

# Buchanan Ingersoll & Rooney PC

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November 4, 2016

## VIA FACSIMILE AND EMAIL

Bruce Bodner, Esquire  
Transport Workers Union, Local 234  
500 N. 2nd Street  
Philadelphia, PA 19123

Re: Southeastern Pennsylvania Transportation Authority v. Transport Workers Union, Local 234, Willie Brown and Brian Pollitt

Dear Mr. Bodner:

Enclosed please find a Complaint and Petition for Preliminary Injunction in the above-referenced matter. Please be advised we are requesting an emergency hearing on the Petition for Preliminary Injunction this afternoon.

Sincerely,



Gerald E. Burns

GEB/djk  
Enclosure  
cc: Robert S. Hawkins, Esquire (w/enc.)

## Court of Common Pleas of Philadelphia County

Trial Division

**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)

**OCTOBER 2016**

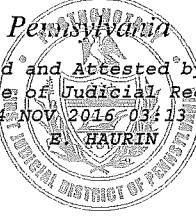
E-Filing Number: 1611009843

**004943**

PLAINTIFF'S NAME SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY		DEFENDANT'S NAME TRANSPORT WORKERS UNION, LOCAL 234		
PLAINTIFF'S ADDRESS 1234 MARKET STREET PHILADELPHIA PA 19107		DEFENDANT'S ADDRESS 500 N. 2ND STREET PHILADELPHIA PA 19123		
PLAINTIFF'S NAME		DEFENDANT'S NAME WILLIE BROWN		
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS TRANSPORT WORKERS UNION LOCAL 234 500 N. 2ND STREET PHILADELPHIA PA 19123		
PLAINTIFF'S NAME		DEFENDANT'S NAME BRIAN POLLITT		
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS TRANSPORT WORKERS UNION LOCAL 234 500 N. 2ND STREET PHILADELPHIA PA 19123		
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 3	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions		
AMOUNT IN CONTROVERSY <input checked="" type="checkbox"/> \$50,000.00 or less <input type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury <input type="checkbox"/> Other:	<input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition	<input type="checkbox"/> Commerce <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals	<input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival
CASE TYPE AND CODE E3 - EQUITY - NO REAL ESTATE (TRO)				
STATUTORY BASIS FOR CAUSE OF ACTION				
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)				<b>FILED PRO PROTHY</b> <b>NOV 04 2016</b> <b>E. HAURIN</b>
				IS CASE SUBJECT TO COORDINATION ORDER? YES      NO
<b>TO THE PROTHONOTARY:</b> Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY</u> Papers may be served at the address set forth below.				
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY GERALD E. BURNS, III		ADDRESS BUCHANAN INGERSOLL & ROONEY 32ND FLOOR 50 S. 16TH STREET PHILADELPHIA PA 19102		
PHONE NUMBER (215) 665-5360	FAX NUMBER (215) 665-8760			
SUPREME COURT IDENTIFICATION NO. 59466		E-MAIL ADDRESS gerald.burns@bipc.com		
SIGNATURE OF FILING ATTORNEY OR PARTY GERALD BURNS, III		DATE SUBMITTED Friday, November 04, 2016, 03:13 pm		

BUCHANAN INGERSOLL & ROONEY PC  
By: Robert S. Hawkins, PA I.D. No. 39862  
Gerald E. Burns, PA I.D. No. 59466  
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Attorneys for Southeastern Pennsylvania  
Transportation Authority  
Filed and Attested by the  
Office of Judicial Records  
04 NOV 2016 03:15 pm  
E HAURIN



SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY  
1234 Market Street  
Philadelphia, PA 19107  
Plaintiff,  
v.

COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

NOVEMBER TERM, 2016

TRANSPORT WORKERS UNION,  
LOCAL 234  
500 N. 2nd Street  
Philadelphia, PA 19123

NO. \_\_\_\_\_

(IN EQUITY)

WILLIE BROWN  
Transport Workers Union, Local 234  
Union Hall, 500 N. 2<sup>nd</sup> Street  
Philadelphia, PA 19123

BRIAN POLLITT  
Transport Workers Union, Local 234  
Union Hall, 500 N. 2<sup>nd</sup> Street  
Philadelphia, PA 19123  
Defendants.

#### PRELIMINARY INJUNCTION ORDER

NOW, this \_\_\_\_\_ day of November, 2016, upon consideration of the Complaint  
in Equity, and the evidence submitted in the above-captioned case, it is hereby ORDERED and  
DECREED that:

1. The above-named Defendants, individually and collectively, and all persons  
acting in any manner at their behest or in concert with them, directly or indirectly, are hereby  
enjoined from:

a. continuing to strike or withhold services as employees of SEPTA or otherwise engaging in any form of work stoppage;

b. causing a clear and present danger to the health, safety and welfare of the public in violation of the Public Employee Relations Act;

c. in any manner impeding, obstructing, hampering, or interfering with the business of SEPTA;

d. coercing, intimidating, ordering, instigating, inducing, encouraging, or otherwise causing SEPTA's employees to absent themselves from work;

e. advising, encouraging, or assisting the doing of any of the things that were herein forbidden.

2. Members of Local 234 who are employees of SEPTA are hereby ordered to return to work forthwith and cease and desist from engaging in a prohibited strike.

3. All Defendants are hereby ordered to terminate the prohibited strike and all employees of SEPTA shall return to work forthwith.

4. Defendants and their employees and agents are hereby enjoined from any and all acts or threats of violence, intimidation, coercion, molestation, libel, or slander against SEPTA.

5. Defendants are ordered to comply with all the provisions of the Public Employee Relations Act, and particularly Section 1003, 43 P.S. § 1101.1003.

6. The Sheriff of Philadelphia County or the Police Department of the City of Philadelphia or their designee is authorized to arrest any persons found to be in violation of the Order or the reasonable orders of the Sheriff or the Police Department which are necessary to carry out the terms of this Order and to bring such person or persons before the Court for disposition.

7. The Sheriff of Philadelphia County and/or SEPTA, its attorneys or any competent adult authorized by SEPTA, are authorized to serve in person or by certified mail true but uncertified copies of the complaint and injunction upon the Defendants and upon any persons acting in concert with them or otherwise participating with them or acting in their aid or on their behalf;

8. The Court shall retain jurisdiction over the Complaint to determine that the decree of this Court is obeyed and the Sheriff's Office of Philadelphia County and the Police Department of the City of Philadelphia and any other law enforcement agency having jurisdiction over the enjoined parties are hereby authorized and directed to enforce this injunction by whatever lawful means deemed appropriate, and to arrest and bring before this Court on charges of contempt any and all persons interfering with enforcement of this Order;

9. This Order shall become effective immediately and SEPTA shall not be required to file a bond pursuant to Pa. R. Civ. P. 1531(b).

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J.

BUCHANAN INGERSOLL & ROONEY PC  
By: Robert S. Hawkins, PA I.D. No. 39862  
Gerald E. Burns, PA I.D. No. 59466  
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Philadelphia, PA 19102  
(215) 665-8700

*Attorneys for Southeastern Pennsylvania  
Transportation Authority*

SOUTHEASTERN PENNSYLVANIA	:
TRANSPORTATION AUTHORITY	:
1234 Market Street	:
Philadelphia, PA 19107	:
Plaintiff,	:
v.	:
TRANSPORT WORKERS UNION,	:
LOCAL 234	:
500 N. 2nd Street	:
Philadelphia, PA 19123	:
WILLIE BROWN	:
Transport Workers Union, Local 234	:
Union Hall, 500 N. 2 <sup>nd</sup> Street	:
Philadelphia, PA 19123	:
BRIAN POLLITT	:
Transport Workers Union, Local 234	:
Union Hall, 500 N. 2 <sup>nd</sup> Street	:
Philadelphia, PA 19123	:
Defendants.	:

COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

NOVEMBER TERM, 2016

NO. \_\_\_\_\_

(IN EQUITY)

**PETITION OF PLAINTIFF SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY FOR PRELIMINARY INJUNCTION**

Plaintiff Southeastern Pennsylvania Transportation Authority (“SEPTA”) petitions the Court for a Preliminary Injunction and in support hereof avers as follows:

**I. FACTS AND BACKGROUND**

**A. The Parties**

1. Southeastern Pennsylvania Transportation Authority (“SEPTA”) is a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania

as an agency and instrumentality thereof with its principal office located at 1234 Market Street, Philadelphia, PA 19107.

2. SEPTA is a metropolitan transportation authority, formed pursuant to the provisions of the Metropolitan Transportation Authorities Act, Act of 1963, 66 P.S. §§ 2001, et seq., for the purpose of operating various forms of public transportation—bus, subway, elevated rail, commuter rail, light rail, and electric trolley bus – in and around Philadelphia, Pennsylvania.

