



# On The Move

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## SEPTA Keeps Shooting Itself in the Foot

### SEPTA wants Local 234 members to sue the Authority in Federal Court

The Old Guard is gone and SEPTA's Labor Relations Department is now woefully inexperienced in labor relations practices and policies. For one thing, Labor Relations Managers seem to know very little about the costs and benefits of resolving certain disputes in arbitration, rather than litigating them in court. Indeed, unlike virtually every other employer in the United States, SEPTA would rather have *legal claims* made by union members heard and decided in federal court instead of arbitration.

SEPTA's position makes no sense because the cost of litigation is much greater than the cost of arbitration---unless SEPTA wants to pad the pockets of its *outside defense attorneys*, while wasting taxpayer money engaging in protracted litigation in federal court over SEPTA's violations of the Americans with Disabilities Act ("ADA") and other federal statutes.

Everyone knows that court proceedings involve time consuming and costly discovery, extravagant legal fees for defense attorneys, the possibility of millions of dollars in damage awards, including punitive damages, and the payment of the *employee's attorney fees*, if the employee prevails. In contrast, arbitration is quicker and far less costly. Yet, SEPTA still favors litigation over arbitration!!!!? Go figure.

This all started when the union filed a case for arbitration over the Authority's failure to provide a "reasonable accommodation" to a first class bus mechanic in violation of the ADA, the federal law banning discrimination based on disability, and SEPTA's own ADA Policy, which mirrors the law. The Union's grievance did not focus on the ADA *legal* claim, but on SEPTA's ADA Policy and the contractual violations SEPTA committed in the course of responding to the reasonable accommodation request made by the grievant. You may not believe it, but SEPTA's idea of a reasonable accommodation involved *demoting* the grievant and *cutting his pay*.

In arbitration, SEPTA argued that the arbitrator lacked jurisdiction to hear the dispute. The Union argued otherwise, without waiving the grievant's right to sue SEPTA under the ADA, based on the outcome in arbitration. An award on the question of jurisdiction will be issued soon. Whatever the outcome, the Union and the grievant have decided to take SEPTA up on its offer to sue. Charges against SEPTA for disability discrimination have been filed with the EEOC. After that, the case will proceed to federal court. SEPTA is charged with discriminating against a disabled employee "by providing him with a job that pays \$2.50 less per hour than the job he had prior to his disability."

## **SEPTA's Social Media Policy is Illegal, Violates State and Federal Law**

In January, Local 234 challenged SEPTA's adoption of an unlawful Social Media Policy. The policy threatened members of Local 234 with discipline if they failed to comply with its vague and ambiguous terms limiting employee *speech*.

SEPTA's social media policy violates the law in several respects. First, it was imposed without first negotiating with the Union. Since the policy includes disciplinary measures that impact "terms and conditions of employment," it must first be negotiated under Pennsylvania law.

The policy also violates the Public Employee Relations Act by interfering with members' rights to engage in concerted activity. The *threat of discipline* based on social media posts deters speech---an essential part of concerted activity. Under the policy, you can be disciplined if your speech reflects "negatively on the image of SEPTA," or creates "a loss of confidence in the safe operations of SEPTA generally." For example, if you talk about safety problems at SEPTA, you could wind up getting fired. This is a violation of state labor law.

Finally, the policy violates the First Amendment of the U.S. Constitution, because the policy is vague, overly broad, and discriminates based on the employee's point of view. Stated another way, the policy has a "chilling effect" on the free speech rights of SEPTA employees, because it deters speech by raising the threat of discipline.

Over the last few months, a number of meetings have been held with SEPTA in an effort to revise the policy and eliminate its impact on protected speech. SEPTA couldn't figure out a way to actually defend the policy. Instead, the Authority harped on three points:

- (1) SEPTA has the right to impose the policy without negotiating with the Union;
- (2) No TWU member has been disciplined as a result of the policy; and,
- (3) SEPTA has a reputation to defend and social media postings by SEPTA employees could damage the Authority's reputation. In other words, discussing managerial incompetence on Facebook, for example, might create problems for SEPTA's image.

SEPTA initially left the door open for possible revisions to the policy, that is, until last week when the Union received an email from Labor Relations stating that "the drafting and promulgation of such a policy clearly falls within the Authority's management rights prerogative," and there will be no negotiations with the Union over SEPTA's social media policy!

As a result, we have filed unfair labor practice charges against SEPTA, seeking to rescind the objectionable parts of the policy and obtain an order directing SEPTA to cease and desist from interfering or coercing employees in the exercise of their rights under Pennsylvania law. The controversy shows that Labor Relations doesn't have a clue. Instead of fixing the problems with the policy, SEPTA would rather fight it out before the labor board---more money, more lawyers.

# **We Must and We Will**