

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 83 :
 :
 v. : CASE NO. PERA-C-20-252-W
 :
 CENTRE AREA TRANSPORTATION AUTHORITY :

PROPOSED DECISION AND ORDER

On October 19, 2020, American Federation of State, County and Municipal Employees District Council 83 (AFSCME or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Centre Area Transportation Authority (CATA, Authority or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act).

On November 10, 2020, the Secretary of the Board issued a complaint and notice of hearing designating February 3, 2021, via SKYPE for Business, as the time and manner of hearing.

The hearing was continued and held on May 18, 2021, via Microsoft TEAMS before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed its post-hearing brief on July 23, 2021. The Authority filed its post-hearing brief on August 23, 2021. The Union filed a post-hearing reply brief on September 10, 2021.

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

FINDINGS OF FACT

1. The Authority is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).
3. The Union represents bus operators, mechanics, facilities workers, bus cleaners and fuelers employed by the Authority. These job classifications are all related to the Authority's fixed route bus services. Approximately three-quarters of the bargaining-unit members are bus operators. Before Covid-19, there were approximately 150 employes in the bargaining unit. (N.T. 14, 69; Authority Exhibit 2; PERA-R-7281-C).
4. The bargaining-unit bus operators hold a CDL license and drive large buses that hold between 30-50 riders. They drive fixed routes which means there are set stop locations and the bus circulates. The bus operators make specific stops at specific times and if a rider wants to ride the bus, the rider has to be at the bus stops at specific times. This is considered a non-demand-responsive route. (N.T. 70-71).

5. In 2018, CATA participated in a simulation offered by Ford Motor Company and software company TransLoc to determine how a non-fixed, demand-responsive service could work in CATA's service area. CATA ran the simulation in the Bellefonte/Pleasant Gap area. That service area was also covered by the XG and XB bus routes. (N.T. 74).

6. On July 2, 2019, the parties had a labor management meeting where the Authority first brought up CATAGO! micro transit. (N.T. 15).

7. At this July 2, 2019, meeting, Kimberly Fragola, who was at the time the Assistant General Manager for Operations for the Authority, said that the Authority had been selected to hold a pilot program to try micro-transit that would run off of an app. Fragola said the micro-transit pilot would work in conjunction with, but not replace, fixed route bus service. At this meeting, the Authority asked Union members for their support in the project so that the Authority could include the fact that the Union supported the project in the Authority's application for Federal Transit Administration (FTA) funding on the project. The Authority pitched the idea of using temporary, part time employees paid at \$10 an hour for the micro-transit program. The Authority expressed that it wanted the pilot micro-transit program to start in November 2019. The Authority expressed that the program would start with only a few vehicles and last for about a year and then be reevaluated. (N.T. 16-19, 56; Union Exhibit 1).

8. At the time of the meetings on July 2, 2019, the Union agreed to write a letter of support for the program because the Union felt it could potentially add members to its bargaining unit. On July 25, 2019, Fragola sent Pastirko an email with suggested language Pastirko could use in a letter of support. Fragola's suggested language includes the line "The first phase of the pilot, which kicks off on November 1, will operate for a period of at least five months alongside existing fixed route service." The Union did write a letter of support to the FTA dated July 25, 2019. (N.T. 20-23; Union Exhibit 2, 3).

9. The Authority did not receive funding from the FTA. However, it moved ahead with the micro-transit project and started the program in January, 2020. The micro-transit program is called "CATAGO!". CATAGO! uses small vans which hold between 7 to 12 people. Its drivers do not require a CDL license. It is a nonfixed route, demand-responsive service. (N.T. 24, 73, 104).

10. CATAGO! drivers have always been non-bargaining unit members. They are Authority employees. (N.T. 29, 78).

11. The XB route goes from State College to Bellefonte and through Bellefonte. The XG route goes from State College to Pleasant Gap. The XG and XB routes are fully described in Employer Exhibit 4 Supplemental. (N.T. 56, 97-98; Employer Exhibit 4 Supplemental).