3. SEPTA is a public employer within the meaning of the Pennsylvania Public Employee Relations Act (“PERA” or “Act 195”). 43 P.S. § 1101.301(1).

4. Defendant Transport Workers Union (“TWU” or “Local 234”) having offices at 500 N. 2nd Street, Philadelphia, PA 19123 is an employee organization within the meaning of PERA. 43 P.S. § 1101.301(3).

5. Local 234 represents a unit of approximately 5,500 SEPTA employees, consisting of bus drivers, subway and trolley operators, and mechanics, who are public employees within the meaning of PERA. 43 P.S. § 1101.301(2).

6. The relationship between SEPTA and Local 234 is governed by PERA, 43 P.S. §§ 1101.101, et seq.

7. SEPTA and Local 234 are parties to a collective bargaining agreement (“CBA”) effective October 31, 2014, through October 31, 2016.

8. Defendant Willie Brown (“Defendant Brown”) is an adult individual, whose business office is at Transport Workers Union, Local 234 Union Hall, 500 N. 2<sup>nd</sup> Street, Philadelphia, PA 19123. Defendant Brown is the President of Local 234.

9. Defendant Brian Pollitt (“Defendant Pollitt”) is an adult individual, whose business office is at Transport Workers Union, Local 234 Union Hall, 500 N. 2<sup>nd</sup> Street, Philadelphia, PA 19123. Defendant Pollitt is the Executive Vice President of Local 234.

**B. Defendants’ Strike**

10. Beginning on July 13, 2016, representatives from SEPTA and Local 234 engaged in collective bargaining in anticipation of the expiration of the parties’ CBA on October 31, 2016. The parties met to bargain on several occasions thereafter, and continue negotiations to this date.

11. The collective bargaining agreement between SEPTA and Local 234 expired on October 31, 2016, at midnight.

12. On November 1, 2016, Defendants commenced a strike against SEPTA. As a result of the strike, service on SEPTA’s City Transit Division has completely ceased.

**C. Requirements of the Public Employe Relations Act**

13. Act 195 provides public sector employees with the right to strike after exhausting the impasse resolution procedures contained in the Act. 43 P.S. §§ 1101.801-02.

14. However, Section 1003 of Act 195 provides that, even if a public employee bargaining unit exhausts the Section 801 and 802 impasse resolution procedures prior to engaging in a strike, if such strike “creates a clear and present danger or threat to the health, safety or welfare of the public,” such strike shall be prohibited.

15. Act 195 provides that, if a strike creates a clear and present danger, the public employer “shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public.” 43 P.S. § 1101.1003 (emphasis added).

16. Section 1003 of Act 195 expressly permits SEPTA to initiate an action in this Court for equitable relief from Defendants' strike, which has the effect of creating a clear and present danger or threat to the health, safety, or welfare of the public.

17. SEPTA has complied with all requirements imposed by law with respect to the labor dispute in question.

**D. Defendants' Strike Has Caused A Clear And Present Danger**

18. SEPTA is the sixth largest transit system in the U.S., providing over 326 million trips in fiscal year 2016 in a service area that covers 2,200 square miles. On a daily basis, SEPTA provides approximately 930,000 trips, consisting of 496,000 rides on 75 bus routes; 316,000 trips on 2 subway-elevated lines, 99,000 trips on 6 light rail (trolley) lines, and 19,000 trips on 3 trackless trolley lines. Many SEPTA riders must use two or even three modes of transportation to get to work.

19. The residents of this region depend upon SEPTA's public transportation services to travel in and around the city and region for work, school, recreation, hospital visits and medical appointments.

20. At approximately 12:00 A.M. on November 1, 2016 members of Local 234, at the direction of the individually named Defendants, engaged in a strike and walked off the job.

21. As a result, SEPTA's buses, trolleys, and subway-elevated rail (including the Market-Frankford Line and the Broad Street Line) have been unable to operate.

22. Unless prevented and restrained by this Court, Defendants' strike, which has created a clear and present danger and threat to the health, safety, and welfare of the citizens of the City of Philadelphia and the surrounding region, will continue.

23. By reason of Defendants' actions in engaging in a strike, the citizens and taxpayers of the City of Philadelphia and surrounding region, will continue to suffer great and irreparable harm, the extent of which cannot now be definitively ascertained.

24. Specifically, as a result of Defendants' strike, the following adverse effects on the health, safety and welfare of the citizens of the City and surrounding region, among other things, already have occurred and will continue so long as the Defendants' strike is permitted to continue:

25. SEPTA provides essential transportation service for the School District of Philadelphia and charter and parochial schools. Approximately 52,000 district and charter school students rely on SEPTA to get to school safely and on time. SEPTA is currently unable to perform that service, forcing children to walk, crossing congested intersections and thoroughfares (thereby endangering such students), to delay their arrival at school, or to skip school altogether.

26. SEPTA's transit division largely serves the working poor of the City of Philadelphia and surrounding counties. Over half of SEPTA's riders earn less than \$50,000 annually, and many earn less than \$15,000 per year. Many of those individuals take two or even three pieces of transportation to get to work, school or medical services. Those individuals cannot afford to switch to taxis, ride-sharing services, and many do not own personal automobiles. News reports have shown people walking literally miles to get to work. For those individuals, the loss of public transportation service is no mere inconvenience; it cuts off their pay and it jeopardizes their jobs, their livelihood and their health. The continuation of the strike exacerbates the impact on the public, as workers exhaust whatever paid time off they have to replace wages that they would have earned.

27. The disabled community is particularly hard-hit by the strike. Many persons with disabilities use SEPTA's fixed route service to travel to organizations such as the Associated Services for the Blind ("ASB") in center city Philadelphia where they receive critical services such as rehab, mobility, support groups, case management, medication management, and life management. Because of the strike, the most of the employees and volunteers of ASB have been unable to come to work and almost all of ASB's clients have been deprived of service.

28. A continuation of the strike through Election Day, November 8, 2016, will jeopardize the ability of citizens to exercise their right to vote. Within the City of Philadelphia, citizens, especially the elderly and disabled, will not have the ability to use SEPTA to travel between polling places and their homes or workplaces. In addition, as a result of the strike, citizens who plan to vote in the evening cannot rely on SEPTA to get them home from work in a timely and predictable manner. The effect of the current strike has been exacerbated by the unavailability of regional rail cars that have been under repair since structural defects were uncovered on July 3, 2016. Some of those rail cars remain unavailable for service. Since the strike began, there have been large and unpredictable delays in regional rail service, resulting in extended commuting times for some riders. If the strike continues through Election Day, citizens in both the City and surrounding counties will risk losing their opportunity to vote if they are unable to vote before commuting to work.

29. Residents of the City of Philadelphia and surrounding region who rely on public transportation to travel to area hospital and medical providers are unable to receive needed treatment based upon the lack of public transportation and are put at serious risk due to Defendants' strike.

30. Unless Defendants' strike is prevented and restrained by this Court, Defendants' conduct will continue causing a clear and present danger and threat to the health, safety, and welfare of the public, and will only increase in severity.

## **II. ARGUMENT**

### **A. The Court Should Enjoin Defendants' Illegal Strike Because It Has Created a Clear and Present Danger and Threat to the Health, Safety, and Welfare of the Public Pursuant to Section 1003 of PERA.**

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31. Since Local 234's members walked off the job and engaged in a strike on November 1, 2016, area residents – whose fares and taxes fund the mass transit system – who rely on public transportation have been severely harmed, not merely because of the inconvenience of such a strike, but because of the danger such strike is causing. As a result, the strike has created a clear and present danger and threat to the health, safety, and welfare of the public, which is prohibited under PERA and therefore must be enjoined.

32. In Section 101 of PERA, the Pennsylvania legislature expressly identifies the priority of the public health, safety and welfare:

The General Assembly of the Commonwealth of Pennsylvania declares that it is the public policy of this Commonwealth and the purpose of this act to promote orderly and constructive relationships between all public employers and their employees subject, however, to the **paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare.** Unresolved disputes between the public employer and its employees are injurious to the public and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution.

43 P.S. § 1101.101 (emphasis added).

33. Accordingly, the legislature further provided in PERA that a strike by public employees, even if done in accordance with the provisions of PERA, which creates a clear and

present danger or threat to public health, safety, or welfare is prohibited. Specifically, Section 1003 provides, in part, that:

If a strike by public employees occurs after the collective bargaining processes set forth in sections 801 and 802 of Article VIII of this act have been completely utilized and exhausted, it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public.

