

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: CASE NO. PERA-U-20-293-W
: (PERA-R-11,367-W)
:
:
ERIE METROPOLITAN TRANSIT AUTHORITY :

PROPOSED ORDER OF DISMISSAL

On December 7, 2020, Erie Metropolitan Transit Authority (Authority) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude the positions of Class A Dispatcher Supervisor, Class B Dispatcher Supervisor, Class C Dispatcher Supervisor, Director of Schedules, Bookkeeper, Clerk Stenographer, Clerk Typist, Payroll/Accounts Payable Clerk, D/R Phone Operator A, D/R Phone Operator B, Class A Customer Service Representative and Class B Customer Service Representative from a unit of nonprofessional employees certified at PERA-R-52-W. The certified exclusive bargaining representative is Amalgamated Transit Union, Local 568 (Union or ATU).

On January 22, 2021, the Secretary of the Board issued a letter directing the Authority to amend its petition to include information about the reasons why it believed petitioned-for positions should be excluded from the bargaining unit.

On February 10, 2021, the Authority filed an Amended Petition for Unit Clarification which included reasoning why it believed the petitioned-for positions should be excluded from the bargaining unit.

On August 10, 2021, the Secretary of the Board dismissed the Authority's amended petition. The Secretary found that the Authority failed to provide sufficient facts supporting the allegation that employes in question should be excluded from the bargaining-unit.

On August 30, 2021, the Authority filed exceptions to the Secretary's dismissal.

On February 15, 2022, the Board issued a Final Order affirming the Secretary's dismissal of the amended petition.

On March 17, 2022, the Authority filed a Petition for Review in Commonwealth Court.

On August 30, 2022, pursuant to an agreement reached by the Board and the Authority, President Judge Leadbetter issued an order remanding the matter from Commonwealth Court with instructions to the Authority to file an amended petition and for the Board to schedule a hearing on the sole issue of removing dispatchers from the bargaining unit as supervisors under Section 604(5) of PERA.

On September 8, 2022, the Authority filed a Second Amended Petition seeking to exclude dispatchers from the bargaining-unit as supervisory employes.

On September 16, 2022, the Secretary of the Board issued an Order and Notice of Hearing designating November 14, 2022, in Pittsburgh, as the time and place of hearing.

The hearing was held on November 14, 2022, in Pittsburgh, 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. Additional days of hearing were held on February 15, 2023 and September 8, 2023. The Authority filed its post-hearing brief on December 5, 2023. The Union filed its post-hearing brief on February 5, 2024.

The Hearing Examiner, on the basis of the evidence presented at the hearing, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Authority is a public employer pursuant to PERA. (N.T. 7).
2. The Union is an employe representative pursuant to PERA. (N.T. 7).
3. At the time of the first day of hearing, the parties were subject to a Collective Bargaining Agreement (CBA) with the effective dates of July 1, 2020, through June 30, 2022. (N.T. 20; Authority Exhibit 1).
4. The Union was certified as exclusive bargaining representative in 1978. The original bargaining-unit comprised of all full-time and regular part-time nonprofessional employes including but not limited to "bus drivers, vehicle maintenance employes, **dispatchers**, stock controllers, maintenance supervisors, clerks, payroll clerks, and secretaries; and excluding management level employes, supervisors, first-level supervisors, confidential employes, and guards as defined by the Act". (PERA-R-11,367-W, Nisi Order of Certification, 1978) (emphasis added).
5. In 1982, the Board amended the Union's certification to include the classification of "planner." The planner position prepares grant application for state and federal funds. Erie Metropolitan Transit Authority, PERA-U-82-117-W (Proposed Order of Unit Clarification, 1982).
6. On July 7, 2020, the Union filed a unit clarification petition at PERA-U-20-140-W seeking to include the newly created "Customer Service Representative" (CSR) position into the bargaining-unit. There was a hearing on the petition and, on July 26, 2021, the Hearing Examiner issued a Proposed Order of Unit Clarification which accreted the CSR position into the nonprofessional unit. The Authority filed exceptions to this Proposed Order of Unit Clarification. The Board dismissed the Authority's exceptions and made the Proposed Order of Unit Clarification absolute and final on February 15, 2022. No further appeal of the Board's Final Order appears in the Board's records. Erie Metropolitan Transit Authority, 53 PPER ¶ 12 (Proposed Order of Unit Clarification, 2021); 53 PPER ¶ 67 (Final Order, 2022).
7. The Authority provides bus services (fixed route), paratransit and ride share programs in and around Erie. The fixed-route division includes dispatchers, mechanics, and operators (bus drivers). At the time of the hearing there were approximately 140 employes in the bargaining-unit including 87 bus drivers. At the time of the hearing, there were three full-time dispatchers and four temporary dispatchers. A temporary dispatcher is a bus driver who fills in as needed and performs the duties of dispatcher. From time to time, a temporary dispatcher will fill in as a dispatcher for an

