

Looking Back at the SEPTA Transit Strike

On June 1, 1998, Local 234 of the Transport Workers Union struck the Southeastern Pennsylvania Transit Authority. The strike, which was the seventh since 1975, reflected the parties' tumultuous bargaining history.

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On July 10, 1998, negotiators for the Southeastern Pennsylvania Transit Authority (SEPTA) and the Transport Workers Union (TWU) agreed to a tentative 3-year contract that ended a 40-day strike that had snarled Philadelphia area traffic since June 1. The strike featured emotional rhetoric, mass demonstrations, lawsuits, court injunctions, and roller-coaster bargaining.

Unlike previous TWU-SEPTA disputes, it was not a battle over traditional economic issues like wage increases and health insurance benefits. Instead, the struggle was prompted by the company's desire to change work rules and other terms of the contract. Doing so would help it streamline its operations by gaining more flexibility in a wide range of contract areas, including the right to assign work, hire part timers, contract out work, and dismiss workers who violated the company's drug and alcohol policy.

Under the terms of the settlement, SEPTA agreed to binding arbitration of its proposal to use 100 part-time

drivers to operate small buses in the City Transit Division. In exchange, the union agreed to accept SEPTA's position on half a dozen other issues ranging from work rule changes to benefits. In addition, the union staved off SEPTA's efforts to introduce a sweeping management rights provision.

In the workers' compensation area, the parties agreed to set limits on how long employees with work-related injuries will receive health and pension benefits. New employees will be eligible for up to 1 year of benefits, while current employees will receive up to 1 year of benefits plus 9 weeks of benefits for each year of service.

SEPTA and TWU adopted contract language that gave the transit agency more latitude in conducting drug and alcohol testing following an incident. SEPTA also gained the right to immediately fire drivers who failed a drug test after violating certain safety rules. In contrast to these employees who would be tested for "cause," the parties agreed to a second chance for

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workers who had already failed a random drug or alcohol test.

The negotiators agreed to economic terms that call for general wage increases of 3 percent each year, boosting top pay from \$38,000 to \$42,000 annually; to an additional, immediate 1-percent wage increase for workers in the Victory and Frontier lines to bring them up to the wage levels of their counterparts in the City Transit Division; and to early retirement incentives. The parties adopted contract language stipulating that normal pension benefits will be calculated based on an employee's highest wages for 3 of his or her last 6 years of employment (previously was the last 3 years), increasing the average monthly pension benefit by 32 percent. They also agreed to increase the time it takes new hires to reach top pay—from 30 to 48 months.

Parties to the dispute

SEPTA. An instrumentality of the Commonwealth of Pennsylvania, SEPTA operates transportation facilities in the 5-county Philadelphia metropolitan area. The company operates 2,358 buses and rail vehicles and employs about 8,100 unionized workers in three divisions: City Transit, Regional Rail, and Suburban Operations (Victory and Frontier lines). The City Transit Division serves the city of Philadelphia with a system of 84 subway-elevated, light rail, trackless trolley and bus routes, accounting for some 554,000 passenger trips daily. The Regional Rail Division operates 7 commuter rail lines in the 5-county area, accounting for some 79,000 passenger trips daily. The Suburban Operations Division serves the western and northern suburbs with a system of 41 interurban trolley, light rail, and bus routes, accounting for some 44,000 passenger trips daily.

Almost half of SEPTA's budget comes from trolley, rail, and bus fares; the remainder comes from various subsidies. In 1997, SEPTA had passenger revenues of \$274 million, of which approximately 80 percent came from City Transit Division operations. In

fiscal year 1998, the Federal Government contributed \$12.5 million in subsidies (down from \$121 million in 1980); the four suburban counties around Philadelphia, roughly \$14 million; Philadelphia, \$56 million; and the State, \$200 million.¹

Of the 13 SEPTA board members, Philadelphia and the 4 surrounding suburban counties each appointed 2, the State House and Senate majority leaders and the governor each appointed 1. This arrangement gives the suburbs a predominant voice in matters relating to the transit company.

TWU. At the time of the dispute, TWU Local 234 represented about 5,200 vehicle operators, cashiers, mechanics, inspectors, and other vehicle and facilities maintenance workers in SEPTA's City Transit Division under a contract that expired on March 14, 1998. The union also represented some 125 drivers and mechanics in the Frontier portion of the Suburban Division, which serves 2 counties adjacent to Philadelphia, under a contract that expired on April 7, 1998.