43 P.S. § 1101.1003 (emphasis added).

34. Because of the paramount importance of the public's right, Section 1003 imposes on a public employer the **mandatory obligation** to seek an injunction if it determines that the impact of a union's strike presents a clear and present danger or threat to public health, safety, or welfare:

In such cases the public employer shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief, including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety, or welfare of the public.

Id. (emphasis added).

35. In analyzing whether a strike creates a clear and present danger or threat to public health, safety, and welfare under PERA, the courts must consider whether the "danger or threat is real or actual and that a strong likelihood exists that it will occur." Masloff v. Port Auth. of Allegheny Cnty., 531 Pa. 416, 427 (1992). However, courts may not consider inconveniences, disruptions, and hardships inherent in any strike as constituting the requisite danger or threat needed to issue an injunction. Id.; Armstrong Sch. Dist. v. Armstrong Educ. Ass'n, 291 A.2d 120, 123-24 (Pa. Commw. Ct. 1972).

36. The Commonwealth Court in Armstrong further clarified the definition for “clear and present danger”:

The “clear” in that epigram is not limited to a threat indubitably etched in every microscopic detail. It includes that which is not speculative but real, not imagined but actual. The “present” in the epigram is not restricted to the climatically imminent. It includes that which exists as contrasted with that which does not yet exist and that which has ceased to exist.

Id. at 123. Courts need not find that the danger or threat has already, in fact, become a reality to issue an injunction. It is for that reason that the legislature permitted injunctions against a “threat” to the health, safety, and welfare of the public.

37. Thus, for example, in New Brighton Borough Sanitary Authority, the court ordered an injunction against union sewage plant workers where the strike resulted in the discharge of raw sewage into a river. 61 Pa. D. & C. 2d at 265. In so ordering, the court noted that, if a strike presents a threat to the public’s health and safety, the court must take action before the threat becomes a reality:

[W]e do not believe the legislature intended that the threat must become a reality before action can be taken to protect the health and safety of the public. If the threat to the health and safety of the citizens in the area of the discharge and further downstream is present, we must take action to prevent the threat from ripening into a reality. This is in accordance with the expressed legislature policy that the guarantee of protection of the public’s health, safety and welfare must be paramount.

Id.

38. Where, as here, a strike prevents individuals from receiving life-saving medical care and treatment or endangers individuals’ health, either by delaying fire, emergency, or police response time or forcing students to cross dangerous intersections to get to school, a clear and present danger and threat to public health, safety, or welfare is created. See Masloff, 531 Pa. at

428 (affirming an adjudication and decree which permanently enjoined a transit union strike because the traffic congestion resulting from the strike adversely affected and threatened “essential public services” such as emergency medical care); New Brighton Borough Sanitary Auth., 61 Pa. D. & C. 2d 261 (enjoining union workers from striking against a sewage plant where such strike resulted in the discharge of raw sewage into a river, thereby posing a threat to the health and safety of the citizens in the area); cf. Cnty. of Mercer v. United Steel Workers of Am., AFL-CIO, 60 Pa. D. & C. 2d 631, 634 (Pa. Ct. Com. Pl. 1973) (declining to declare a clear and present danger or threat to the health, safety, or welfare of the public because the collective bargaining process requirements of PERA were not met, but noting that because of the union members’ strike against their hospital employer “it would not be long until there would be substantial health hazard”).

39. In Masloff, the Pennsylvania Supreme Court confronted a similar factual scenario as here, involving the Port Authority of Allegheny County (“Port Authority”), which provides public transportation services in and around Pittsburgh and Allegheny County, Pennsylvania, and Local 85, the collective bargaining agent for 2,700 employees of the Port Authority. Masloff, 531 Pa. at 419. The collective bargaining agreement between the parties expired on November 30, 1991, and negotiations for a successor agreement were unsuccessful. As a result, on March 16, 1992, Local 85 initiated a strike and walked off the job. Id. The City of Pittsburgh filed a preliminary injunction action against Local 85 seeking to enjoin the strike. During the hearings in that case, various witnesses testified regarding the severe impact of the strike:

- Blind, epileptic, professional, student, and blue collar witnesses testified about the effect of the lack of public transportation upon their lives;
- Renal, cancer, and psychiatric patients were often unable to get to appropriate medical facilities for treatment as a result of the strike;

- Emergency medical services were delayed in attempts to reach citizens in need;
- Citizens were endangering their safety by walking along public roads to get to work because other modes of transportation were unavailable;
- Residents were forced to find alternate living accommodations with friends or family because of the inaccessibility to work, school, or daycare.

Id. at 426. As a result of the testimony received by the Commonwealth Court, the Commonwealth Court held that the strike created a clear and present danger to the public health, safety, and welfare, and it issued an injunction. Id. at 430.

40. Local 85 appealed the decision to the Pennsylvania Supreme Court. The Pennsylvania Supreme Court acknowledged that, under the Second Class County Port Authority Act<sup>1</sup>, Local 85 had the ability to engage in a strike unless the strike created a “clear and present danger or threat to the health, safety or welfare of the public . . . .” 55 P.S. § 563.2(k). The Pennsylvania Supreme Court reviewed the testimony received before the Commonwealth Court and affirmed the injunction. The Supreme Court found the strike’s detrimental effect on emergency services particularly troubling:

The evidence established, *inter alia*, that public services, such as ambulance, fire, and police services, were severely hampered by the increased traffic congestion resulting from the strike. To the extent Local 85’s argument suggests that the adverse effect and threat to essential public services such as fire and police protection and emergency medical services are the ordinary and anticipated consequences of a transit strike, **we are unpersuaded**.

Id. at 427 (emphasis added). The Masloff decision is applicable here because Defendants’ strike has produced even more dramatic and potentially dangerous and threatening results, which the

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<sup>1</sup> 55 P.S. § 551, *et seq.* While the Masloff case dealt with the Port Authority Act, the Act’s provisions relating to a public employee bargaining unit’s ability to strike are virtually identical to the provisions of Act 195 and are therefore controlling here. In addition, the Masloff court stated that the clear and present danger limitations in the two acts are identical and are to be interpreted in a like manner. Id. at 425.

Masloff court determined created a clear and present danger to public health, safety, and welfare, and therefore warrants an injunction.

41. As described above (¶¶ 18-30, *supra*), the strike has manifested a clear and present danger and threat to public health, safety, or welfare in several ways: 1) individuals are being prevented from receiving medical care and treatment; 2) transportation of students to schools is being impeded or prevented, and; 3) the rights of citizens to participate in a Presidential election are being adversely affected. Pennsylvania courts have recognized that adverse impacts on transportation of students to school can present a clear and present danger. See Jersey Shore Area Sch. Dist. v. Jersey Shore Educ. Ass'n, 519 Pa. 398 (1958) (effect of teachers' strike on potential competitive disadvantage for students based on missing school constituted a "clear and present danger"). Moreover, the impact of the strike on voter participation in the upcoming election cannot be understated. Pennsylvania has always regarded the "right of suffrage as 'fundamental' and 'pervasive of other basic civil and political rights.'" Applewhite v. Com., No. 330 M.D. 2012, 2014 WL 184988, at \*18 (Pa. Commw. Ct. Jan. 17, 2014) (quoting Bergdoll v. Kane, 557 Pa. 72, 85, 731 A.2d 1261, 1269 (1999) (citation omitted)). Any interference with the right to vote, however slight, must be recognized as a clear and present danger to the public welfare.

42. Accordingly, the strike engaged in by Defendants creates a clear and present danger and threat to the health, safety, and welfare of the public. Defendants' strike therefore is unlawful pursuant to Section 1003 of PERA and injunctive relief must be granted.

**B. Assuming, Arguendo, That They Apply, All of the Requirements of the Pennsylvania Rules of Civil Procedure for Granting a Special or Preliminary Injunction Have Been Met.**

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43. Because PERA imposes upon this Court the obligation to issue an injunction if a public sector strike creates a clear and present danger or threat to the public health, safety, and welfare, and because Defendants' strike has created a clear and present danger and threat, this Court need not inquire whether the traditional standard for a preliminary injunction has been met. The Pennsylvania legislature, in drafting PERA, found the public health and welfare to be of such vital importance that it created a special class of injunction whereby, even if a labor union followed the statutory requirements and lawfully engaged in a strike, a strike that creates a "clear and present danger" to the public welfare must be enjoined. The "clear and present danger" standard thereby allows the courts to issue an injunction without addressing the traditional standards for a preliminary injunction. Thus, this Court need not inquire into those standards.

44. Even if those standards for a preliminary injunction did apply here, they have been met under Pennsylvania law and an injunction should be granted. Rule 1531(a) of the Pennsylvania Rules of Civil Procedure provides, in pertinent part:

A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice.

Pa. R. Civ. P. 1531(a).