entire week. A full-time dispatcher will drive a bus route one or two times a month. (N.T. 14-19, 193, 199).

8. Senior bus drivers select routes based on a contractual bidding process which places preference on seniority. Dispatchers do not assign work to bus drivers in this case. These types of senior bus drivers are called run operators or run drivers. They have a defined run. The Authority also has extra board operators (or sheet operators or sheet drivers). The extra board or the extra sheet operators are junior employees that are placed there because there is no work available for them as a run driver. They are eligible for the extra work placed on the sheet. These bus drivers fill in for people who are on vacation or are absent for any reason. The assignment of these board operators is based on the CBA and written work rules. (N.T. 75-77, 110-112, 131-133, 243-244, 306; Authority Exhibit 1, page 30-31, Union Exhibit 8, Union Exhibit 12).

9. As mentioned above, in addition to the provisions of the CBA, the dispatchers also follow written rules when assigning work to the extra sheet operators and assigning overtime. These rules were developed by the Authority and not the dispatchers. (N.T. 111, 167, 171-172, 250-252, 321-322; Union Exhibit 8).

10. The CBA contains provisions for seniority. The CBA states: "The selection of all runs shall be completed in seniority order. Days off will be selected by seniority. The number of days off will be set by the Authority." (N.T. 242-243; Authority Exhibit 1, page 25).

11. There are no rules in the CBA or anywhere else which allows a dispatcher to have discretion when assigning overtime. (N.T. 252-253, 322, 330; Authority Exhibit 1, page 33, Union Exhibit 8).

12. With respect to overtime, the CBA states: "The overtime list will be in seniority order. The operator having the most seniority, on a daily rotating basis, will be assigned the first available work for that day, then the next most senior operator until all work assignments are taken." (Authority Exhibit 1, page 33).

13. Dispatchers notice when bus drivers are not on time or fail to show up to their shift. This is referred to as a "miss". The dispatchers record it as a miss. Dispatchers do not issue verbal or written warnings about misses. Once a dispatcher notes the miss, the bus driver has the discretion to stay and work or go home and miss the shift. Dispatchers do not have any role in imposing discipline for misses. Dispatchers do not have any discretion in recording misses and following the CBA and management directives. Management issues discipline to bus drivers with respect to misses. Management has instructed dispatchers to record misses accurately so that management can start the discipline process against bus drivers who show up late. Management will discipline dispatchers if they ignore misses and use their discretion to not record misses when bus drivers are late. (N.T. 69-71, 105-106, 116, 255-256, 323-326, 356-358; Union Exhibit 9).

14. The CBA has language which covers misses. The CBA states in relevant part:

Operators who are on their way to work on time, but are prevented from getting to the garage on time to take out their assignments due to bus failure, blockade, or unusual circumstances that can be proven, will be allowed to replace the show-up operator who has taken

his or her assignment at the first opportunity, within one (1) hour of the original report time, pay to begin at that time. . . . The time the extra operator missed before taking over his run will be subtracted from the [eight hour shift] guarantee.

(N.T. 254-255; Authority Exhibit 1, page 34).

15. The CBA contains language which states: "No regular run operated by the Authority shall pay less than eight (8) hours." (N.T. 243; Authority Exhibit 1, page 28).