12. During the initial run of CATAGO! in January, CATAGO! ran as follows. Within the Bellefonte zone (Pleasant Gap was added to the zone in March, 2020), riders used the CATAGO! app to call a CATAGO! van to take trips from place to place in the zone. The requests are managed by a new computer system called TransLoc. For example, a rider

could go from their home in Bellefonte to the County jail using CATAGO!, since each is in the Bellefonte zone. To leave the zone, the rider takes a CATAGO! van to a fixed-route bus stop and gets on a fixed-route bus to go from there. The Bellefonte/Pleasant Gap zone has "anchor points" where riders could get out of a CATAGO! van and get onto a fixed-route bus. These four fixed locations are the Nittany Mall, Wal-Mart, Nittany Medical Center, and the "blue loop clock". During the initial run of CATAGO!, in January, 2020, the fixed XB and XG routes were running. The plan for the pilot phase was not to replace fixed-bus routes. The Authority wanted CATAGO! to act as a "feeder" to bring people outside the core State College area. (N.T. 59, 75-80, 88, 103).

13. The Bellefonte/Pleasant Gap zone overlaps the area served by the XB and XG routes. The first CATAGO! zone as implemented just covered Bellefonte. The zone was enlarged to include Pleasant Gap in March, 2020. (N.T. 103; Employer Exhibit 4, 4 Supplemental).

14. In March, 2020, due to the COVID-19 pandemic, ridership on the Authority's fixed route buses plummeted to almost zero. A significant percentage of riders on the fixed route buses are students at Pennsylvania State University's (Penn State) main campus in State College. (N.T. 25, 89).

15. Due to the reduction in ridership, the Authority went into early summer layoff. 96 bargaining-unit bus operators were laid off. Normally, the Authority lays off employes in the summer due to reduced ridership due to Penn State not being in session. With respect to the layoffs, the Authority issued a press release on March 19, 2020, which states in relevant part:

Effective Monday, March 23, 2020

Effective Monday, March 23, all CATABUS fixed route service will cease operations at 8:00 p.m. daily. Specific details for final trips will be available by Thursday, March 19 at catabus.com. CATAGO! microtransit service will cease operation at 8:00 p.m. Monday through Friday, and 7:00 p.m. Saturday, as the service does not run on Sunday. CATA asks that those working second and third shifts who will be adversely affected by these changes please contact CATA's Customer Service Center at (814) 238- CATA(2282) during regular business hours to share their feedback on this change. . . .

CATA will not operate the following routes: The A (Park Forest Village), B (Boalsburg), C (Houserville), F (Pine Grove), G (Gray's Woods), and S (Science Park) routes. We will notify the community when we are able to return these routes to service.

The XB (Bellefonte) and XG (Pleasant Gap) routes will also be discontinued, however CATAGO! microtransit service will be expanded to provide

service to Pleasant Gap during this time. CATARIDE services will continue in the $\frac{3}{4}$ mile zone around the XB and XG routes.

The changes in frequency to the K (Cato Park), N (Martin St./Aaron Dr.), R (Waupelani Dr.), and V (Vairo Blvd.) routes scheduled to start on Thursday, March 19 will remain in effect.

CATA is working with Penn State to determine the impact of today's announcement on the Blue Loop and Red Link service so no changes are being made at this time.

(N.T. 26, 28, 45, 90; Union Exhibit 3).

16. CATAGO! remained operating after the March, 2020, layoffs of bargaining-unit members. (N.T. 90).

17. Fragola sent the press release to Margaret Pastirko, the Staff Representative for District Council 83. After reviewing the press release at Union Exhibit 3, Pastirko told Fragola that CATAGO! cannot replace the XB (Bellefonte) and XG (Pleasant Gap) routes. The Authority reinstated the XB and XG routes in June, 2020, when ridership increased due to relaxed Covid-19 restrictions for essential workers. (N.T. 28-30, 105).

18. By June, 2020, the Authority recalled around 37 to 39 bargaining unit members. By August, 2020, the Authority recalled the remaining laid-off bargaining unit members, anticipating Penn State's return. (N.T. 90-91).

19. In September, 2020, at a labor-management meeting, Fragola raised the issue of replacing the XB and XG bus lines with CATAGO! service. Pastirko objected to this at the meeting and suggested moving the CATAGO! drivers into the bargaining unit so that the CATAGO! drivers would not be replacing bargaining unit members. Fragola said that the Authority would not do that. Jerrod St. Clain, the President of Local 1238, said that what the Authority was doing was a labor charge. Fragola said that the Union "has got to do what you got to do." (N.T. 31-32).