45. A party seeking injunctive relief must show: 1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated by damages; 2) that greater injury would result from refusing the injunction than by granting it; 3) the injunction restores the

parties to the status quo which existed immediately before the alleged wrong; 4) the party is likely to succeed on the merits; 5) the injunction is reasonably suited to abate the offending activity; and 6) a preliminary injunction will not adversely affect the public interest. Warehime v. Warehime, 580 Pa. 201, 209-10 (2004).

46. Because SEPTA meets all of these requirements, its petition for injunctive relief must be granted.

**C. The Injunction is Necessary to Prevent Immediate and Irreparable Harm.**

47. Without the requested injunction, Defendants' strike will continue to put the general public in severe threat of severe injury or death. Such harm is immediate and irreparable. Injunctions are granted only in cases of urgent necessity to guard against injuries not merely feared but reasonably to be apprehended and likely to be irreparable. Cent. Dauphin Educ. Ass'n v. Cent. Dauphin Sch. Dist., Pa. D. & C. 4th 300, 313 (Pa. Com. Pl. 2001). In the context of a preliminary injunction, an injury is "irreparable" if it will cause damage which can be estimated only by conjecture and not by an accurate pecuniary standard. Ambrogi v. Reber, 932 A.2d 969, 978 (Pa. Super. Ct. 2005).

48. If the requested injunction is not granted and the strike is allowed to continue, no legal remedy for Defendants' illegal actions could place SEPTA and the general public in the same position they would have been in had the illegal conduct been enjoined. There is no accurate pecuniary standard which can compensate for the inability to seek essential medical services or the delay in emergency response time, because there is no amount of monetary damages which can compensate for the potential or actual loss of life, which this unlawful strike threatens and will continue to threaten if such action is not enjoined. Such harm is immediate

and irreparable and only an injunction can alleviate the clear and present danger and threat to the health, safety, and welfare of the general public.

**D. Greater Injury Would Result from Refusing an Injunction than from Granting It.**

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49. Defendants' strike has caused substantial injury by endangering the general public, forcing school children to cross dangerous intersections and overpasses just to get to school, preventing those who need medical treatment from obtaining such treatment, and delaying emergency response for police, fire, and EMS services in the City. Granting the relief requested by SEPTA would put an end to this severe threat and would cause no injury to Defendants.

50. PERA grants Defendants and other public sector employees the ability to strike. However, PERA clearly states that if such a strike creates a clear and present danger or threat to the health, safety, and welfare of the public, such a strike shall be enjoined. 43 P.S. § 1101.1003. An injunction would follow the statutory requirements of PERA, and therefore it cannot be said that issuance of an injunction would cause any relevant injury to Defendants.

**E. An Injunction Will Properly Restore the Parties to the Status Quo.**

51. As stated above, mandating that all employees represented by Defendants return to work will simply restore all parties to the status quo which existed prior to the injunction and illegal strike. If an injunction is granted, employees will return to work and be paid. The parties can and should resume bargaining to execute a successor agreement. Most critically, the continuity of service to the general public will be restored and the clear and present danger to the public health, safety, and welfare eliminated.

**F. SEPTA Is Likely to Succeed on the Merits.**

52. As discussed above, the illegality of Defendants' strike is clear. PERA prohibits strikes that create a "clear and present danger or threat to the health, safety or welfare of the public." 43 P.S. § 1101.1003. Defendants' strike creates a clear and present danger to public health, safety, and welfare. The threat of immediate and irreparable harm is real. The general public has been placed at serious risk based upon, among other things, the inability to receive vital medical treatment and the delay in emergency response, all caused by the illegal strike.

53. Defendants' strike is outside the ambit of protection afforded by the provisions of PERA, and is therefore unlawful.

**G. Injunction is Reasonably Suited to Abate Harm Posed by Illegal Strike.**

54. Through this action, SEPTA seeks only a status quo injunction. Such an injunction will return the parties to their position prior to the illegal strike. Employees will be required to return to work and perform the services that would not be available absent injunctive relief. Moreover, SEPTA and Local 234 could resume collective bargaining negotiations to avoid the need for a strike or disruption to the public health, safety and welfare. Without the service of Defendants' members, SEPTA would be unable to provide the transportation services that the general public relies on for work, school, and medical needs, thereby creating a clear and present danger and threat to the health, safety, and welfare of the general public.

**H. An Injunction Will Not Adversely Affect the Public Interest.**

55. Not only will a preliminary injunction **not** adversely affect the public interest, it is required to protect the public interest. The legislature, in drafting PERA, made clear that it reserved the paramount right of the public "to keep inviolate the guarantees for their health, safety and welfare." 43 P.S. § 1101.101. As a result, if an otherwise lawful strike creates a clear and present danger or threat to the health, safety, and welfare of the public, such strike must be

enjoined as it would constitute an illegal strike. An action here enjoining Defendants' strike would not adversely affect the public interest, but in fact, promote the public interest.

**RELIEF**

For the foregoing reasons, SEPTA respectfully requests that this Court issue a special and preliminary injunction against Defendants to prevent them from continuing to engage in conduct that is causing a clear and present danger and threat to the health, safety, and welfare of the general public, which is prohibited under Act 195.

Respectfully submitted,

Date: November 4, 2016

/s/ Gerald E. Burns

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SOUTHEASTERN PENNSYLVANIA :  
TRANSPORTATION AUTHORITY :  
1234 Market Street :  
Philadelphia, PA 19107 :  
Plaintiff, :  
v. :

COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

NOVEMBER TERM, 2016

TRANSPORT WORKERS UNION, :  
LOCAL 234 :  
500 N. 2nd Street :  
Philadelphia, PA 19123 :

NO. \_\_\_\_\_  
(IN EQUITY)

WILLIE BROWN :  
Transport Workers Union, Local 234 :  
Union Hall, 500 N. 2<sup>nd</sup> Street :  
Philadelphia, PA 19123 :

BRIAN POLLITT :  
Transport Workers Union, Local 234 :  
Union Hall, 500 N. 2<sup>nd</sup> Street :  
Philadelphia, PA 19123 :  
Defendants.

**RULE TO SHOW CAUSE WHY  
PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Upon consideration of the verified complaint in equity and the petition for preliminary injunction of Plaintiff Southeastern Pennsylvania Transportation Authority, IT IS HEREBY ORDERED that Defendants show cause before this Court on the \_\_\_\_\_ day of November, 2016, at \_\_\_\_\_ o'clock in Courtroom \_\_\_\_ why the Preliminary Injunction should not be entered.

\_\_\_\_\_  
J.

BUCHANAN INGERSOLL & ROONEY PC  
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**MEMORANDUM IN SUPPORT OF THE PETITION OF PLAINTIFF  
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY  
FOR SPECIAL AND PRELIMINARY INJUNCTION**

Plaintiff Southeastern Pennsylvania Transportation Authority (“SEPTA”) respectfully submits the following Memorandum of Law in Support of its Petition for Special and Preliminary Injunction.

**I. MATTER BEFORE THE COURT**

This is an action in equity to enjoin an unlawful strike and work stoppage pursuant to the Public Employee Relations Act (“PERA” or “Act 195”), 43 P.S. § 1101.101 *et seq.* SEPTA

brings this action to enjoin the Transport Workers Union, Local 234 ("Local 234"), and Defendants Willie Brown, Brian Pollitt, and all others conspiring, participating, or acting in concert with them (collectively "Defendants").

## **II. STATEMENT OF QUESTION INVOLVED**

1. Should this Court grant SEPTA's Petition for Special and Preliminary Injunction because Defendants' strike has created a clear and present danger and threat to the health, safety, and welfare of the general public, and is thereby prohibited under the Public Employe Relations Act?

Suggested answer: Yes.

## **III. FACTS**

### **A. The Parties**

SEPTA, a metropolitan transportation authority, is a public employer within the meaning of PERA. 43 P.S. § 1101.301(1). SEPTA operates various forms of public transportation in Philadelphia, Pennsylvania and its surrounding regions, including but not limited to, Bucks, Montgomery, and Delaware Counties, Pennsylvania, Wilmington, Delaware and Trenton, New Jersey. SEPTA provides public transportation in the form of bus, subway, elevated rail, commuter rail, light rail, and electric trolley buses. SEPTA is the sixth largest transit system in the U.S., providing over 326 million trips in fiscal year 2016 in a service area that covers 2,200 square miles.

Local 234 is an employe organization within the meaning of PERA, 43 P.S. § 301(3). Local 234 represents a unit of approximately 5,500 SEPTA employees, comprised of bus drivers, subway and trolley operators, and mechanics, and is an employee organization within the meaning of PERA. 43 P.S. § 1101.301(3). Defendants Brown and Pollitt are President and

Executive Vice President of Local 234. The members of Local 234 employed by SEPTA are public employees within the meaning of PERA. 43 P.S. § 1101.301(2).

