



On The Move

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On December 21, 2023, the Union demanded that SEPTA bargain over the impact of its decision to activate the audio recording system built into the video surveillance equipment already on its buses, trolleys and trains. SEPTA plans to activate audio monitoring in the beginning of the new year.

The obligation to engage in collective bargaining is a creation of state law, more specifically the Public Employee Relations Act (PERA). PERA defines mandatory subjects of bargaining. It also defines managerial rights, matters about which bargaining is not required. If an action is deemed a managerial right, the employer must bargain only over the impact of that decision---if the decision impacts terms and conditions of employment, including any disciplinary action that may arise as a result of its decision.

For example, in a dispute between the *Pennsylvania Liquor Enforcement Association and the Commonwealth of Pennsylvania State Police* the Public Employee Relations Board stated that "where an employer exercises its managerial prerogative to install new technology to monitor employee behavior for purposes of discipline *under existing rules*," and where "*the disciplinary aspects of employee working conditions remain unchanged*," there is no impact on the employee that is "severable from introduction of the new technology."

In another case, the Board dismissed a union's claim of a "duty to bargain over the impact of installation of cameras on employees' discipline because the cameras did not have the effect of changing guidelines or procedures for disciplining employees."

"However, where the employer exercises a managerial prerogative to install monitoring devices, but uses the enhanced monitoring of the new technology to create new rules *or more stringent guidelines*, or to alter the *procedures for review of employee conduct*, those new rules, guidelines, or procedures constitute a severable impact that is mandatorily negotiable under PERA."

Where new technology leads to a change in working conditions, it is a mandatory subject to bargaining

In the case brought by the *Liquor Enforcement Association*, the Labor Board determined that the introduction of Automatic Vehicle Locators (AVLs) led to a change in disciplinary procedures and created a mandatory subject of bargaining.

As the Board explained, the Commonwealth did not monitor the driving habits of its Liquor Enforcement Officers prior to the installation of the AVLs. The only monitoring of driving habits occurred if a Liquor Enforcement Officer was stopped by a local or state police officer, at which time the driver was immediately provided with an opportunity to be questioned and explain things.

In contrast, under the AVL program, the Commonwealth has the ability to retrieve information and question individuals about erratic driving behaviors at any time the supervisor pleases, which could be weeks or months following the incident, thereby placing the employee at a significant disadvantage.

Since it created a new ground for discipline, the Board found that the Commonwealth changed its “rules, guidelines and procedures” with respect to discipline for “erratic driving” and effectuated a change in employees working conditions that was a mandatory subject of bargaining.

Audio monitoring by SEPTA is a mandatory subject of impact bargaining

The use of audio monitoring technology on SEPTA’s buses, trains and trolleys will *necessarily* result in a change in SEPTA’s “rules, guidelines and procedures” with respect to disciplinary action based on *the words* spoken by an operator and recorded on the audio equipment. As a result, it is a mandatory subject of bargaining.

In the past, SEPTA did not monitor the words spoken by an operator, nor did the Authority have the ability to retrieve information and question operators *about their speech* at any time a supervisor pleases, which could be long after the incident, thereby placing the employee at a significant disadvantage.

This is similar to a case the Union won in arbitration years ago where supervisors were writing up operators for running ahead of schedule, but the operators involved had no knowledge of the alleged infraction until they were interviewed over a rule violation *days later*. The arbitrator held that the failure to inform operators at the time of the purported violation constituted a breach of the employee’s right to due process and SEPTA had to change the practice.

Work rules that are vague are mandatory subjects of bargaining

At present, there are several work rules that relate to an employee’s speech. For example, ASR-9-A(4) prohibits the use of “boisterous, profane, or vulgar language.” ASR-10 requires that employees “treat customers in a polite, respectful, professional manner at all times.” Rule CS-2 states that employees must not engage in “unnecessary conversation with passengers.” Rule BDR-52 prohibits an operator from “soliciting conversation with any passenger.” While these rules may seem harmless, they are “vague and overbroad,” because they fail to place operators on notice as to exactly what utterances might subject them to discipline.

The Labor Board has long recognized that work rules that are “vague and overbroad” are mandatory subjects of bargaining. It is through collective bargaining, that “broadly-worded work rules may be narrowed down and clarified to identify what is expected of employees so that employees are on notice of conduct for which they may be subject to discipline.”

SEPTA has agreed to meet and bargain with the Union over the impact of its use of audio recording technology. If the Authority fails to bargain in good faith over this new monitoring technology, the Union will file unfair labor practice charges.