16. Dispatchers do not have the authority to send bus drivers home, to hire, to fire, to discipline, to promote, to reward, or to address grievances. Dispatchers do not perform evaluations of employes. Dispatchers do not issue discipline in any form. (N.T. 80-81, 106-109, 247, 260-261, 330-332, 351).

17. Troy Trimper is a dispatcher. He has been a full-time dispatcher since 2017. Before that, he was a temporary dispatcher and bus driver. Trimper testified that, as part of his duties, he shadows bus-drivers for approximately four hours per shift. Shadowing means Trimper drives an Authority vehicle and follows buses on their routes. Trimper testified that if, while he is shadowing, he notices a bus driver commit some rule infraction he will catch up to the bus driver and explain what he noticed. He testified that if he "can't get through" to the bus driver, he will write up an incident report. As part of shadowing, Trimper just reports what he observes. He does not issue or recommend discipline. Management tells Trimper to go out on the road and observe bus drivers. (N.T. 26-34, 78-81, 182).

18. Trimper testified about an incident on July 12, 2022, with bus driver Dan Smith. With respect to this incident, Trimper testified as follows: Trimper was at a location where Smith was in a bus waiting to start a route and had his doors open. Trimper told Smith to shut the bus doors so that passengers would board other busses that were waiting. Smith would not shut the bus door. Smith said, "If I close the doors, what do you want me to do? Take off and have all [the passengers boarding the bus] fall?" Trimper responded "No, you can keep your doors closed, and they won't fall, and take off once they're seated. You know what? This is your last trip. You can go home." (N.T. 56-58; Authority Exhibit 7).

19. Dan Smith is in the bargaining-unit and has been a bus driver for over six years. Smith testified he was never disciplined for the events described by Trimper. Smith testified that when Trimper told him to "go home" it was actually the end of the event Smith was working and Smith had no other duties to perform. Smith had already worked over eight hours for that day. Smith did not construe what Trimper said as punishment or discipline. Smith did all the work he was entitled to that day. (N.T. 285-294, 319; Union Exhibit 11, 14).

20. Street checks are another way to say shadowing bus drivers. All dispatchers do street checks or shadowing except for one dispatcher's shift due to that dispatcher shift having increased office duties. (N.T. 122-123).

21. Dispatchers will a few times a month instruct bus drivers to revisit bus stops if the bus driver was off schedule. (N.T. 126-127).

22. The dispatchers have the discretion to reroute bus drivers. (N.T. 130-131).

23. The Authority uses the titles Dispatch Supervisor A, B and C. A, B and C refer to the three full-time dispatch shifts per day. (N.T. 19).

24. Dispatcher A, B and C have the following written job descriptions. These job descriptions have not changed in a long time and state in relevant part:

Updated January 1991

Position Title: Chief Dispatcher - Class A

Supervisor: Superintendent of Transportation

I. Position Summary

Responsible for bagging money; counting and sorting five days per week. Prepare roster daily of extra operators.

II. Duties and Responsibilities.

1. Bag money daily.
2. Prepare cash receipts and cashiers report. Make bank deposits.
3. Maintain work schedule of extra operators, including chapter work.
4. Prepare and control weekly overtime roster of A.M. and P.M. trippers.
5. Street checks as time permits.
6. Relieve dispatchers for meals.
7. Deliver tickets and tokens when time permits.

. . .

IV. Direction Exercised

Advise and instruct drivers on use of equipment in relation to street traffic conditions via radio and on the street.

. . .

VI. Minimum Requirements

1. High School Graduate
2. 1 year minimum experience as a bus operator
3. Experience as a dispatcher

* * * * *

Position Title: Supervisor - Dispatcher - Class B
(Early Dispatch)

Supervisor: Director of Operation - Fixed Route

Position Summary: Responsible for dispatching drivers,
processing of fare box receipts and assisting
dispatching charter service. Provide information
service.

Duties and Responsibilities

Dispatcher

1. Assign drivers to established schedules.
2. Make arrangements through the maintenance department
for replacement buses in the event of breakdowns.
3. Communicate via radio and telephone to provide
continuity of service when extra buses are needed.
4. Answer telephone inquiries on schedule information
and passenger complaints.
5. Approve trip sheets for previous evening.
6. Conduct passenger counts and maintain records.
7. Report all accidents according to company
procedures.
8. Assign school trippers.
9. See that school signs displayed as necessary.
10. Make changes for drivers.
11. Drive tripper buses when needed.