SEPTA is a party to a collective bargaining agreement with Local 234. The relationship between SEPTA and Local 234 is governed by PERA.

**B. Defendants' Unlawful Strike**

On October 31, 2016, the collective bargaining agreement between SEPTA and Local 234 expired. On November 1, 2016, at 12:00 A.M., employees of SEPTA who are represented by Local 234, walked off the job and commenced a strike and work stoppage against SEPTA, which is currently ongoing and continuing, thereby crippling mass transit in the City and surrounding regions. As a result of the strike, SEPTA is unable to provide bus, subway, trolley, and elevated rail services to the residents and taxpayers of the City of Philadelphia and surrounding regions, and, due to the lack of public transportation, residents are unable to travel to work, school and medical appointments.

**C. Service Provided by SEPTA**

Residents of Philadelphia and the surrounding region rely heavily on SEPTA on a daily basis to travel in and around Philadelphia for many reasons, including work, school, recreation, and medical treatment. SEPTA provides over 900,000 trips to riders on its subways, buses and trolleys every day. SEPTA is able to provide these vital services to citizens as a direct result of the taxes and fares paid by the citizens of Philadelphia and the surrounding region. The bulk of SEPTA's operating budget derives from government funds it receives from federal, state, and local governments, and from the fares that riders pay to use SEPTA's services.

Defendants' unlawful strike is depriving millions of citizens of use of the transit system they fund through fares and taxes. The inability to use SEPTA's services leaves these tax- and fare-paying citizens with severely limited or, in many cases, no ability to travel to work, school,

medical appointments, or other commitments, or to pursue recreational activities. The strike also impacts the region as a whole, as increased pressure is placed upon the highway system by citizens seeking alternate routes to carry on their daily activities and as employers and businesses are faced with the increased costs of employee absenteeism or reduced revenues. In this election year, the strike also will hamper the ability of area residents to exercise their right to vote, as they will not be able to use public transportation to reach their polling place.

**D. Impact of Defendants' Unlawful Strike**

As a result of Defendants' strike, numerous adverse effects on the health, safety and welfare of the citizens of the City and surrounding region already have occurred and will continue so long as the Defendants' strike is permitted to continue.

Specifically, SEPTA provides essential transportation service for the School District of Philadelphia and charter and parochial schools. Approximately 52,000 district and charter school students rely on SEPTA to get to school safely and on time. SEPTA is currently unable to perform that service, forcing children to walk, crossing congested intersections and thoroughfares (thereby endangering such students), to delay their arrival at school, or to skip school altogether.

SEPTA's transit division largely serves the working poor of the City of Philadelphia and surrounding counties. Over half of SEPTA's riders earn less than \$50,000 annually, and many earn less than \$15,000 per year. Many of those individuals take two or even three pieces of transportation to get to work, school or medical services. Those individuals cannot afford to switch to taxis or ride-sharing services, and many do not own personal automobiles. News reports have shown people walking literally miles to get to work. For those individuals, the loss of public transportation service is no mere inconvenience; it cuts off their pay and it jeopardizes their jobs, their livelihood and their health. The continuation of the strike exacerbates the impact

on the public, as workers exhaust whatever paid time off they have to replace wages that they would have earned.

The disabled community is particularly hard-hit by the strike. Many persons with disabilities use SEPTA's fixed route service to travel to organizations such as the Associated Services for the Blind ("ASB") in center city Philadelphia where they receive critical services such as rehab, mobility, support groups, case management, medication management, and life management. Because of the strike, the most of the employees and volunteers of ASB have been unable to come to work and almost all of ASB's clients have been deprived of service.

A continuation of the strike through Election Day, November 8, 2016, will jeopardize the ability of citizens to exercise their right to vote. Within the City of Philadelphia, citizens, especially the elderly and disabled, will not have the ability to use SEPTA to travel between polling places and their homes or workplaces. In addition, as a result of the strike, citizens who plan to vote in the evening cannot rely on SEPTA to get them home from work in a timely and predictable manner. The effect of the current strike has been exacerbated by the unavailability of regional rail cars that have been under repair since structural defects were uncovered on July 3, 2016. Some of those rail cars remain unavailable for service. Since the strike began, there have been large and unpredictable delays in regional rail service, resulting in extended commuting times for some riders. If the strike continues through Election Day, citizens in both the City and surrounding counties will risk losing their opportunity to vote if they are unable to vote before commuting to work.

Residents of the City of Philadelphia and surrounding region who rely on public transportation to travel to area hospital and medical providers are unable to receive needed

treatment based upon the lack of public transportation and are put at serious risk due to Defendants' strike.

#### **IV. ARGUMENT**

##### **A. The Court Should Enjoin Defendants' Illegal Strike Because It Has Created a Clear and Present Danger and Threat to the Health, Safety, and Welfare of the Public Pursuant to Section 1003 of PERA.**

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Since Local 234's members walked off the job and engaged in a strike on November 1, 2016, area residents – whose fares and taxes fund the mass transit system – who rely on public transportation have been severely harmed, not merely because of the inconvenience of such a strike, but because of the danger such strike is causing. As a result, the strike has created a clear and present danger and threat to the health, safety, and welfare of the public, which is prohibited under PERA and therefore must be enjoined.

In Section 101 of PERA, the Pennsylvania legislature expressly identified the priority of the public health, safety and welfare:

The General Assembly of the Commonwealth of Pennsylvania declares that it is the public policy of this Commonwealth and the purpose of this act to promote orderly and constructive relationships between all public employers and their employes subject, however, to the **paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare.** Unresolved disputes between the public employer and its employes are injurious to the public and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution.

43 P.S. § 1101.101 (emphasis added). Accordingly, the legislature further provided in PERA that a strike by public employees, even if done in accordance with the provisions of PERA, which creates a clear and present danger or threat to public health, safety, or welfare is prohibited. Specifically, Section 1003 provides, in part, that:

If a strike by public employees occurs after the collective bargaining processes set forth in sections 801 and 802 of Article VIII of this act have been completely utilized and exhausted, it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public.

43 P.S. § 1101.1003 (emphasis added). Because of the paramount importance of the public's right, Section 1003 imposes on a public employer the **mandatory obligation** to seek an injunction if it determines that the impact of a union's strike presents a clear and present danger or threat to public health, safety, or welfare:

In such cases the public employer shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief, including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety, or welfare of the public.

*Id.* (emphasis added).

In analyzing whether a strike creates a clear and present danger or threat to public health, safety, and welfare under PERA, the courts must consider whether the "danger or threat is real or actual and that a strong likelihood exists that it will occur." Masloff v. Port Auth. of Allegheny Cnty., 531 Pa. 416, 427 (1992). However, courts may not consider inconveniences, disruptions, and hardships inherent in any strike as constituting the requisite danger or threat needed to issue an injunction. Id.; Armstrong Sch. Dist. v. Armstrong Educ. Ass'n, 291 A.2d 120, 123-24 (Pa. Commw. Ct. 1972). The Commonwealth Court in Armstrong further clarified the definition for "clear and present danger":

The "clear" in that epigram is not limited to a threat indubitably etched in every microscopic detail. It includes that which is not speculative but real, not imagined but actual. The "present" in the epigram is not restricted to the climatically imminent. It includes that which exists as contrasted with that which does not yet exist and that which has ceased to exist.

Id. at 123. Courts need not find that the danger or threat has already, in fact, become a reality to issue an injunction. It is for that reason that the legislature permitted injunctions against a “threat” to the health, safety, and welfare of the public. Thus, for example, in New Brighton Borough Sanitary Authority, the court ordered an injunction against union sewage plant workers where the strike resulted in the discharge of raw sewage into a river. 61 Pa. D. & C. 2d at 265. In so ordering, the court noted that, if a strike presents a threat to the public’s health and safety, the court must take action before the threat becomes a reality:

[W]e do not believe the legislature intended that the threat must become a reality before action can be taken to protect the health and safety of the public. If the threat to the health and safety of the citizens in the area of the discharge and further downstream is present, we must take action to prevent the threat from ripening into a reality. This is in accordance with the expressed legislature policy that the guarantee of protection of the public’s health, safety and welfare must be paramount.

Id.