20. In Fall, 2020, Penn State students did not return to campus in normal, pre-pandemic, numbers due to the continuing COVID-19 pandemic. (N.T. 32).

21. On September 28, 2020, the Authority issued a public announcement on service changes which states in relevant part:

CATA Temporarily Discontinues Commuter Routes,
Expands CATAGO! into Pleasant Gap.

As the result of low ridership during the ongoing COVID-19 pandemic, CATA will temporarily discontinue CATABUS commuter routes - the A (Park Forest), B (Boalsburg), C (Houserville), F (Pine

Grove), G (Grays Woods), S (Science Park), XB (Bellefonte), and XG (Pleasant Gap) Routes effective Monday October 5, 2020. . . .

Also Effective Monday, October 5, CATAGO! microtransit service, which currently operates in Bellefonte, Monday-Friday from 6:00 am until 11:00 p.m. and in Bellefonte and Pleasant Gap Saturdays from 6:00 a.m. until 7:00 p.m., will be extended to also provide service to Pleasant Gap Monday -Friday from 6:00 a.m. until 11:00 p.m. . . .

(N.T. 32; Union Exhibit 5).

22. In connection with the route cancellations effective October 5, 2020, the Authority laid off the related fixed route bargaining-unit members. (N.T. 33-34).

23. After the service change on October 5, 2020, the Authority took away all fixed (bus) routes for the Bellefonte/Pleasant Gap zone and relied solely on CATAGO! service for that zone. (N.T. 58).

24. At the time of the hearing, the XB and XG routes were still canceled. At the time of the hearing, the Authority did not plan on restarting the XB and XG routes in Fall 2021. (N.T. 34, 95, 108).

25. The Parties are subject to a collective bargaining agreement (CBA) with the effective dates of April 17, 2018, through March 31, 2021. The Parties' CBA states in relevant part:

Section 4.1:

. . . [T]he Employer shall have and retain exclusively the following rights which shall not be subject to collective bargaining:

. . .

A. To determine the level of transit service to be provided, recognizing that the level of service may vary from time to time depending on the needs of the public and to reduce service after public patronage declines.

. . .

G. To assign and reassign different routes, as may be needed for providing efficient service to the public.

. . .

J. The right to contract for the provision of non-fixed route, demand-responsive transportation. Non-fixed route, demand-responsive transportation shall be defined as

transportation which does not operate on a published and publicly distributed fixed route and timetable. . . .

(Authority Exhibit 1).

DISCUSSION

The Union alleges that the Authority violated Sections 1201(a) (1) and (5) of PERA by eliminating the XB and XG bus routes operated by bargaining unit employees and replacing them with expanded non-bargaining unit service. The Union argues that this act was a violation in two senses. First, the Union argues that the replacement of the eliminated XB and XG bus routes was a unilateral transfer of bargaining unit work in violation of Section 1201(a) (5). Second, it argues that the Authority's replacement of the XB and XG bus routes was an unlawful repudiation of a July, 2019, agreement between the Parties which is also a violation of Section 1201(a) (5) of PERA.

As a threshold matter, the Authority argues that the Union's charge is untimely. (Authority's Brief at 8-9). Section 1505 of PERA provides that no charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the charge. 43 P.S. § 1101.1505. A charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair practice was committed. Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER ¶ 24 (Final Order, 2004). The complainant has the burden to show that the charge was filed within four months of the occurrence of the alleged unfair practice. PLRB v. Commonwealth of Pennsylvania (Bureau of Employment Security), 9 PPER ¶ 9171 (Nisi Decision and Order, 1978); PLRB v. Allegheny County Prison Employees Independent Union, 11 PPER ¶ 11282 (Proposed Decision and Order, 1980).

In this matter, it is clear that the Union's charge is timely. The charge was filed on October 19, 2020. The record in this matter shows that the events which led to the charge occurred in September and October, 2020, culminating with the October 5, 2020, cancellation of the XB and XG bus routes to Bellefonte and Pleasant Gap with the continuation and expansion of the CATAGO! service in the Bellefonte/Pleasant Gap zone. Therefore, the Union's charge was filed well within the four-month period allowed by PERA.