Supervisor

1. Control window sales of tokens and student tickets.

Minimum Qualifications

1. High School graduate.
2. Ability to issue order to personnel.
3. Good written and oral communication skills.
4. Experience with computer systems.

* * * * *

Position Description

Updated January 1991

Position Title: Supervisor - Class C - Late Dispatch

Supervisor: Superintendent of Transportation

I. Position Summary

Responsible for dispatching drivers, processing of fare box receipts and assisting dispatching charter service. Provide information service.

II. Duties and Responsibilities

A. Dispatcher

1. Assign drivers to established schedules.
2. Manage arrangement through the maintenance department for replacement buses in the event of breakdowns.
3. Communicate via radio and telephone to provide continuity of service when extra buses are needed.
4. Answer telephone inquiries on schedule information and complaints.
5. Report all accidents according to company procedure.
6. Prepare and approve trip sheets.
7. Conduct passenger counts and maintain records.
8. Handle lost and found department.
9. Assign school trippers.
10. See that school signs are displayed as necessary.
11. Make changes for drivers.
12. Communicate to garage any changes in the number of buses for the next day.
13. Drive tripper buses when necessary.

B. Supervisor

1. Record all transfers returned by drivers.
2. Control window sales of tokens and student tickets.
3. Make out bank deposit slips.
4. Compile guarantee sheet on weekend.
5. Make extra sheet for Sunday and Monday.

. . .

IV. Direction Exercised

Advise and instruct drivers on use of equipment in relation to street traffic conditions via radio.

Hours, days off and duties subject to change as conditions warrant.

. . .

VI. Minimum Qualifications

1. High School Graduate
2. Minimum 1 year experience as a bus operator.

(N.T. 120-121, 167-168, 267-268; Authority Exhibit 12).

DISCUSSION

The Authority's Second Amended Petition requests that the Board remove dispatchers from the bargaining unit because they are supervisory employees.

The party arguing for the exclusion of an employe from a unit on a statutory ground bears the burden of proving a basis for the exclusion. School District of Philadelphia v. Commonwealth of Pennsylvania, PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998).

Section 301(6) of PERA provides as follows:

"Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

43 P.S. § 1101.301(6).

In determining the difference between a lead worker or task leader and a statutory supervisor, the Board has examined the requirement that the employe "responsibly direct" other employes. The Board explained the meaning as follows:

"Direct" infer[es] authority to order employes as to the nature, quality and quantity of their work. "Responsibly" infers authority to grant reward or sanction should such orders not be followed, or, to a substantial degree, to be able to effectively recommend such reward or sanction. The right to order the work force and the ability to effect reward or sanction are what distinguish a "supervisor" from a "task leader."

In the Matter of the Employes of Danville Area School Dist., 8 PPER 195 (Order and Notice of Election, 1977). The Board has repeatedly and consistently emphasized that "an employe who lacks the authority to effect reward or sanction simply cannot be excluded from a bargaining unit as a supervisor." In the Matter of the Employes of Pennsylvania State University, Milton S. Hershey Medical Center, 20 PPER 20126 (Final Order, 1989); Findlay Township Water Authority, 21 PPER ¶ 21130 (Final Order, 1990) (reiterating that "[t]he hallmark of supervisory status under [PERA] is the ability to effect reward or sanction").

Section 604(5) of the Act states that "... [i]n determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. § 1101.604(5). The Board, with appellate court approval, has looked to the extent to which supervisory duties are performed and concluded that employees who perform some supervisory duties, but do not perform those duties for a substantial portion of their work time, are not supervisors within the meaning of PERA. West Perry School District v. PLRB, 752 A.2d 462 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 795 A.2d 984 (2000); State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999); Independent Association of Pennsylvania Liquor Control Board Employees v. PLRB, 409 A.2d 532 (Pa. Cmwlth. 1980). Conversely, where the employee performs predominantly supervisory duties, that employee is excluded from the rank-and-file unit as supervisory. AFSCME v. PLRB, 342 A.2d 155 (Pa. Cmwlth. 1975).

