

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-D-25-127-E
:
RED ROSE TRANSIT AUTHORITY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On June 2, 2025, Pauline Bogert filed a petition for decertification (Petition), under the Public Employee Relations Act (PERA or Act), with the Pennsylvania Labor Relations Board (Board), alleging that 30 percent or more of the employees in her bargaining unit have shown an interest in decertifying the Amalgamated Transit Union, Local 1241 (Union), which is the grandfathered, non-certified exclusive collective bargaining representative of the nonprofessional employees of the Red Rose Transit Authority (Authority).

On June 25, 2025, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on August 20, 2025, in Harrisburg. The hearing was rescheduled for, and held on, August 13, 2025. During the hearing on that date, all parties in interest were afforded a full and fair opportunity to enter testimony, documents, and cross-examination into the record. At the close of the hearing, the parties presented oral arguments in support of their positions, in lieu of filing post-hearing briefs.

The Examiner, based on the hearing testimony and exhibits, and from all the matters and documents 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. 15)
2. The Union is an employee organization within the meaning of Section 301(3) of PERA. The Authority recognizes the Union as the authorized, exclusive collective bargaining representative of bus operators, maintenance workers, and cleaners. (N.T. 15; JX-1, Article 2)
3. Pauline Bogert is a bargaining unit member employed by the Authority in the position of Bus Operator, and she is a public employee within the meaning of Section 301(2) of PERA. (Petition)
4. The parties stipulated and agreed that the employees in the bargaining unit share an identifiable community of interest. The Authority did not stipulate that probationary employees share an identifiable community of interest with non-probationary employees. (N.T. 15-16)
5. Patricia McKenna has been a bus operator for the Authority for over 11 years, and she is currently the Union President and Business Agent. (N.T. 18-19)

6. At the time of the hearing, the Authority employed 4 probationary bus operators: Cynthia Whitmoyer; Tonia Poole; Lee Glover; and James Saput. Also, at the time of the hearing, the Authority employed 2 probationary maintenance employees: Msafiri Kasongo (Utility); and Willian Gutierrez (Maintenance Technician). (N.T. 19-21; JX-2; JX-3)

7. In the Maintenance Department, the Authority employs Tech 1s, Tech 2s, and Tech 3s. They have different levels of certifications for air conditioning systems on buses and state inspections. Tech 1s are the higher rank and pay, and they perform their work independently without supervision. The Lead Tech is the highest-ranking Technician. The Lead Tech directs the work of the lower ranking techs. The Lead Tech maintains operations within budget and recommends engine replacements. (N.T. 21-22, 24)

8. Cleaners clean the bus interiors and bus windows. Utility workers extract data and cash receipts from buses when they return from the road. Utility workers refuel the buses and replenish the fluids. Utility workers then take the buses through the wash bay and park the buses. If a Utility worker has a CDL-B, they may be directed to drive a bus out on the road to change out a bus on a route. Utility workers also clean the shop and the parts in the shop. (N.T. 22-23)

9. Probationary bus operators have the same job duties as non-probationary bus operators. Probationary maintenance employees have the same job duties as non-probationary maintenance employees, within a given classification (i.e., Tech, Utility, and Cleaner). Maintenance employees can change job classification through promotion provided they have or obtain the proper qualifications. For example, a Cleaner can become a Utility worker or a Tech. (N.T. 20-21, 25)

10. Other than CDL training, probationary employees receive all the same training that non-probationary employees receive in a continuing education capacity. Both probationary and non-probationary employees receive training in safety and defensive driving, blood borne pathogens, customer service, dealing with difficult passengers, and sexual harassment. (N.T. 51)

11. Probationary maintenance employees are supervised by the same supervisors as the non-probationary maintenance employees. Probationary bus operators are supervised by the same supervisors as the non-probationary bus operators. The dispatchers and the Director of Operations supervises all bus operators. The Director of Maintenance supervises all maintenance personnel, including both probationary and non-probationary maintenance employees. (N.T. 26-27)

12. The Director of Operations and the Director of Maintenance make all hiring and firing decisions for non-probationary and probationary employees alike. Probationary employees work together with non-probationary employees in the same departments and job classifications. (N.T. 27-28)