Where, as here, a strike prevents individuals from receiving medical care and treatment, or forced students to cross dangerous intersections to get to school, or impedes the rights of citizens to participate in a Presidential election, a clear and present danger and threat to public health, safety, or welfare is created. See Masloff, 531 Pa. at 428 (affirming an adjudication and decree which permanently enjoined a transit union strike because the traffic congestion resulting from the strike adversely affected and threatened “essential public services” such as emergency medical care); New Brighton Borough Sanitary Auth., 61 Pa. D. & C. 2d 261 (enjoining union workers from striking against a sewage plant where such strike resulted in the discharge of raw sewage into a river, thereby posing a threat to the health and safety of the citizens in the area); cf. Cnty. of Mercer v. United Steel Workers of Am., AFL-CIO, 60 Pa. D. & C. 2d 631, 634 (Pa. Ct.

Com. Pl. 1973) (declining to declare a clear and present danger or threat to the health, safety, or welfare of the public because the collective bargaining process requirements of PERA were not met, but noting that because of the union members' strike against their hospital employer "it would not be long until there would be substantial health hazard").

In Masloff, the Pennsylvania Supreme Court confronted a similar factual scenario as here, involving the Port Authority of Allegheny County ("Port Authority"), which provides public transportation services in and around Pittsburgh and Allegheny County, Pennsylvania, and Local 85, the collective bargaining agent for 2,700 employees of the Port Authority. Masloff, 531 Pa. at 419. The collective bargaining agreement between the parties expired on November 30, 1991, and negotiations for a successor agreement were unsuccessful. As a result, on March 16, 1992, Local 85 initiated a strike and walked off the job. Id. The City of Pittsburgh filed a preliminary injunction action against Local 85 seeking to enjoin the strike. During the hearings in that case, various witnesses testified regarding the severe impact of the strike:

- Blind, epileptic, professional, student, and blue collar witnesses testified about the effect of the lack of public transportation upon their lives;
- Renal, cancer, and psychiatric patients were often unable to get to appropriate medical facilities for treatment as a result of the strike;
- Emergency medical services were delayed in attempts to reach citizens in need;
- Citizens were endangering their safety by walking along public roads to get to work because other modes of transportation were unavailable;
- Residents were forced to find alternate living accommodations with friends or family because of the inaccessibility to work, school, or daycare.

Id. at 426. As a result of the testimony received by the Commonwealth Court, the Commonwealth Court held that the strike created a clear and present danger to the public health, safety, and welfare, and it issued an injunction. Id. at 430.

Local 85 appealed the decision to the Pennsylvania Supreme Court. The Pennsylvania Supreme Court acknowledged that, under the Second Class County Port Authority Act<sup>1</sup>, Local 85 had the ability to engage in a strike unless the strike created a “clear and present danger or threat to the health, safety or welfare of the public . . .” 55 P.S. § 563.2(k). The Pennsylvania Supreme Court reviewed the testimony received before the Commonwealth Court and affirmed the injunction. The Supreme Court found the strike’s detrimental effect on emergency services particularly troubling:

The evidence established, *inter alia*, that public services, such as ambulance, fire, and police services, were severely hampered by the increased traffic congestion resulting from the strike. To the extent Local 85’s argument suggests that the adverse effect and threat to essential public services such as fire and police protection and emergency medical services are the ordinary and anticipated consequences of a transit strike, **we are unpersuaded**.

Id. at 427 (emphasis added). The Masloff decision is applicable here because Defendants’ strike has produced even more dramatic and potentially dangerous and threatening results, which the Masloff court determined created a clear and present danger to public health, safety, and welfare, and therefore warrants an injunction.

As described above (pp. 4-5, *supra*), the strike has manifested a clear and present danger and threat to public health, safety, or welfare in several ways: 1) individuals are being prevented

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<sup>1</sup> 55 P.S. § 551, *et seq.* While the Masloff case dealt with the Port Authority Act, the Act’s provisions relating to a public employee bargaining unit’s ability to strike are virtually identical to the provisions of Act 195 and are therefore controlling here. In addition, the Masloff court stated that the clear and present danger limitations in the two acts are identical and are to be interpreted in a like manner. Id. at 425.

from receiving medical care and treatment; 2) transportation of students to schools is being impeded or prevented, and; 3) the rights of citizens to participate in a Presidential election are being adversely affected. Pennsylvania courts have recognized that adverse impacts on transportation of students to school can present a clear and present danger. See Jersey Shore Area Sch. Dist. v. Jersey Shore Educ. Ass'n, 519 Pa. 398 (1958) (effect of teachers' strike on potential competitive disadvantage for students based on missing school constituted a "clear and present danger"). Moreover, the impact of the strike on voter participation in the upcoming election cannot be understated. Pennsylvania has always regarded the "right of suffrage as 'fundamental' and 'pervasive of other basic civil and political rights.'" Applewhite v. Com., No. 330 M.D. 2012, 2014 WL 184988, at \*18 (Pa. Commw. Ct. Jan. 17, 2014) (quoting Bergdoll v. Kane, 557 Pa. 72, 85, 731 A.2d 1261, 1269 (1999) (citation omitted)). Any interference with the right to vote, however slight, must be recognized as a clear and present danger to the public welfare.

**B. Assuming, Arguendo, That They Apply, All of the Requirements of the Pennsylvania Rules of Civil Procedure for Granting a Special or Preliminary Injunction Have Been Met.**

Because PERA imposes upon this Court the obligation to issue an injunction if a public sector strike creates a clear and present danger or threat to the public health, safety, and welfare, and because Defendants' strike has created a clear and present danger and threat, this Court need not inquire whether the traditional standard for a preliminary injunction has been met. The Pennsylvania legislature, in drafting PERA, found the public health and welfare to be of such vital importance that it created a special class of injunction whereby, even if a labor union followed the statutory requirements and lawfully engaged in a strike, a strike that creates a "clear and present danger" to the public welfare must be enjoined. The "clear and present danger"

standard thereby allows the courts to issue an injunction without addressing the traditional standards for a preliminary injunction. Thus, this Court need not inquire into those standards.

Even if those standards for a preliminary injunction did apply here, they have been met under Pennsylvania law and an injunction should be granted. Rule 1531(a) of the Pennsylvania Rules of Civil Procedure provides, in pertinent part:

A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice.

Pa. R. Civ. P. 1531(a).

A party seeking injunctive relief must show: 1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated by damages; 2) that greater injury would result from refusing the injunction than by granting it; 3) the injunction restores the parties to the status quo which existed immediately before the alleged wrong; 4) the party is likely to succeed on the merits; 5) the injunction is reasonably suited to abate the offending activity; and 6) a preliminary injunction will not adversely affect the public interest. Warehime v. Warehime, 580 Pa. 201, 209-10 (2004).

Because SEPTA meets all of these requirements, its petition for injunctive relief must be granted.

#### **1. The Injunction is Necessary to Prevent Immediate and Irreparable Harm.**

Without the requested injunction, Defendants' strike will continue to put the general public in severe threat of severe injury or death. Such harm is immediate and irreparable. Injunctions are granted only in cases of urgent necessity to guard against injuries not merely feared but reasonably to be apprehended and likely to be irreparable. Cent. Dauphin Educ. Ass'n

v. Cent. Dauphin Sch. Dist., Pa. D. & C. 4th 300, 313 (Pa. Com. Pl. 2001). In the context of a preliminary injunction, an injury is “irreparable” if it will cause damage which can be estimated only by conjecture and not by an accurate pecuniary standard. Ambrogi v. Reber, 932 A.2d 969, 978 (Pa. Super. Ct. 2005).

If the requested injunction is not granted and the strike is allowed to continue, no legal remedy for Defendants’ illegal actions could place SEPTA and the general public in the same position they would have been in had the illegal conduct been enjoined. There is no accurate pecuniary standard which can compensate for the inability to seek essential medical services or the delay in emergency response time, because there is no amount of monetary damages which can compensate for the potential or actual loss of life, which this unlawful strike threatens and will continue to threaten if such action is not enjoined. Such harm is immediate and irreparable and only an injunction can alleviate the clear and present danger and threat to the health, safety, and welfare of the general public.

**2. Greater Injury Would Result from Refusing an Injunction than from Granting It.**

Defendants’ strike has caused substantial injury by endangering the general public, forcing school children to cross dangerous intersections and overpasses just to get to school, preventing those who need medical treatment from obtaining such treatment, and delaying emergency response for police, fire, and EMS services in the City. Granting the relief requested by SEPTA would put an end to this severe threat and would cause no injury to Defendants.

PERA grants Defendants and other public sector employees the ability to strike. However, PERA clearly states that if such a strike creates a clear and present danger or threat to the health, safety, and welfare of the public, such a strike shall be enjoined. 43 P.S. § 1101.1003.

An injunction would follow the statutory requirements of PERA, and therefore it cannot be said that issuance of an injunction would cause any relevant injury to Defendants.