Post-petition evidence is admissible where there has been no showing that the employer changed job duties merely to influence the Board's determination regarding the placement of the position in question. In the Matter of the Employees of Housing Authority of the City of Shamokin, 42 PPER 32 (Proposed Order of Unit Clarification and Proposed Order of Amendment of Certification, 2011) citing In the Matter of the Employees of Westmoreland County, 40 PPER 35 (Final Order, 2009).

The Board has long recognized that dispatchers (i.e., communications specialists) are appropriately part of a broad-based unit of full-time and regular part-time nonprofessional employees. See Union County, 23 PPER ¶ 23006 (Final Order, 1991) (county dispatchers properly included in unit of full-time and regular part-time employees under commissioners' jurisdiction); Warren Borough v. IBEW, Local No. 1124, 423 A.2d 1117 (Pa. Cmwlth. 1980) (police communication dispatchers properly included in previously certified nonprofessional unit); Allegheny County, 27 PPER ¶ 27152 (Proposed Order of Unit Clarification, 1996). The scheduling of work and hours are not functions that are recognized by Section 301(6) as supervisory. In the Matter of the Employees of East Allen Township, 48 PPER ¶ 34 (Order Directing Submission of Eligibility List, 2016). Directing work assignments alone is insufficient to show supervisory status. Id. If an employee directs other employees, but does not effect reward or sanction, the employee is not a supervisor. Pennsylvania State University, Milton S. Hershey Medical Center, supra.

In this matter, the record shows that dispatchers have been part of the bargaining-unit since 1978, when the unit was originally certified. There is nothing in this record to show that the job functions of dispatchers have drastically changed since their original inclusion in the bargaining unit. Indeed, the job descriptions for two of the three full-time dispatchers in this matter have not been updated since 1991. The other job description is undated. In late 2020, the Authority filed a petition to have dispatchers and a handful of other positions removed from the bargaining unit after the Union filed a petition to include the newly created customer service representative position in the bargaining-unit.

Moving to the merits of this matter, the Authority presented a great deal of testimony and exhibits but did not meet its burden of showing that the dispatchers are supervisors. The weight of the relevant evidence in this matter shows that dispatchers are non-professional employees who work as bus drivers and communications specialists and primarily perform routine and clerical scheduling tasks. Dispatchers have no independent authority or

judgment to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees. Dispatchers abide by the CBA, work rules, and management directives and what discretion they have is routine and clerical. To the extent the dispatchers perform any supervisory work, they do not perform it for a substantial period of their work time.

Moving to the Authority's arguments, the Authority argues that the dispatchers are supervisory because they assign and direct work without the prior approval of management. Authority's Brief at 11-13. The Authority argues:

In practice, dispatchers assign and direct work on a daily basis in at least the following ways: by shadowing drivers and preparing incident reports, by rerouting drivers and otherwise moving them from their scheduled routes, and by determining staffing levels, including assigning the number of show-ups, sending out supply buses, and staffing special events. Dispatchers also direct the work of others in the bargaining unit, and they can assign work to themselves.

Authority's Brief at 13. The record shows that the dispatchers do perform some of the tasks described by the Authority above. However, the record shows that these duties are routine and clerical in nature. Though dispatchers do of course assign work to bus drivers, they have no authority to sanction or reward bus drivers (or any other employe) and so lack the necessary indicia of supervisory status under PERA. The record is clear that discipline is the **exclusive** responsibility of management. Shadowing drivers and writing incident reports is not supervisory. Rerouting drivers and changing their routes is not supervisory on this record. Assigning the number of show-ups is not supervisory but routine and clerical. While dispatchers do have to figure out how many show-up drivers may be needed, dispatchers do not determine the overall level of services to be provided. Sending out supply buses is not supervisory but routine and clerical. There is no credible evidence of dispatchers determining staffing levels or staffing special events.