13. The Union represents all the employees on the seniority lists for the bus operators and the maintenance workers. Article 2 of the Collective Bargaining Agreement (CBA) between the Authority and the Union is the recognition clause. The recognition clause expressly excludes the following employee classifications from the bargaining unit: supervisors, foremen, office clerks, and storeroom clerks. The recognition clause does not expressly exclude probationary employees. (N.T. 23, 30-31, 39; JX-1, Article 2)

14. The Union does not prohibit probationary employees from joining the Union and paying Union dues. Dues paying probationary employees can vote on contract ratification. Section 22.10 of the CBA shows that the Authority and the Union bargained for a 90-day probationary period for probationary employees. This Section also shows that an individual employee's 90-day probationary period may be extended to 120 days if the Union and the Authority mutually agree. Every time there is an extension over an employee's 90-day probationary period, the Authority and the Union bargain the extension, which has occurred more frequently recently. (N.T. 31-32, 38-39, 56-57, 90-91; JX-1)

15. Section 8.2 of the CBA provides for the negotiated wages for all bus operators in their first year of employment, which includes probationary employees. Section 8.3 of the CBA provides for the negotiated wages for all maintenance employees in the Utility and Technician III classifications in their first year, which includes probationary employees. (N.T. 37-38; JX-1, §8.2, 8.3)

16. Section 8.10 of the CBA shows that the Authority and the Union negotiated for a provision for all employees, including probationary employees, ensuring payment at their regular wage rate while attending training and safety meetings, and ensuring overtime for hours that, when added to their regular shift, exceed 8 hours in a day. (N.T. 44-45; JX-1)

17. Section 8.15 of the CBA shows that the Authority and the Union negotiated for a one-time signing bonus for new employees who would be on probation at the beginning of their employment with the Authority. (N.T. 45; JX-1)

18. Section 22.10 of the CBA shows that the Authority and the Union negotiated over setting certain separate terms and conditions of employment for probationary employees who are contractually excluded from the grievance procedure contained in Article 5 and the right to challenge discipline under Article 6. (N.T. 39-40, 57; JX-1)

DISCUSSION

In late July 2025, the parties attempted to enter into a Memorandum of Agreement that would have designated the identity of the parties, the bargaining unit description, voter eligibility list, and ballot position of voting choices, which would have paved the way for an order and notice of election. However, the Authority and the Union did not agree on whether probationary employees were eligible to vote in the election, which remains the sole issue here. In answering this question, I will determine whether the probationary employees at the Authority are public employees under PERA with collective bargaining rights and whether they have an identifiable community of interest with the non-probationary employees in the bargaining unit of nonprofessional bus operators, cleaners, and maintenance personnel.

Section 301(2) of PERA provides that a "Public employee" or "employee" means any individual employed by a public employer but shall not include elected officials, appointees of the Governor with advice and consent of the Senate as required by law, management level employees, confidential employees, clergymen or other persons in a religious profession . . . " as well as Act 111 employees. 43 P.S. §1101.301(2).

The record shows that the Authority is a public employer under PERA that hires, fires, directs the work of, and pays probationary employees. Thus, the probationary employees working in the classifications covered by the bargaining unit are public employees. Although PERA excludes certain classifications of employees from the rights and privileges afforded by the Act, it does not exclude regular full-time or part-time probationary employees. Therefore, under Section 401 of PERA, probationary employees have the right "to organize, form, join or assist in employee organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employees shall also have the right to refrain from any or all such activities." 43 P.S. §1101.401.

Under Sections 301(2) and 401 of PERA, probationary employees whose positions and job duties do not satisfy the criteria for one of the statutory exclusions have the statutory right through "their own free choice" to join and assist employee organizations for collective bargaining or to withhold such support. Section 401 explicitly gives probationary employees the right to choose, i.e., vote, for or against the Union in this case, provided they share an identifiable community of interest, as required under Section 604(1) of PERA.