**3. An Injunction Will Properly Restore the Parties to the Status Quo.**

As stated above, mandating that all employees represented by Defendants return to work will simply restore all parties to the status quo which existed prior to the injunction and illegal strike. If an injunction is granted, employees will return to work and be paid. The parties can and should resume bargaining to execute a successor agreement. Most critically, the continuity of service to the general public will be restored and the clear and present danger to the public health, safety, and welfare eliminated.

**4. SEPTA Is Likely to Succeed on the Merits.**

As discussed above, the illegality of Defendants' strike is clear. PERA prohibits strikes that create a "clear and present danger or threat to the health, safety or welfare of the public." 43 P.S. § 1101.1003. Defendants' strike creates a clear and present danger to public health, safety, and welfare. The threat of immediate and irreparable harm is real. The general public has been placed at serious risk based upon, among other things, the inability to receive vital medical treatment and the delay in emergency response, all caused by the illegal strike.

Defendants' strike is outside the ambit of protection afforded by the provisions of PERA, and is therefore unlawful.

**5. Injunction is Reasonably Suited to Abate Harm Posed by Illegal Strike.**

Through this action, SEPTA seeks only a status quo injunction. Such an injunction will return the parties to their position prior to the illegal strike. Employees will be required to return to work and perform the services that would not be available absent injunctive relief. Moreover, SEPTA and Local 234 could resume collective bargaining negotiations to avoid the need for a strike or disruption to the public health, safety and welfare. Without the

service of Defendants' members, SEPTA would be unable to provide the transportation services that the general public relies on for work, school, and medical needs, thereby creating a clear and present danger and threat to the health, safety, and welfare of the general public.

**6. An Injunction Will Not Adversely Affect the Public Interest.**

Not only will a preliminary injunction **not** adversely affect the public interest, it is required to protect the public interest. The legislature, in drafting PERA, made clear that it reserved the paramount right of the public "to keep inviolate the guarantees for their health, safety and welfare." 43 P.S. § 1101.101. As a result, if an otherwise lawful strike creates a clear and present danger or threat to the health, safety, and welfare of the public, such strike must be enjoined as it would constitute an illegal strike. An action here enjoining Defendants' strike would not adversely affect the public interest, but in fact, promote the public interest.

**V. RELIEF**

For the foregoing reasons, SEPTA respectfully requests that this Court issue a special and preliminary injunction against Defendants to prevent them from continuing to engage in conduct that is causing a clear and present danger and threat to the health, safety, and welfare of the general public, which is prohibited under Act 195.

Respectfully submitted,

Date: November 4, 2016

*/s/ Gerald E. Burns*

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OF PHILADELPHIA COUNTY  
NOVEMBER TERM, 2016  
NO. \_\_\_\_\_  
(IN EQUITY)

**CERTIFICATE OF SERVICE**

I certify that I served true and correct copies of the foregoing petition and all accompanying documents today by facsimile and electronic mail upon counsel for Defendants at:

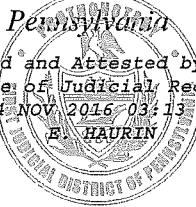
BRUCE BODNER, ESQ.  
[Bbodner@twu234.org](mailto:Bbodner@twu234.org)  
Fax: 215-972-4140; 215-496-9041

Dated: November 4, 2016

/s/ Gerald E. Burns  
Gerald E. Burns, Esquire

BUCHANAN INGERSOLL & ROONEY PC  
By: Robert S. Hawkins, PA I.D. No. 39862  
Gerald E. Burns, PA I.D. No. 59466  
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Philadelphia, PA 19102  
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Attorneys for Southeastern Pennsylvania  
Transportation Authority  
Filed and Attested by the  
Office of Judicial Records  
02 NOV 2016 03:15 pm  
B. HAURIN



SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY :  
1234 Market Street :  
Philadelphia, PA 19107 :  
Plaintiff, :  
v. :  
TRANSPORT WORKERS UNION, :  
LOCAL 234 :  
500 N. 2nd Street :  
Philadelphia, PA 19123 :  
WILLIE BROWN :  
Transport Workers Union, Local 234 :  
Union Hall, 500 N. 2<sup>nd</sup> Street :  
Philadelphia, PA 19123 :  
BRIAN POLLITT :  
Transport Workers Union, Local 234 :  
Union Hall, 500 N. 2<sup>nd</sup> Street :  
Philadelphia, PA 19123 :  
Defendants. :  
:

COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

NOVEMBER TERM, 2016

NO. \_\_\_\_\_  
(IN EQUITY)

**NOTICE**  
You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR  
LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR  
CANNOT AFFORD ONE, GO TO OR TELEPHONE THE  
OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU  
CAN GET LEGAL HELP.

LAWYER REFERENCE SERVICE  
One Reading Center  
Philadelphia, PA 19107  
Telephone: (215) 238-1701

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentir una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Se avisa que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO  
INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL  
DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN  
PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA  
DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR  
DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DE REFERENCIA LEGAL  
One Reading Center  
Philadelphia, PA 19107  
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*Attorneys for Southeastern Pennsylvania  
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COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY  
NOVEMBER TERM, 2016  
NO. \_\_\_\_\_  
(IN EQUITY)

**VERIFIED COMPLAINT IN EQUITY**

**The Parties**

1. Southeastern Pennsylvania Transportation Authority (“SEPTA”) is a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof with its principal office located at 1234 Market Street, Philadelphia, PA 19107. SEPTA is a metropolitan transportation authority, formed pursuant to the provisions of the Metropolitan Transportation Authorities Act, Act of 1963, 66 P.S. §§ 2001, et seq., for the purpose of operating various forms of public transportation—bus, subway,

elevated rail, commuter rail, light rail, and electric trolley bus – in and around Philadelphia, Pennsylvania.

2. SEPTA is a public employer within the meaning of the Pennsylvania Public Employe Relations Act (“PERA” or “Act 195”). 43 P.S. § 1101.301(1).

3. Defendant Transport Workers Union, Local 234 (“TWU” or “Local 234”) having offices at 500 N. 2nd Street, Philadelphia, PA 19123 is an employe organization within the meaning of PERA. 43 P.S. § 1101.301(3).

4. Local 234 represents a unit of approximately 5,500 SEPTA employees, consisting of bus drivers, subway and trolley operators, and mechanics, who are public employees within the meaning of PERA. 43 P.S. § 1101.301(2).

5. The relationship between SEPTA and Local 234 is governed by PERA, 43 P.S. §§ 1101.101, et seq.

6. SEPTA and Local 234 are parties to a collective bargaining agreement (“CBA”) effective October 31, 2014, through October 31, 2016.

7. Defendant Willie Brown (“Defendant Brown”) is an adult individual, whose business office is at Transport Workers Union, Local 234 Union Hall, 500 N. 2<sup>nd</sup> Street, Philadelphia, PA 19123. Defendant Brown is the President of Local 234.

8. Defendant Brian Pollitt (“Defendant Pollitt”) is an adult individual, whose business office is at Transport Workers Union, Local 234 Union Hall, 500 N. 2<sup>nd</sup> Street, Philadelphia, PA 19123. Defendant Pollitt is the Executive Vice President of Local 234.

### **Jurisdiction and Venue**

9. This Court has jurisdiction under the Pennsylvania Judicial Code, 42 Pa. C.S.A. § 931(a), because SEPTA and Local 234 carry on a continuous and systematic part of their

operations in the Commonwealth of Pennsylvania, and the acts and omissions that give rise to the claim in this action occurred in the Commonwealth of Pennsylvania and the City and County of Philadelphia.

10. For the same reason, venue is proper in this Court under Rules 1006 and 2156 of the Pennsylvania Rules of Civil Procedure.

#### **Timeline of Contract Negotiations between SEPTA and Local 234**

11. Beginning on July 13, 2016, representatives from SEPTA and Local 234 engaged in collective bargaining in anticipation of the expiration of the parties' CBA on October 31, 2016. The parties met to bargain on several occasions thereafter, and continue negotiations to this date.

12. The collective bargaining agreement between SEPTA and Local 234 expired on October 31, 2016, at midnight.

13. On November 1, 2016, Defendants commenced a strike against SEPTA. As a result of the strike, service on SEPTA's City Transit Division has completely ceased.

#### **Requirements of the Public Employe Relations Act**

14. Act 195 provides public sector employees with the right to strike after exhausting the impasse resolution procedures contained in the Act. 43 P.S. §§ 1101.801-02.

15. However, Section 1003 of Act 195 provides that, even if a public employee bargaining unit exhausts the Section 801 and 802 impasse resolution procedures prior to engaging in a strike, if such strike "creates a clear and present danger or threat to the health, safety or welfare of the public," such strike shall be prohibited.

16. Act 195 provides that, if a strike creates a clear and present danger, the public employer "shall initiate, in the court of common pleas of the jurisdiction where such strike

occurs, an action for equitable relief including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public.” 43 P.S. § 1101.1003.