History of the dispute

Both parties point to the departure of SEPTA's general manager, Louis J. Gambaccini in February 1997 as the starting point of the conflict.² Gambaccini, who ran the transit company for 8½ years, was always successful in convincing top SEPTA management that it was preferable to deal with the TWU than take a strike.³ He was replaced by John K. Leary, Jr., who inherited a company that was plagued by financial and operational problems, and he had a different outlook on negotiations.

The parties' relationship took a decided turn for the worse in late 1997, when SEPTA hired David L. Cohen, Mayor Edward G. Rendell's former chief of staff, as its chief bargaining strategist. Cohen was already disliked by the TWU because of his prominent role as chief architect of the 1992 municipal contract negotiations, in which the unions were forced to accept several major concessions.⁴ To

make matters worse, Cohen "set the tone" for the upcoming contract talks in mid-December when he described labor-management relations at SEPTA as "the inmates running the asylum." The hostility generated by his comments did not dissipate during the dispute, and Cohen became a prime target of union members' wrath.⁵

SEPTA and TWU opened bargaining talks on December 23, 1997, with a mutual exchange of contract proposals. SEPTA's contract demands represented a sweeping change in the existing contract, asking the union to concede to 47 "take-a-ways" that would have affected union members' job security, pay, benefits, seniority, and working conditions. According to the union, these proposals included the right to hire part-time employees, up to 20 percent of the work force, without benefits; the elimination of the no-layoff clause for new hires; the right to eliminate contractual benefits and dismiss employees who are out of work for more than 6 months due to a work-related injury; and the right to contract some work or services to private companies and close down or relocate company operations.⁶ Other SEPTA proposals would have cut health, dental, and prescription drug benefits; eliminated family medical coverage for injured workers and job picking rights for maintenance workers; and cut the pay of new hires by \$2.66 per hour.

Both SEPTA and TWU painted the dispute as a fight for their existence. The company said the "protectionist" work rules it wanted to change were "rooted in the 1940s."⁷ SEPTA pointed to its current \$150 million operating deficit, which was projected to grow to \$350 million by fiscal year 2003, and claimed that without these changes it would go broke.

The company's opening proposal shocked TWU. A spokesperson said, "We expected a proposal. What we got was a whole new contract. They presented us with a radically rewritten agreement that [would replace one that] took 50 years to build. They wanted to change more than 100 ex-

isting agreements, offer us a whole new document. This is unprecedented in labor.”⁸ TWU criticized the company for trying “to strip the union of its authority and demoralize its workers.”⁹ The union also disputed SEPTA’s budget figures saying that the transit agency had a \$118,000 budget surplus in fiscal year 1997, and was projected to end fiscal year 1998 with a balanced budget.

Negotiations continue

During the next 2 months, SEPTA and TWU held low key and basically unproductive talks, with the parties making little or no progress on the major issues. In mid-February 1998, the parties began holding more frequent and intensive contract talks in an attempt to reach an agreement before the March 14th expiration date of the City Transit Division’s agreement. But negotiations stalled during the next 3 weeks, and both parties expended considerable resources in publicity campaigns—launched earlier in the month—to win public support. The publicity campaigns demonstrated just how “rancorous” the heated contract talks had become.¹⁰

With time quickly running out and the parties still far apart on major issues, TWU and SEPTA continued intensive negotiations into the early morning hours on both March 13 and 14. They deadlocked, however, over the company’s continued demands for sweeping changes in the contract. SEPTA said its focus in the negotiations centered on reducing absenteeism, gaining more flexibility in assigning work, forcing employees to share health insurance costs, tightening drug-testing, restricting the no-layoff clause to current employees, and other changes that would enhance the transit company’s ability to invest in capital projects.

An hour before the City Transit Division’s agreement was set to expire, the union agreed to delay strike action on a day-by-day basis and keep its members on the job as long as contract talks were progressing. At this point the parties had only reached

agreement in “some minor areas.”¹¹

After a week of marathon bargaining, where proposals and counterproposals were exchanged, SEPTA and the TWU halted negotiations because the talks stalled. The parties resumed bargaining on March 25, and held a brief meeting on March 26. They returned to the bargaining table on March 31, but halted negotiations because SEPTA was facing an April 1 strike threat by the United Transportation Union (UTU), another union on the property.¹² TWU and SEPTA resumed formal contract talks on April 8, at which time the parties discussed several noneconomic issues, adjourned, and reconvened bargaining on April 13.

Until mid-May, the parties met several times a week, but made little progress on major issues such as work rules, workers’ compensation, pensions, health care, and wages. On May 15, TWU made a comprehensive offer, which the company rejected. That offer included, according to the union, a zero tolerance drug and alcohol testing policy for employees in safety-sensitive positions and significant concessions on work rules, pay rates for new hires, attendance policies, grievance and arbitration procedures, jobs for disabled workers, and health care cost containment.