The Authority argues that the four-month period of limitation should have started running in March, 2020. (Authority's Brief at 9). In March, 2020, the Authority did in fact discontinue the XB and XG lines while continuing the CATAGO! service for the Bellefonte/Pleasant Gap zone. However, the record shows that, once the Union became aware of this, Pastirko told Fragola that CATAGO! cannot replace the XB and XG routes with CATAGO! and that the Authority reinstated the XB and XG lines by June, 2020. I find that these facts show that the Union did not know, or should not have known, that an unfair practice had been committed. I find that it was reasonable to believe that the unfair practice had stopped due to Pastirko's complaint to Fragola and, therefore, the four-month period of limitation did not start in March, 2020.

Moving to the merits of the Union's charge, the Union argues that the elimination of the XB and XG routes and related expansion of the CATAGO! Service in the Bellefonte/Pleasant Gap area was an unlawful unilateral transfer of bargaining unit work in violation of Section 1201(a)(5) of the Act. An employe representative bears the burden of proving that an employer unilaterally transferred or removed work from the bargaining unit. City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). The transfer of any bargaining unit work outside the unit without first bargaining with the employe representative is an unfair practice. City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992). A removal of bargaining unit work may occur (1) when an employer unilaterally removes work that is exclusively performed by the bargaining unit or (2) when an employer alters a past practice regarding the extent to which bargaining unit employes and non-bargaining unit employes perform the same work. City of Jeannette v. PLRB, 890 A.2d 1154 (Pa. Cmwlth. 2006) (citing AFSCME, Council 13, AFL-CIO v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992)).

Even where bargaining unit and non-unit employes have both performed similar duties, a union can satisfy the exclusivity requirement by proving that the bargaining unit members exclusively performed an identifiable proportion or quantum of the shared duties such that the bargaining unit members have developed an expectation and interest in retaining that amount of work. AFSCME, Council 13 v. PLRB, supra; City of Jeanette v. PLRB, supra. Therefore, a public employer commits an unfair practice by altering the manner in which work has been traditionally assigned or by varying "the extent to which members and non-members of the bargaining unit have performed the same work." Wyoming Valley West School District, 32 PPER ¶ 32008, 28-29 (Final Order, 2000) (citing AFSCME, Council 13, AFL-CIO v. PLRB, supra); Centre Township, 50 PPER 14 (Final Order, 2018).

Further, the Board has held that where non-unit personnel perform work through the use of new technology that is substantially equivalent to work previously performed by the bargaining unit on an exclusive basis, the Board will find a duty to bargain over assignment of such work out of the unit. Commonwealth of Pa. State Police, 36 PPER ¶ 144 (Final Order 2005, aff'd sub nom. Pa. State Police v. PLRB, 912 A.2d 909 (Pa. Cmwlth. 2006) (en banc), quoting City of Philadelphia, 31 PPER ¶ 31022 (Final Order, 1999).

With the above law in mind, it is clear from the record that the Authority had the duty to bargain the removal of bargaining unit work which occurred in October, 2020, when it discontinued the XB and XG bus lines and kept and expanded the CATAGO! service in the zone previously serviced by the XB and XG routes.¹ First, the record is clear that the Authority refused to bargain this change in the September, 2020, meeting between the parties. Next, I find that the record in this matter supports a conclusion that the work done by the CATAGO! drivers is substantially equivalent to the work done by the bargaining unit bus drivers. First, much like the cases in Commonwealth of Pa. State Police, supra, the CATAGO! system was created and implemented as a

¹ The Authority has a successful affirmative defense which is discussed below.