At pages 15-16 of its Brief, the Authority discusses actions performed by dispatchers which it contends are supervisory including shadowing bus drivers, counseling and writing up incident reports. As mentioned above, dispatchers play no role in the discipline of bus drivers for any incident and therefore lack the hallmark of supervisory status under PERA which is the ability to effect sanction (i.e., discipline). With respect to the dispatchers' alleged authority to send bus drivers home, see below.

At pages 17-19 of its Brief, the Authority continues its examination of dispatchers' day-to-day activities in assigning work to bus drivers. The record shows that the dispatchers do assign work to bus drivers. However, this work is routine and clerical in nature and based on the CBA, work rules, and management directives. Furthermore, dispatchers lack the hallmark of supervisory status under PERA which is the ability to effect reward or sanction. The Authority here cites In re Employes of Philadelphia, 43 PPER 143 (Final Order, 2012), to support its argument that dispatchers are supervisory in this case due to their assignment of work to bus drivers. However, Employes of Philadelphia is distinguishable because the employes in question in Employes of Philadelphia, water conveyance supervisors, effectively recommended the hiring of employes, conducted disciplinary

hearings, met with superiors regarding evaluations, and evaluated employees. The dispatchers in question in this matter do not perform any of those duties. Furthermore, the Hearing Examiner in Employes of Philadelphia found that the water conveyance supervisors "determine job priority and select the daily job assignments based on their independent discretion" and "make[] discretionary job assignment decisions regarding scheduling and job priorities." In contrast, the facts in this matter show dispatchers primarily follow the CBA, work rules, and management directives and, **critically**, they lack the authority to effect reward or sanction.

At pages 20-22 of its Brief, the Authority argues that the dispatchers are supervisory because they schedule show-ups, send out supply buses, and staff special events. The record shows these are all examples of routine and clerical functions. While dispatchers do have to figure out how many show-up drivers may be needed, dispatchers do not determine the overall level of services to be provided. Furthermore, dispatchers lack the hallmark of supervisory status under PERA which is the ability to effect reward or sanction. The Authority has also failed to show that dispatchers perform any of these alleged supervisory functions for a substantial period of their work time.

At page 22-23 of its Brief, the Authority argues that the dispatchers are supervisory because they direct the work of other employees besides bus drivers. The record shows these are all examples of routine and clerical functions. Furthermore, dispatchers lack the hallmark of supervisory status under PERA which is the ability to effect reward or sanction.

At pages 24-35 of its Brief, the Authority argues that dispatchers "effect reward or sanction". At no point in this record was there any credible evidence that dispatchers have the authority to effect reward or sanction employees. The Authority first argues dispatchers effect sanction by shadowing drivers and correcting undesirable behavior through the preparation of incident reports resulting in discipline. Shadowing bus drivers is not supervisory work. While it is true that dispatchers do from time to time prepare incident reports, incident reports are not discipline and the Authority presented no evidence of a dispatcher issuing discipline to anyone. Since dispatchers play no role in the actual process of disciplining bus drivers or any other employee, they lack the hallmark of supervisory status. The case cited here by the Authority In re Employes of Monroe County, 51 PPER 10 (Proposed Order of Dismissal, 2019), is distinguishable from this case. In Monroe County, the Hearing Examiner explicitly found that the sergeants in question regularly issued discipline. No such facts exist in this matter.

The Authority next argues starting at page 25 of its Brief that dispatchers effect reward by assigning overtime and extra work, which has a direct impact on unit member pay. As a general response to this assertion by the Authority, any change to a schedule has the likely outcome of impacting the pay of an employee. Employees are paid for hours worked, so, axiomatically, a reduction or increase to the hours they work is a change in their pay. However, that fact has not stopped the Board from including dispatchers in non-supervisory bargaining-units. The key criteria to look for in determining if such assigning duties are supervisory are if they are routine and clerical, if the employee in question can reward and sanction employees, and the extent to which the employee performs these actions. Under this analysis, dispatchers are not supervisors.

The record shows that when overtime is required, the dispatchers follow the CBA seniority rules and posted work rules in the assignment of such overtime. This is not sufficient to indicate supervisory status. Furthermore, the dispatchers do not have the independent authority to create overtime events (or the authority to create the need for overtime) and, as mentioned, follow seniority rules when assigning bus drivers overtime. The Authority here cites to In re Employes of Pennsylvania State University, 52 PPER 21, (Proposed Decision and Order, 2020). That case is distinguishable from this case because in Pennsylvania State University, the Hearing Examiner explicitly found that the sergeants and lieutenants at issue had the power and discretion to mandate overtime and create events which require overtime staffing.