Similarly, our Supreme Court, in Gehring v. PLRB, 920 A.2d 181 (Pa. 2007), held that probationary police officers and fire personnel covered by Act 111 cannot be excluded from the collective bargaining process simply because they lack a property right in continued employment. The Gehring Court stated: "Act 111's coverage is made expressly available on an unqualified basis to "policemen" and "firemen" employed by the Commonwealth or a political subdivision, see 43 P.S. § 217.1, and its general conferral of a right to bargain collectively is facially available to probationary officers and may be vindicated through their authorized representatives." Id. at 185. Hearing Examiner Pozniak opined that "the Gehring Court made it abundantly clear that probationary employees are not excluded from Act 111's coverage and that the parties may explicitly negotiate protections for such employees." PSTA v. Commonwealth of Pennsylvania, Pennsylvania State Police, PF-C-24-101-E (Proposed Decision and Order, 2025). The case for probationary employee voting and bargaining rights is even more compelling under the express provisions of Sections 301(2) and 401 of PERA. Thus, probationary employees under Act 111 and PERA have collective bargaining rights that may be "vindicated" through their collective bargaining representative, and they must have the right to choose the representative or choose whether they desire no representative.

When determining whether employees share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures, bargaining history, and employees' desires. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, working conditions, or other factors. Id.

Despite some differences in wages and benefits, the probationary employees at the Authority share an identifiable community of interest with the non-probationary employees in the bargaining unit represented by the

Union. Probationary bus operators have the same job duties as non-probationary bus operators. Probationary maintenance employees have the same job duties as non-probationary maintenance employees, within a given classification (i.e., Tech, Utility, and Cleaner).

Other than CDL training for new employees, probationary employees receive all the same training that non-probationary employees receive in a continuing education capacity. Both probationary and non-probationary employees receive training in safety and defensive driving, blood borne pathogens, customer service, dealing with difficult passengers, and sexual harassment. Probationary maintenance employees are supervised by the same supervisors as the non-probationary maintenance employees. Probationary bus operators are supervised by the same supervisors as the non-probationary bus operators. The Director of Operations and the Director of Maintenance make all hiring and firing decisions for non-probationary and probationary bus operators and maintenance employees respectively. Probationary employees work together with non-probationary employees in the same departments and job classifications.

The Union represents all the employees on the seniority lists for the bus operators and the maintenance workers, which includes probationary employees, and has negotiated on behalf of probationary employees. Article 2 of the CBA excludes certain classifications of employees, but it does not exclude probationary employees. Therefore, the Union established with substantial evidence that the probationary employees at the Authority share an identifiable community of interest with the non-probationary employees in the bargaining unit.

Moreover, the Authority has a history of bargaining with the Union over the terms and conditions of employment for probationary employees. Probationary employees receive less pay and benefits, and they do not have access to the contractual grievance procedure. But those terms and conditions of employment were negotiated by the Union on behalf of the probationary employees. Probationary employees are eligible to join the Union, pay Union dues, and vote to ratify contracts. The Union also negotiated a 90-day probation period for probationary employees and negotiated for a possible 30-day extension period upon further negotiation and Union agreement in individual cases. Therefore, the Authority has recognized that probationary employees are indeed included in the bargaining unit and that the Union represents them in bargaining.

Accordingly, the probationary employees are public employees of the Authority, under Section 301(2) of PERA, with a community of interest with the non-probationary employees in the bargaining unit, under Section 604(1) of PERA, and they have the right to vote for or against the Union under Section 401 of PERA. Additionally, the record demonstrates that the Union has represented, and bargained on behalf of, probationary employees with the Authority for many years. Thus, the probationary employees certainly have the right to vote on whether they support, or disapprove of, the type and level of representation that has been provided to them by this Union in a decertification election.

CONCLUSION

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

1. The Authority is a public employer within the meaning of Section 301(1) of PERA.

2. Pauline Bogert is a public employee within the meaning of Section 301(2) of PERA and a member of the bargaining unit currently represented for collective bargaining purposes by the Union.

3. The Union is an employee organization within the meaning of Section 301(3) of PERA.

4. The Board has jurisdiction over the parties.

5. The Authority's probationary employees are public employees sharing an identifiable community of interest with the non-probationary employees in the bargaining unit and are eligible to vote for or against Union representation.

6. The unit appropriate for the purpose of collective bargaining and voter eligibility is a subdivision of the employer unit comprised of all full-time and regular part-time Authority employees including but not limited to all Bus Operators, Maintenance employees, and Cleaners, and excluding all management level employees, supervisors, first-level supervisors, confidential employees, and guards as defined in the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Authority shall within ten days of the date hereof submit to the Board and the other parties an alphabetized list of the names and addresses of the employees eligible for inclusion in the unit set forth above in Conclusion Number 6.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-seventh day of August, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Jack E. Marino

JACK E. MARINO, Hearing Examiner