result of new technology that created a new context for work. The record shows that in 2018, the Authority participated in a simulation offered by Ford Motor Company and software company TransLoc to determine how a non-fixed, demand-responsive service could work in the Authority's service area. CATA ran the simulation in the Bellefonte/Pleasant Gap area and subsequently implemented the pilot. The new technology allowed riders in the zone use an app on their phone to call a driver. The driver would respond to the rider and drive the rider to any location the driver requested that was within the same zone. This is substantially new technology that allowed the Authority to operate differently than the traditional bus routes operated by bargaining unit members. I find, however, that is still substantially equivalent to the work done by bargaining unit bus drivers. While the Authority does point to a differences between fixed route and non-fixed route public transportation, I find that, leaving aside the new technology which enables CATAGO!, the differences between these two modes of public transportation are superficial and that there is a substantial equivalence between the two modes of work. Both modes of work involve driving Authority vehicles in the Authority's service area to pick up and drop off riders. I find that, but for the technology introduced by the Authority, the work now done by CATAGO! drivers in the Bellefonte/Pleasant Gap zone would have been done by bargaining unit members.

Second, I infer from the record that the CATAGO! service and the bus service are substantially equivalent because the Authority in October, 2020, replaced the XB and XG bus lines in Bellefonte and Pleasant Gap and relied on CATAGO! to service riders in the Bellefonte and Pleasant Gap area. I infer from the record that the Authority decided it was able to cancel the XB and XG lines in October, 2020, because it could rely on CATAGO! to provide substantial equivalent service. This inference is supported by the record as a whole and the following testimony of Fragola on direct:

Q. So at the time you designed the pilot program to operate the [Bellefonte/Pleasant Gap] zone, was the concept to replace fixed routes?

A. No. It - what was going on is we - there's lack of funding for buses. So we can get more buses for replacement but not expansion and State College is a growing area. A new apartment building goes up and they advertise that the residents get a bus pass and we need to go there, so we keep needing to expand in the core State College area. We couldn't get any buses to do that. So what we were looking to do is redistribute our resources. We wanted to have CATAGO! micro-transit act as this feeder bringing people and then we could relocate those resources to within the core and have more service there.

(N.T. 76-77). I find that this quote clearly demonstrates a motivation for the Authority to replace the XB and XG routes and service the Bellefonte/Pleasant Gap area with CATAGO!. The Authority did not have adequate funding for all the buses it needed to expand and wanted to "redistribute [its] resources" by expanding CATAGO! and reassigning

buses to the "core" service area which is not the Bellefonte/Pleasant Gap zone. This motivation, and the record as a whole, supports my inference that CATAGO! service and the traditional bus service were similar enough that the Authority replaced bus service with CATAGO! by using new technology. Though in her testimony Fragola says that the Authority did not intend to replace bus routes when designing the CATAGO! pilot program, that is in fact what happened by October, 2020.

Moving on, the record shows that non-bargaining unit members drove the CATAGO! vans in the Bellefonte/Pleasant Gap zone starting in January, 2020. Thus, the work described above became, in part, non-exclusive to the bargaining unit. The record further shows that prior to October, 2020, non-bargaining unit members were performing work via CATAGO! in conjunction with the buses in the Bellefonte/Pleasant Gap zone. Thus, the record shows that there was, immediately prior to October, 2020, a practice where both bargaining unit bus drivers and CATAGO! drivers performed work together in the Bellefonte/Pleasant Gap zone. I find that the Union's bargaining unit members developed an expectation and interest in retaining that amount of work in Bellefonte/Pleasant Gap zone. The record shows then that in early October, 2020, the Authority unilaterally changed this practice and removed the XB and XG routes leaving only the CATAGO! workers operating in the Bellefonte/Pleasant Gap zone and then expanded the CATAGO! service. Thus, the Employer altered the extent to which members and non-members of the bargaining unit have performed the same work while refusing to bargain this change.

In defense, the Authority argues that it has a contractual privilege to implement the CATAGO! service as it sees fit without bargaining. Both the Commonwealth Court and the Board have recognized the affirmative defense of contractual privilege. Pennsylvania State Troopers Ass'n v. PLRB, 804 A.2d 1291 (Pa. Cmwlth. 2002); Jersey Shore Area Sch. Dist., 18 PPER ¶ 18117 (Final Order, 1987). The doctrine of contractual privilege requires the dismissal of a charge where the employer establishes a sound arguable basis for ascribing a certain meaning to the language of the collective bargaining agreement or other bargained for agreement and that the employer's conduct was in conformity with that interpretation. Fraternal Order of Transit Police v. SEPTA, 35 PPER 73 (2004). An employer's interpretation need not be the correct interpretation as long as a sound arguable basis exists for its interpretation, thus establishing a substantial claim of contractual privilege. Id. Moreover, it is not the function of the Board to interpret collective bargaining agreements through unfair practice charges. Hatfield Township, 18 PPER ¶ 18226 (Final Order, 1987).