The company insisted its own offer was fair. The proposals included the following:

- A 9-percent wage increase over 3 years, boosting the average hourly rate from \$17.80 to \$19.45
- No-layoff protection for all union members, including new employees
- An “unprecedented” early retirement incentive for most senior employees, including an additional \$500 monthly payment in effect until age 62
- A 32-percent increase in monthly pension benefits for a typical new retiree

- Fully company paid family health insurance under a home maintenance or preferred provider plan, plus a \$1,000 bonus for employees switching from the traditional indemnity plan
- A zero tolerance drug and alcohol policy, and
- Limited use of a “small number” of part-time workers whose assignments would be decided by a joint labor-management committee.

Strike announced

On May 21, TWU announced its intention to strike on June 1, if an agreement was not reached. Hours before, the union filed an unfair labor practice complaint with the Pennsylvania Labor Relations Board, alleging that SEPTA failed to bargain in good faith by not moving from its initial demands and by refusing to drop any of its 47 take-a-ways.

With a strike deadline in sight, the parties reconvened negotiations on May 30, the first time the two sides had formally met since May 19, but the talks faltered. The complexity of the issues continued to divide the parties and stymie the negotiators.

Strike ensues

On June 1, the union struck, shutting down subways, buses, and trolleys in Philadelphia (City Transit Division) and in suburban Bucks and Montgomery counties (Victory lines). The shutdown forced thousands of passengers to find alternative modes of transportation and was particularly hard on the city’s poor, many of whom are completely dependent on public transportation.¹³

According to union leaders, the strike was timed to disrupt the busy summer season, which was to include several tourist events and conventions. The city government and employers responded by implementing contingency plans, which included the use of private buses, extra cars on the re-

gional railroads that continued to operate,¹⁴ and free parking throughout the city. SEPTA also had developed contingency plans to use management employees to operate some subway and bus lines if necessary.

Philadelphia Mayor Edward G. Rendell, who followed the dispute closely, had pressed the union to accept SEPTA's "outstanding offer." The mayor said that the transit authority could not agree to a contract that would result in increased fares—which were already the highest in the country—or cuts in transportation services that would harm the city's poor.¹⁵ The mayor also pointed out that SEPTA's proposal offered the same terms as were accepted by UTU in April.

After the strike began, the parties held sporadic contract talks. They went 4 straight days without bargaining. On June 4, they held a perfunctory 5- to 10-minute meeting, in which they "hurled obscenities at each other."¹⁶ On the same day, TWU volunteered to end its strike if SEPTA would agree to binding arbitration of the dispute—an offer the company refused.

On June 9, SEPTA announced that it dropped its plan to have managers operate subway and elevated trains. Press reports indicated that the company feared fierce protest by union members and possibly violence.¹⁷

On June 15, the City Council announced plans to sue both SEPTA and TWU in State court and ask the court to order the parties to immediately resume negotiations and continue talks until an agreement could be reached. Mayor Rendell, who throughout the dispute politically aligned himself with SEPTA, attacked the action, saying the lawsuit wouldn't require strikers to return to work.¹⁸

Later that same day, the parties held their first formal talks since May 30. They met again on June 17 and 22-

30, with the assistance of a State mediator and made significant progress in whittling down the issues. On June 30, the talks fell apart. The union abruptly walked out of the meetings because, they said, SEPTA had reneged on a deal to pull five key issues off the table. Press reports indicated that at this time the parties had narrowed their differences down to five or six issues, depending on the source: Part-time workers, discipline policy, wage progression, pay increases, workers' compensation, and management rights.

On July 2, SEPTA and TWU met separately with a State mediator who engaged in shuttle diplomacy in an attempt to bring the two sides together. The mediator was unsuccessful in trying to restart face-to-face talks.

On July 7, the parties held their first formal meeting in 7 days. On the same day, at a union rally, TWU vice-president Sabin Rich accused Democratic State Senator Vincent J. Fumo, one of Philadelphia's most powerful politicians, of offering money to TWU local union president Steve Brookens to end the strike. Fumo denied the charge, saying he only offered to find more money for the union's pension fund. During the previous week, when contract talks stalled, Fumo blamed Brookens, saying he was more concerned about being reelected to his post than in reaching an agreement for his members. The incident created a publicity furor for the union.

Just when it looked like the dispute would drag on for months, a settlement was reached. But, it took an outsider, Robert Brady, the Democratic Congressman from the 34th ward in Philadelphia, to break the stalemate. Mr. Brady, formerly an official with the Carpenters union and now chairman of the local Democratic Party, was known as a deal maker.