The Authority cites the testimony of Troy Trimper at page 27 of its Brief for the proposition that dispatchers have discretion to assign overtime after 1 p.m. I do not find Trimper's testimony to be credible. This determination is based on the witness's demeanor on the stand and also the great weight of evidence in the record that shows dispatchers have no discretion when scheduling overtime.

The Authority also cites the testimony of dispatcher Nat Fabac at page 27-28 of its Brief for the proposition that dispatchers can award work sufficient to be a supervisor under PERA. The Authority cites Fabac's testimony to support the proposition "For example, in September 2022, Fabac scheduled certain garage employees (who also are in the bargaining unit) to work the Tall Ships event because not enough drivers had volunteered to work." However, as noted by the Authority in Footnote 8 of its Brief, Fabac testified at N.T. 326-329 that he was directed to do so by management. I find Fabac's testimony to be credible and, therefore, in that instance, he lacked independent authority. Even if Fabac had independent authority in that instance, the evidence would not be sufficient to show that the work was supervisory or that dispatchers perform such work for a substantial period of their work time.

The Authority at page 27 of its Brief relies on the testimony of bus driver Jermaine Beason to support the proposition that dispatchers reward bus drivers with more pay from the end of a bus driver's original shift until the start of a later run the bus driver is going to cover. I have reviewed the testimony of Beason at N.T. 427-28 and I find that this testimony describes routine and clerical work completed in response to the routine and immediate needs of the moment. The evidence shows merely that dispatchers have the ability to schedule bus drivers. The Board has regularly found such an action to be non-supervisory. To the extent this activity is supervisory work, the Authority has not shown that dispatchers perform it for a substantial period of their work time. Beason did not know how many times he did it other than "many" times and more than 10 times in his seven years while working as a dispatcher (from 1999 to 2006). This is not sufficient to show the dispatchers performed the work for a substantial period of their work time. In addition, I give Beason's testimony little weight as it is from a time period approximately fourteen or more years before the Petition was filed.

The Authority next argues at page 28 of its Brief that dispatchers effect reward and sanction by issuing or waiving misses. As an overall response to this argument from the Authority, recording a miss is as routine and clerical function as can be imagined and is not a supervisory task. The record shows that recording misses by bus-drivers was in fact accomplished by

dispatchers in a routine and clerical way in response to routine and immediate concerns. Recording a miss is not hiring, transferring, suspending, laying off, recalling, promoting, discharging, or assigning. The Authority argues that dispatchers somehow have the ability to reward or sanction employes through the discretionary use of misses. The record does show that the **bus driver** had the discretion to go home (and not get paid) or perform some other available work. The record overwhelmingly shows that dispatchers did not have the discretion to not acknowledge misses by bus drivers. The record shows that management instructed dispatchers to not use discretion when recording misses and that management told dispatchers that they would be disciplined if they used discretion when recording misses. The dispatchers do not have the authority to use discretion when recording misses.

To support its argument that dispatchers have discretion when recording misses, the Authority in its Brief at page 29 cites the testimony of dispatcher Troy Trimper. I do not find Trimper's testimony to be credible. This determination is based on the witness's demeanor on the stand and also the great weight of evidence in the record that shows dispatchers have no discretion when recording misses. Trimper's credibility on this issue is severely undercut by the credible evidence that Trimper was directly instructed by management to not use discretion when recording misses. (N.T. 356-357).

The Authority also cites in support of its argument the testimony of Beason at N.T. 415-424. In general, I give this testimony by Beason little weight. One incident cited by Beason at N.T. 420-421 was from over twenty years ago. I also give the additional evidence cited by the Authority on this issue on pages 30-31 of its Brief little weight as I have decided to instead credit the evidence establishing that dispatchers have no discretion to ignore misses. As mentioned above, the Authority's argument that dispatchers have discretion to ignore misses is severely undercut by the credible testimony that management instructs dispatchers to record misses. (N.T. 356-357).