In this matter, the Parties' CBA has the following language in Section 4.1:

. . . [T]he Employer shall have and retain exclusively the following rights which shall not be subject to collective bargaining:

. . .

A. To determine the level of transit service to be provided, recognizing that the level of service may vary from time to time depending on

the needs of the public and to reduce service after public patronage declines.

. . .

G. To assign and reassign different routes, as may be needed for providing efficient service to the public.

. . .

J. The right to contract for the provision of non-fixed route, demand-responsive transportation. Non-fixed route, demand-responsive transportation shall be defined as transportation which does not operate on a published and publicly distributed fixed route and timetable. . . .

(Authority Exhibit 1). I find that, based on the record as a whole, the Authority's argument that it acted in conformity with this language has a sound arguable basis rooted in the language of Section 4.1. Section 4.1. states that the Authority may, without bargaining, determine the level of services to be provided, assign and reassign routes, and contract for the provision of a "non-fixed route, demand-responsive transportation". The record shows that CATAGO! fits the definition of "non-fixed route, demand-responsive transportation" and thus I find the Authority has a sound arguable basis for its implementation of CATAGO!. I further find that the Authority's actions with respect to the discontinuation of XB and XG have a sound arguable basis in the explicit language of the CBA which says the Authority may, without bargaining, determine the level of service to be provided and assign and reassign routes. Therefore, the Union's charge based on the unilateral transfer of bargaining unit work must be dismissed as the Authority has established the affirmative defense of contractual privilege based on Section 4.1. of the CBA.

The Union next argues that the Authority's actions in this matter amount to a repudiation of an agreement between the Parties reached in July, 2019, which is a violation of Section 1201(a)(5). The PLRB exists to remedy violations of statute, i.e., unfair labor practices, and not violations of contract. Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645, 649 (Pa. Commw. Ct. 2000); Parents Union for Public Schools in Philadelphia v. Board of Education of the School District of Philadelphia, 480 Pa. 194 (1978). Where breach of contract is alleged, interpretation of collective bargaining agreements typically is for the arbitrator under the grievance procedure set forth in the parties' collective bargaining agreement. Ellwood City Police Wage and Policy Unit v. Ellwood City Borough, 29 PPER 29213 (Final Order, 1998), aff'd, 736 A.2d 707 (Pa. Cmwlth., 1999). However, the PLRB will review an agreement to determine whether the employer clearly has repudiated its provisions because such a repudiation may constitute both an unfair labor practice and a grievance. Millcreek Education Association v. Millcreek Township School District, 22 PPER 22185 (Final Order, 1991), aff'd, 631 A.2d 734 (1993), appeal denied, 537 Pa. 626 (1994); Port Authority of Allegheny County v. Amalgamated Transit Union Local # 85, 27 PPER 27184 (Final Order, 1996). To establish that a binding

agreement exists, the charging party must prove that the parties reached a meeting of the minds concerning the subject matter at issue. Philadelphia Community College, 52 PPER ¶ 77 (Final Order, 2020); Radnor Township School District, 40 PPER 44 (Final Order, 2009). Where the parties have a meeting of the minds concerning the subject matter of the agreement, a binding agreement exists. Larksville Borough, 48 PPER ¶ 82 (Final Order, 2017); Bethel Park School District, 27 PPER ¶127033 (Proposed Decision and Order, 1995); Northampton County, 38 PPER 19 (Proposed Decision and Order, 2007).