Around 9:30 P.M. on July 7, Mr. Brady met with Steve Brookens to see what it would take to reach an agree-

ment. At that meeting, Mr. Brady offered to "mediate" the dispute by acting as a go-between for the parties. By the morning of July 10, Mr. Brady began communicating separately with Mr. Brookens and Mayor Rendell, relaying each side's negotiation position. Mayor Rendell, in turn, spoke to SEPTA's general manager John K. Leary, Jr., SEPTA's chief labor strategist David L. Cohen, and SEPTA board members. Mark Lamont, chief of Pennsylvania's Bureau of Mediation, also assisted the parties by relaying messages to the negotiators.

After several ups and downs during the day, including a time when it looked like the settlement had unraveled, SEPTA and TWU reached a tentative agreement in principle, when the three remaining issues on the table—part timers, workers' compensation, and aspects of the pension plan—were resolved. According to press reports, the end came when the parties agreed to submit the issue of part-time workers to binding arbitration.¹⁹

Later on, however, when the parties tried to reduce the details to writing, they had different recollections of the terms to which they had agreed on two key issues. The first issue dealt with the exact language to submit to an arbitrator concerning the transit agency's proposal to hire part-time drivers to operate small buses to be used in the City Transit Division. The second issue concerned how long employees on workers' compensation would receive health and pension benefits. SEPTA claimed that TWU agreed that an employee would receive 10 weeks of benefits for each year of service; the union said it agreed to 10 weeks per year worked, plus an additional year.

Meanwhile, the strikers returned to their jobs and the rank-and-file approved the agreement on July 24. SEPTA's board members approved the settlement 3 months later. ■

¹ *The Philadelphia Tribune*, February 6, 1998, p. 3.

² *The Philadelphia Inquirer*, March 15, 1998.

³ *The Philadelphia Inquirer*, July 9, 1998, p. 9.

⁴ *The Philadelphia Daily News*, March 11, 1998.

⁵ According to Robert Bussel, professor of labor studies and industrial relations at Pennsylvania State University, who has extensively followed negotiations at SEPTA, "That's a pretty poisonous thing to say, unless your goal is to throw down the gauntlet and antagonize them (the union) from the start. That set a tone from the very beginning that was confrontational and signaled where management was coming from." (*The Philadelphia Inquirer*, July 12, 1998.)

⁶ SEPTA's proposal also included a "zipper clause," which stated that any new contract would contain a full and complete understanding of the terms and conditions of employment in one document. In effect, the clause would have wiped away all previous agreements, side letters, or informal practices agreed to in the past, unless they were included in the new agreement.

⁷ *Daily Labor Report*, No. 107, June 4, 1998, p. A-2.

⁸ *The Philadelphia Tribune*, December 26, 1997, p. 4.

⁹ *The Philadelphia Tribune*, February 6, 1998, p. 3.

¹⁰ *The Philadelphia Inquirer*, February 3, 1998.

¹¹ *The Daily Labor Report*, No.51, March 17, 1998, p. A-3.

¹² UTU, which represented 280 bus drivers and trolley operators employed on the Victory District routes in Delaware and Chester counties, struck a deal with SEPTA on April 5. That agreement subsequently served as a coercive comparison for the TWU-SEPTA negotiations.

¹³ With 38 percent of its households without an automobile, Philadelphia is the second most transit-dependent city in the United States. (*The Philadelphia Tribune*, June 30, 1998, p. 3.)

¹⁴ The regional rails, which were manned by UTU-represented workers, continued to operate with a few service interruptions caused by TWU strikers picketing the lines; these ser-

vice interruptions were quickly halted by court injunctions.

¹⁵ Between 1988 and 1997, SEPTA's ridership plunged 21 percent, which represents about \$75 million in lost revenues.

¹⁶ *The Philadelphia Inquirer*, June 6, 1998, p. 1.

¹⁷ *The Daily Pennsylvania*, June 11, 1998.

¹⁸ On June 26, the City Council filed the suit, which was subsequently denied by the Pennsylvania State Supreme Court.

¹⁹ How important was this issue to the parties? Bruce Bodner, business agent for the union, said, "Part-time workers represent the introduction of cheap labor into the City Transit Division bargaining unit. That undermines the job security of all of our members." Michael Burns, SEPTA's chief operating officer, said, "It's an industry response to the changing demographics of the business—a recognition that for every time you want to put a bus out on the street, you just can't pay an 8-hour day with full benefits. We just couldn't continue to run a business that way." (*The Philadelphia Inquirer*, July 10, 1998, p.1.)