain with ECC over the wages, hours and working conditions of the employes performing the Owl Link Service, TWU's rights and obligations to bargain are within the exclusive province of the NLRB. A decision by the NLRB as to the bargaining rights and obligations with respect to ECC necessarily affects, and preempts, the bargaining rights and obligations of SEPTA under PERA.

After a thorough review of the exceptions, the Board reaffirms that in a joint employer relationship between a public employer and private company the Board's ability to determine the bargaining rights and obligations regarding the jointly employed employes, is preempted by the NLRB's jurisdiction over the private company. As such, the Secretary did not err in declining to issue a complaint and dismissing the Charge of Unfair Practices under Section 1201(a)(1) and (5) of PERA. Accordingly, the TWU's exceptions shall be dismissed, and the Secretary's September 23, 2021 decision will be sustained.

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 by the Transport Workers Union Local 234 are hereby dismissed, and the Secretary's September 23, 2021 decision declining to issue a Complaint and dismissing the Charge of Unfair Practices, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this twenty-first day of December, 2021. 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.