17. Section 1003 of Act 195 expressly permits SEPTA to initiate an action in this Court for equitable relief from Defendants’ strike, which has the effect of creating a clear and present danger or threat to the health, safety, or welfare of the public.

18. SEPTA has complied with all requirements imposed by law with respect to the labor dispute in question.

#### **Defendants’ Strike Poses a Clear and Present Danger**

19. SEPTA is the sixth largest transit system in the U.S., providing over 326 million trips in fiscal year 2016 in a service area that covers 2,200 square miles. On a weekday basis, SEPTA’s City Transit Division (“CTD”) fixed route service provides approximately 900,000 trips, consisting of 477,000 rides on 75 bus routes, in addition to 39 supplemental routes used primarily by students; 325,000 trips on 2 subway-elevated lines, 77,000 trips on 6 light rail (trolley) lines, and 21,000 trips on 3 trackless trolley lines. Many SEPTA riders must use two or even three modes of transportation to get to work.

20. The residents of this region depend upon SEPTA’s public transportation services to travel in and around the city and region for work, school, recreation, hospital visits and medical appointments.

21. At approximately 12:00 A.M. on November 1, 2016 members of Local 234, at the direction of the individually named Defendants, engaged in a strike and walked off the job.

22. As a result, SEPTA’s buses, trolleys, and subway-elevated rail (including the Market-Frankford Line and the Broad Street Line) have been unable to operate.

23. Unless prevented and restrained by this Court, Defendants' strike, which has created a clear and present danger and threat to the health, safety, and welfare of the citizens of the City of Philadelphia and the surrounding region, will continue.

24. By reason of Defendants' actions in engaging in a strike, the citizens and taxpayers of the City of Philadelphia and surrounding region, will continue to suffer great and irreparable harm, the extent of which cannot now be definitively ascertained.

25. Specifically, as a result of Defendants' strike, the following adverse effects on the health, safety and welfare of the citizens of the City and surrounding region, among other things, already have occurred and will continue so long as the Defendants' strike is permitted to continue:

(a) SEPTA provides essential transportation service for the School District of Philadelphia and charter and parochial schools. Approximately 55,000 district and charter school students rely on SEPTA to get to school safely and on time on a daily basis. SEPTA is currently unable to perform that service, forcing children to walk, crossing congested intersections and thoroughfares (thereby endangering such students), which delays their arrival at school, or causes them to miss school altogether. Based on publicly available information from the City, twenty percent (20%) of Philadelphia public school students were absent on day 1 of the strike and fifteen (15%) of students were absent on day 2. Lower attendance is concentrated among high school students in the Citywide high schools. That means that hundreds, if not thousands, of high school students are not in school.

(b) SEPTA's City Transit Division largely serves the working poor of the City of Philadelphia and surrounding counties. Over half of SEPTA's riders earn less than \$50,000 annually, and many earn less than \$15,000 per year. Many of those individuals take two or even

three pieces of transportation to get to work, school or medical services. Those individuals cannot afford to switch to taxis or ride-sharing services, and many do not own personal automobiles. Approximately 69% of the CTD ridership does not own a personal vehicle. News reports have shown people walking literally miles along congested public streets to get to work. For those individuals, the loss of public transportation service is no mere inconvenience; it cuts off their pay and it jeopardizes their jobs, their livelihood and their health. The continuation of the strike exacerbates the impact on the public, as workers exhaust whatever paid time off they have to replace wages that they would have earned.

(c) The disabled community is particularly hard-hit by the strike. Many persons with disabilities use SEPTA's fixed route service to travel to organizations such as the Associated Services for the Blind ("ASB") in Center City Philadelphia where they receive critical services such as rehab, mobility, support groups, case management, medication management, and life management. Because of the strike, most of the employees and volunteers of ASB have been unable to come to work and almost all of ASB's clients have been deprived of service.

(d) A continuation of the strike through Election Day, November 8, 2016, will jeopardize the ability of citizens to exercise their right to vote in the upcoming Presidential election. Within the City of Philadelphia, citizens, especially the elderly and disabled, will not have the ability to use SEPTA to travel between polling places and their homes or workplaces. In addition, as a result of the strike, citizens who plan to vote in the evening cannot rely on SEPTA to get them home from work in a timely and predictable manner. The effect of the current strike has been exacerbated by the unavailability of regional rail cars that have been under repair since structural defects were uncovered on July 3, 2016. Some of those rail cars

remain unavailable for service. Since the strike began, there have been large and unpredictable delays in regional rail service, resulting in extended commuting times for some riders. If the strike continues through Election Day, citizens in both the City and surrounding counties will risk losing their opportunity to vote if they are unable to vote before commuting to work.

(e) Residents of the City of Philadelphia and surrounding region who rely on public transportation to travel to area hospital and medical providers are unable to receive needed treatment based upon the lack of public transportation and are put at serious risk due to Defendants' strike.

(f) The strike has disrupted SEPTA's services to the disabled and elderly under the Customized Community Transportation ("CCT") and Shared Ride programs. Both of these programs provide service to eligible individuals who cannot use SEPTA's fixed route system and need transportation to and from vital services such as dialysis or chemotherapy treatment, senior adult day care, and day programs for the intellectually disabled. Because of increased traffic caused by the strike, service to individuals who use these programs have been delayed for several hours, jeopardizing their medical care and exposing them to hours of delay in returning home.

26. Unless Defendants' strike is prevented and restrained by this Court, Defendants' conduct will continue causing a clear and present danger and threat to the health, safety, and welfare of the public, and will only increase in severity.

### **Remedy**

WHEREFORE, being statutorily permitted to initiate an action for relief from a strike causing a clear and present danger and threat to the health, safety, and welfare of the public, SEPTA requests equitable relief and prays of this Court as follows:

(a) That a preliminary and permanent injunction be issued enjoining and restraining Defendants and any other persons acting on behalf of or in concert with them or any of them from:

1. continuing to strike or withhold services as employees of SEPTA or otherwise engaging in any form of work stoppage;
2. causing a clear and present danger to the health, safety and welfare of the public in violation of the Public Employe Relations Act;
3. in any manner impeding, obstructing, hampering or interfering with the business of SEPTA;
4. coercing, intimidating, ordering, instigating, inducing, encouraging, or otherwise causing SEPTA's employees to absent themselves from work;
5. advising, encouraging, or assisting the doing of any of the things that were herein forbidden.

(b) That members of Local 234 who are employees of SEPTA be ordered to return to work forthwith and cease and desist from engaging in a prohibited strike.

(c) That all Defendants be ordered to terminate the prohibited strike and direct all employees of SEPTA to return to work forthwith.

(d) Defendants and their employees and agents shall be enjoined from any and all acts or threats of violence, intimidation, coercion, molestation, libel, or slander against SEPTA.

(e) That Defendants be ordered to comply with all the provisions of the Public Employe Relations Act, and particularly Section 1003, 43 P.S. § 1101.1003.

(f) That the Order shall, if necessary, be enforced by the Sheriff of Philadelphia County and by the Police Department of the City of Philadelphia and any other law enforcement agency having jurisdiction over the enjoined parties.

(g) That the Sheriff of Philadelphia or the Police Department of the City of Philadelphia or their designee shall have the authority to arrest any persons found to be in violation of the Order or the reasonable orders of the Sheriff or the Police Department which are necessary to carry out the terms of this injunction and to bring such person or persons before the Court for disposition.

(h) That the Order, together with a copy of the Complaint in Equity, may be served on Defendants by SEPTA's counsel or their representatives.

(i) That the Sheriff of Philadelphia County is hereby directed to take all necessary steps to serve and enforce the provisions of the Order on all appropriate persons.

(j) That SEPTA shall not be required to file a bond pursuant to Pa. R. Civ. P. 1531(b).

(k) That this Court grant any further necessary and appropriate relief.

BUCHANAN INGERSOLL & ROONEY, PC

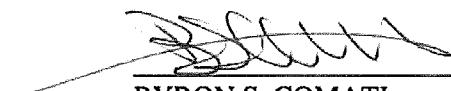
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(215) 665-8700  
*Attorneys for Plaintiff Southeastern Pennsylvania  
Transportation Authority*

Date: November 4, 2016

**VERIFICATION**

I, BYRON S. COMATI, verify that I am the Director, Strategic Planning & Analysis of the Southeastern Pennsylvania Transportation Authority ("SEPTA"); that I am authorized to take this Verification on behalf of SEPTA; that the facts set forth in the foregoing Complaint in Equity are true and correct to the best of my knowledge, information and belief; and that I understand that any statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: November 3, 2016



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BYRON S. COMATI