The above discussion on misses needs to be taken in the context of the fact that the Authority has the burden of showing dispatchers are supervisory. There are a few levels to this burden. The party asserting a statutory exclusion must show that a particular worker actually performs the work in question. They also must show the work is supervisory and, importantly, that the worker performs the supervisory work for a substantial period of their work time. Moving to this case, even if I agreed with the Authority and found that dispatchers had the discretion to ignore misses, I would find that the Authority has not met its burden of showing the work task of ignoring misses is supervisory work. Such an act would be an example of a routine and clerical response to a normal scheduling issue. Dispatchers schedule bus drivers. That is what they do. It is reasonable to expect that, in the routine and clerical task of scheduling, dispatchers from time-to-time engage in unsanctioned legerdemain as an empathetic response to the dramas and predicaments of their co-workers or to extinguish their own pressing and immediate problems. This level of alleged bookkeeping fudging is not supervisory under the Act. Furthermore, the Authority has not shown that dispatchers had the power to discipline bus drivers for misses. Finally, even if the Authority had in fact shown that the dispatchers had discretion with respect to misses and had shown that this is a supervisory task under PERA, the Authority still has not met the evidentiary burden of

showing that the dispatchers perform this alleged supervisory function for a substantial period of their work time.

At page 32 of its Brief, the Authority argues "Finally and perhaps most importantly, dispatchers effect sanction by sending drivers home, resulting in an automatic loss of pay." There is no credible evidence in the record that dispatchers have the authority to send drivers home without pay, other than routine scheduling actions. The Authority in its Brief at page 32 here relies on the testimony of Trimper that he sent bus driver Dan Smith home at an event on July 12, 2022. Here I credit the testimony of Dan Smith. Smith testified he was at the end of his shift when this incident happened so that is why he went home. In addition, I give this incident little weight as it is post-petition evidence and I infer from the record that Trimper and the Authority were fleshing-out, dressing-up, or exaggerating Trimper's post-petition duties in order to make the case at the hearing that he was a supervisor.

The Authority at page 32 of its Brief points to a January 9, 2023, incident where Trimper allegedly sent bus driver Karen Jones home early without pay. Jones lost about five hours of pay. As above, I put very, very little weight into this post-petition event. This event was not only post-petition, but post the first day of hearing, where the issues of the case were crystallized for the parties. I look askance at this evidence. Even if I do credit this event, and I do not, the Authority still has not met the evidentiary burden of showing that the dispatchers perform this alleged supervisory function for a substantial period of their work time.

The Authority's further examples of dispatchers allegedly sending bus drivers home without pay are routine scheduling functions or from time periods so remote that they have no evidentiary value. The August 17, 2016 event referenced by the Authority at page 33 of its Brief is remote in time and a routine scheduling action and not evidence of anything supervisory. I find the DeMarco issue referenced by the Authority on page 33 of its Brief to be so vague as to have no evidentiary value. I find the March 9, 2023, incident referenced by the Authority on pages 33-34 of its Brief to be a routine scheduling issue and not evidence of any supervisory functions. Again, even if I did credit these handful of events, the Authority has not met the evidentiary burden of showing that the dispatchers perform these alleged supervisory duties for a substantial period of their work time.

The Authority finishes its Brief at pages 35 to 36 by citing to events and incidents which are not examples of dispatchers performing supervisory work. Addressing each incident cited by the Authority here in turn: Counseling workers is not supervisory. It is a function of being a lead worker or task leader, who are explicitly not supervisory under PERA. Contacting management when the dispatcher thinks a bus driver is under the influence of drugs or alcohol is not supervisory. The record shows the dispatchers have no authority to discipline in such cases. As discussed above, completing incident reports is not supervisory as the record is clear that the dispatchers have no authority to discipline based on those incident reports.

CONCLUSION

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.

4. Dispatchers are not supervisors.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Second Amended Petition for Unit Clarification is dismissed.

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 (20) days of the date hereof, this order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this sixteenth of April, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
STEPHEN A. HELMERICH, Hearing Examiner