With respect to repudiation, the Union argues in its Brief:

In this case, CATA's conduct constitutes a clear repudiation of the agreement reached at the July 2, 2019 labor-management meeting. As noted above, it is undisputed that CATA assured AFSCME in that meeting that CATAGO! would work in conjunction with, but not replace, fixed route service. And there can be no question that this was an agreement between the parties. Margaret Pastirko's un rebutted testimony establishes that, at the meeting, CATA was "pitching" the CATAGO! program to AFSCME, in order to obtain AFSCME's support for its federal funding application. N.T. 15, 16. In its "pitch," CATA told AFSCME that it would not replace fixed route service with CATAGO! service, and AFSCME agreed that it would provide the requested letter of support. N.T. 16, 19-20. AFSCME would not have provided the requested letter of support if CATA had told the Union that it intended to replace fixed route service with CATAGO!. N.T. 20.

Nevertheless, in 2020, having obtained the support it sought, CATA eliminated the XB and XG routes, and concurrently expanded CATAGO! service in the areas previously served by those two routes. This conduct is plainly contrary to the agreement it made with AFSCME in July 2019.

(Union's Post Hearing Brief at 9-10). I do not agree with the Union that the evidence for an unambiguous agreement and meeting of the minds is clear on this record.

I find the following evidence relevant to issue of meeting of the minds. As put forth above, Fragola testified that the initial plan for the pilot for CATAGO! was not to replace buses. (N.T. 76-77). Additionally, Pastirko credibly testified on direct:

Q. Can you describe what you remember happening at that [July, 2019] meeting?

A. Well, I remember that they - Kimberly Fragola in particular - she kind of laid out how they had been selected to hold a pilot program to try micro-transit, you know, service out and that it would run off of an app. And it would be on

demand, but it would work in conjunction with, not in replace of, our fixed bus service.

. . .

Q. Specifically, how did they want you to support [the micro-transit pilot]?

A. They wanted us to write a letter of support that they could include to try and obtain some funding.

(N.T. 15-16). Fragola also said at the July 2, 2019, meeting that the pilot program would last around a year and then the Authority would reevaluate. Fragola followed up on this meeting by writing an email to Pastirko which asked the Union to provide a letter of support. (Union Exhibit 2). In this letter Fragola provided suggested language that the Union could use in its letter. The suggested language contains the following sentence: "The first phase of the pilot, which kicks off on November 1, will operate for a period of at least five months alongside existing fixed route service." (Union Exhibit 2). The Union thereafter did write and submit a letter of support to the FTA. (Union Exhibit 3). The Union's letter did not contain any language about CATAGO! operating "alongside" the fixed bus service. Additionally, in March, 2020, the Authority discontinued the XB and XG services with CATAGO! continuing to operate in the Bellefonte/Pleasant Gap zone. The record shows that Pastirko complained about this and that the XB and XG routes were reinstated in June, 2020. The record does not show that the routes were reinstated based on any agreement between the Parties, however, and instead were a response to increased demand due to relaxed Covid-19 restrictions for essential workers.

Overall, I find that this evidence is ambiguous as to a meeting of the minds between the parties on the issue of CATAGO!. The record shows that, at most, the Authority orally agreed to not replace fixed routes with CATAGO! micro-transit as part of the pilot phase of the CATAGO! program. In other words, to the extent there was a meeting of the minds, that agreement did not cover the implementation of the CATAGO! program beyond its pilot phase. The record is unclear as to how long this pilot phase was supposed to last. This ambiguity as to the length of the pilot phase weighs against a finding of a meeting of the minds. Additionally, there is an ambiguity as to what exactly "operating alongside" and "not replace" means. I find that a reasonable interpretation of the Authority's statements to be that the Authority did not intend to cease or replace the *entire* fixed route bus service with CATAGO! and was not talking specifically about the Bellefonte/Pleasant Gap zone and XB and XG lines. The Authority's fixed route bus service still exists. Regardless, the evidence is ambiguous which supports a finding that there was no meeting of the minds. Most importantly, there was no written, formalized agreement between the parties on the issue of CATAGO! which weighs heavily against any finding of meeting of the minds on the issue. Thus, based on the record as a whole, since the evidence as to the meeting of the minds between the parties on the issue of CATAGO! is at best ambiguous, I find that the Authority did not clearly repudiate any agreement between the Parties when, in October, 2020, it cancelled the XB and XG services and expanded CATAGO! in the Bellefonte/Pleasant Gap zone.

CONCLUSIONS

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

1. The Authority 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 hereto.
4. The Authority has not committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

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 rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventh day of October, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner