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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**TRANSPORT WORKERS UNION OF
PHILADELPHIA, LOCAL 234,
500 North 2nd Street
Philadelphia, PA 19123,**

**RAYMOND STAAS,
802 Saratoga Terrace
Turnersville, NJ 08012,**

**CYNDI ANDERSON,
224 S. 56th St.
Philadelphia, PA 19139,**

**FRED HINES,
7036 City Ave.
Philadelphia, PA 19151,**

**SHARELL ANDERSON,
6657 Musgrave St.
Philadelphia, PA 19119,**

**AL BELL,
4049 Neilson St.
Philadelphia, PA 19124,**

Plaintiffs,

v.

**SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY,
1234 Market St.
Philadelphia, PA 19106,**

Defendant.

CIVIL ACTION

No.: 09 4135

COMPLAINT

Plaintiffs, Transport Workers Union of Philadelphia, Local 234 ("TWU"), Raymond Staas, Cyndi Anderson, Fred Hines, Sharell Anderson, and Al Bell, by their counsel and by way of Complaint against Southeastern Pennsylvania Transportation Authority ("SEPTA"), herein state as

follows:

INTRODUCTORY STATEMENT

Plaintiffs in this action seek to prevent the Southeastern Pennsylvania Transportation Authority (“SEPTA” or the “Authority”), an agency and instrumentality of the Commonwealth of Pennsylvania, from violating the Fourth and Fourteenth Amendment rights of approximately forty of Defendant’s employees, whom SEPTA is now subjecting to unwarranted inclusion in its random drug and alcohol testing program on unlawful grounds. The employees in question are not among the employees whose “safety-sensitive” positions create the “narrow exception” to the Fourth Amendment’s general requirement of individualized cause before the government can conduct a body-fluids search.

JURISDICTION AND VENUE

1. Jurisdiction over this action is based on federal question jurisdiction under 28 U.S.C. § 1331 in that this action alleges a violation of Fourth and Fourteenth Amendment rights by an agency of the Commonwealth of Pennsylvania.

2. Venue is appropriate in this Judicial District pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events giving rise to Plaintiffs’ claims have occurred in this District, and the vast majority of TWU Local 234’s members are located and/or reside within this District. Venue is also appropriate in this Judicial District pursuant to 29 U.S.C. § 464(b), in that TWU Local 234’s principal office is located here.

THE PARTIES

3. Plaintiff Transport Workers Union of Philadelphia, Local 234 (“TWU” or “Local 234”), is a Pennsylvania public employee, unincorporated association with offices located at 500

North 2nd Street, Philadelphia, Pennsylvania 19123.

4. Plaintiff Raymond Staas is a TWU member and SEPTA employee assigned to the position of Vehicle Readiness Coordinator (“VRC”). Plaintiff Staas resides at 802 Saratoga Terrace, Tursersville, New Jersey 08012.

5. Plaintiff Cyndi Anderson is a TWU member and SEPTA employee assigned to the position of Vehicle Readiness Coordinator (“VRC”). Plaintiff Cyndi Anderson resides at 224 S. 56th St., Philadelphia, Pennsylvania 19139.

6. Plaintiff Fred Hines is a TWU member and SEPTA employee assigned to the position of Vehicle Readiness Coordinator (“VRC”). Plaintiff Hines resides at 7036 City Ave., Philadelphia, Pennsylvania 19151.

7. Plaintiff Sharell Anderson is a TWU member and SEPTA employee assigned to the position of Vehicle Readiness Coordinator (“VRC”). Plaintiff Sharell Anderson resides at 6657 Musgrave St., Philadelphia, Pennsylvania 19119.

8. Plaintiff Al Bell is a TWU member and SEPTA employee assigned to the position of Vehicle Readiness Coordinator (“VRC”). Plaintiff Bell resides at 4049 Neilson St., Philadelphia, Pennsylvania 19124.

9. Defendant SEPTA is a regional public transit authority organized under the laws of the Commonwealth of Pennsylvania, with its principal executive offices located at 1234 Market St., Philadelphia, Pennsylvania 19106.

FACTS

10. TWU represents over 5300 workers employed by SEPTA, including SEPTA’s Vehicle Readiness Coordinators. The terms and conditions of employment of members of the TWU

are governed by a labor agreement negotiated by and between SEPTA and TWU, dated November 7, 2005 (the “Agreement”). A copy of the relevant provisions of the Agreement is attached hereto as Exhibit A.

11. SEPTA employs approximately forty (40) VRCs. Under the terms of the Agreement, the VRC position is a “reserved, light duty position for Medically Disqualified employees.” Ex. A, § 504(I)(1). Every VRC is on alternative duty because his or her medical condition and prognosis prevents him or her from returning to his or her former permanent position with SEPTA. *See* Ex. A, § 504(I)(1)-(2). In many cases, VRCs formerly held “safety-sensitive” positions such as Bus Driver or Bus Mechanic, from which they became medically disqualified.

12. Under the Agreement and the negotiated Job Description, the VRCs are not required to drive or have a Commercial Driver’s License. The VRC job description is attached hereto as Exhibit B.

13. Under the terms of the Agreement and SEPTA’s Drug Free Workplace Policy, the Authority prohibits employees from using or being under the influence of drugs or alcohol while on duty, four hours before duty, or while subject to duty.

14. In agreement with TWU, SEPTA has established a drug and alcohol testing program. Ex. A, §1203. In addition to conducting testing on employees when SEPTA has a particularized reason to do so (including reasonable suspicion and post-accident testing), the Authority has established a random drug and alcohol testing program. Ex. A. § 1203(I). The program was designed in conformity with FTA regulations, *inter alia*, including 49 C.F.R. Part 655.

15. SEPTA’s random drug testing program was created to protect the public from “extraordinary” safety hazards that could be created by drug or alcohol use by the subset of SEPTA

employees who are in “safety-sensitive positions.” Under the terms of the Agreement, only those employees in safety-sensitive positions are subject to the random drug and alcohol testing program. As the U.S. Court of Appeal for Third Circuit has stated, a random testing program would not pass constitutional muster were it not “careful[ly] tailor[ed] to cover only employees in safety-sensitive positions....” *Transport Workers’ Union of Philadelphia, Local 234 v. Southeastern Pennsylvania Transp. Authority (TWU v. SEPTA)*, 884 F.2d 709, 711 (3d Cir. September 1, 1989). As the Court reasoned, the government’s interest in testing employees without individualized suspicion is only sufficiently compelling to cover those employees who “can cause great human loss before any signs of impairment become noticeable to supervisors or others.” *Id.* at 712 (internal quotation omitted).

16. The testing pool (i.e., the employees subject to random testing) consists of those employees in safety-sensitive positions. The program is designed such that in a given year, the number of random tests performed is equal to half the number of employees in the testing pool.

17. Although not properly subject to random drug and alcohol testing, VRCs are subject to reasonable suspicion testing, as are all SEPTA employees represented by the TWU. That is, if a VRC was to fall under individualized suspicion, the Agreement permits the testing of that individual.

18. On August 6, 2009, SEPTA notified the President of TWU of its intent to begin including all VRCs in the random testing program.

19. On August 14, 2009, SEPTA notified the VRCs by posting a notice that SEPTA intended to begin including all VRCs in the random testing program. The notice advised the VRCs that “effective Sunday, September 6, 2009, they will be subject to random drug and alcohol testing.” A copy of the notice is attached hereto as Exhibit C.

20. From 1995 through September 6, 2009, SEPTA employees assigned alternate duty

work as VRCs have not been subject to the random testing program.

21. It is long settled that random drug and alcohol testing is considered a “search” under the Fourth Amendment to the U.S. Constitution, as applied pursuant to the Fourteenth Amendment. *Skinner v. Railway Labor Executives’ Ass’n.*, 109 S. Ct. 1402, 1413, 49 U.S. 602, 618 (1989).

22. Subjecting non-safety sensitive employees, such as VRCs, to random drug and alcohol testing violates the Fourth Amendment rights of those affected by SEPTA’s unilaterally imposed policy.

23. Absent injunctive relief by this Court, Plaintiffs have no adequate remedy at law.

24. Plaintiffs are likely to succeed on the merits of their claims.

25. Plaintiffs have suffered and will suffer irreparable harm in the event that this Court fails to grant injunctive relief to enjoin SEPTA from including the VRCs in the Authority’s random drug and alcohol testing pool in violation of their Fourth Amendment right to be free of unreasonable searches.

26. The public interest and balance of equities strongly favors granting the injunctive relief sought by the Plaintiffs, and clearly outweighs the interests of SEPTA in adding non-safety sensitive employees to the drug and alcohol testing pool.

COUNT I

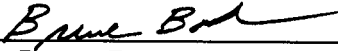
28. Paragraphs 1-27 of the Complaint are incorporated herein by reference as though set forth in their entirety.

29. By their conduct, Defendant SEPTA is violating constitutional protections afforded public employees under the Fourth and Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendant SEPTA by:

- a. Temporarily, preliminarily and permanently enjoining SEPTA from subjecting employees assigned to the position of Vehicle Readiness Coordinator to random drug and alcohol testing;
- b. Awarding Plaintiffs such other equitable relief as the Court deems just and proper.

KAUFMAN, COREN & RESS, P.C.

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Dated: September 10, 2009

EXHIBIT A

EXHIBIT A

IV. Prescription Medication

Prescribed medication for an employee's compensable injury or illness shall be provided at no cost to the employee. The Authority shall establish a prescription drug program administered by a third-party administrator for the provision of such medication with the requirement that claimants accept generic substitution for brand drugs when available and prescribed.

V. Medical Dispute Resolution

Section 1201 of the labor agreement will not apply to employees involved in a dispute who are at the time receiving workers' compensation indemnity benefits.

If the employee's treating physician considers the employee unable to work a job assigned to him/her by the Authority, including Transitional or Alternate Duty or the employee's regularly assigned position, the employee will be placed on IOD leave. In addition to all other rights under the Pennsylvania Workers' Compensation Act, the Authority shall have the right to petition to have the employee's workers' compensation benefits suspended or terminated. If, during the pendency of any litigation, the employee's treating physician changes his/her opinion regarding the employee's ability to perform the job offered by the Authority, the employee immediately will be required to return to work.

If the workers' compensation dispute is resolved in favor of the employee, the employee will continue on IOD leave or continue on the Priority Recall List until the applicable time periods have expired, as described in this labor agreement, or if the employee had been performing an Alternate Duty Position when the dispute arose, he/she will be returned to such position.

If the Authority prevails, and at the time of the determination the employee is on IOD leave or on the Priority Recall List, the employee must return to his/her regular position or be deemed to have resigned from employment with the Authority. If, at the time of the determination, the employee has exhausted all IOD leave and all applicable time on the Priority Recall List and has been dropped from the Authority's rolls, he/she will not be reinstated.

Section 504. Alternate Duty Program

I. Definitions

As used in this Article, the following terms mean:

1. *Alternate Duty Position:* A reserved, light duty position for Medically Disqualified employees. An Alternate Duty Position can be any position for which

the employee is qualified and medically capable of performing, including a different permanently budgeted position in the bargaining unit. In addition, the parties agree that the following full-time classifications shall be Alternate Duty Positions: Vehicle Readiness Coordinator (VRC), Loader, Scrapper and Cashier.

2. *Medically Disqualified:* Based on the employee's medical condition and prognosis, the employee cannot return to his or her former permanently budgeted position with the Authority, as determined by the Authority's Medical Director or his/her designee. Employees eligible for this classification will be those with IOD injuries regardless of seniority and sick employees with five (5) or more years of seniority at the time of disqualification.

3. *MD List:* The list of Medically Disqualified employees awaiting assignment to a permanently budgeted Alternate Duty Position.

4. *Temporarily Disqualified:* Based on the employee's medical condition and prognosis, the employee cannot return to his or her former permanently budgeted position with the Authority for a temporary period of time, as determined by the Authority's Medical Director or his/her designee.

5. *Transitional Duty:* A temporary alternate duty assignment for IOD employees not to exceed ninety (90) days per assignment at a wage rate of \$5.64/hour. Such employees, if eligible, also will receive a partial disability payment pursuant to the Workers' Compensation Act. Transitional duty assignments may entail less than a full-time schedule.

II. Transition of Employees in MDTD Program

All temporary duty assignments in the MDTD program at the time this Alternate Duty Program takes effect will cease. Employees performing such assignments at that time will be treated as follows:

1. Temporarily disabled employees working in the MDTD program when the MDTD program ceases will be classified as Medically Disqualified, if applicable, returned to their regular permanently budgeted positions if medically capable of performing the work, or placed on sick leave or IOD leave. For sick employees performing MDTD jobs on the ratification date of this agreement, the Authority will permit such employees to remain in their MDTD assignment for a period not to exceed sixty (60) days and, upon return to sick leave, an employee who has not accrued leave, will be advanced sixty (60) days of sick leave from the employee's future entitlement.

2. For employees classified as MDPD, the Authority will make available fifty-seven (57) Alternate Duty Positions. Such employees will be offered the opportunity to transfer to one of the Alternate Duty Positions on the basis of Authority seniority, provided that the employee has the requisite skills and is medically capable of performing the duties of the Alternate Duty Position. Employees in an Alternate Duty Position will be permitted to pick their work assignments, including location and shift, based on Authority seniority.

3. An employee who was classified as MDPD but was not placed in one of the 57 positions (either because all 57 positions were filled or because the employee was not capable of performing in any of the 57 available positions) will be placed on the MD List and permitted to remain in their current MDTD assignment for a period not to exceed six (6) months from the date of ratification of this labor agreement. Thereafter, any such employee will be placed on sick leave or IOD leave, as applicable, and continue on the MD List. While on the MD List, such employees will have priority for placement in an available Alternate Duty Position over any employee who subsequently is Medically Disqualified. Also, if during the first sixty (60) days of the new assignment to an Alternate Duty Position, the Authority determines that the employee is not medically capable of performing the duties of the position, the employee will be placed on sick leave or IOD leave and will be placed on the MD List.

4. Employees who transfer to one of the 57 positions will not be precluded from placing their names on the MD List to await transfer to another Alternate Duty Position. Such employees will be placed on the MD List in order of Authority seniority.

5. MDPD employees who transfer to one of the 57 Alternate Duty Positions will be paid at the applicable wage rate for such Alternate Duty Position, as adjusted for across-the-board wage increases under the Labor Agreement.

III. New Alternate Duty Program

Under the new Alternate Duty Program, employees who are medically incapable of performing their regular permanently budgeted job due to illness or injury will be treated as follows:

1. Employees who are Temporarily Disqualified will utilize sick leave or IOD Leave, if otherwise eligible, but will not be placed on the MD List. The Authority may offer Transitional Duty assignments to IOD employees. Any IOD employee who declines a Transitional Duty assignment that he/she is medically capable of

performing will be dropped from the Authority's employment, and the Authority may petition to terminate or modify his/her workers' compensation benefits.

2. Employees who become Medically Disqualified will be placed on the MD List while awaiting assignment to an Alternate Duty Position. Employees may remain on the MD List for the duration of any sick leave or IOD Leave for which they are eligible and for the duration of any time period for which the employee is eligible to be on the Priority Recall List. When such periods have expired, the employee will be removed from the MD List.

3. When Alternate Duty Positions are to be filled from the MD List, three (3) IOD employees will be placed for every one (1) sick employee who is placed. Subject to the foregoing, the most senior IOD or sick employee on the MD List who possesses the requisite skills and is medically capable of performing the job will be offered the vacated position. Medically Disqualified employees on the MD List will have first priority to transfer into an existing Alternate Duty Position which becomes vacant, but only if the Authority determines, in its sole discretion, that the position will be filled. Nothing in this Article will obligate the Authority to create an Alternate Duty Position, remove an employee from an existing Alternate Duty Position or fill a vacated Alternate Duty Position.

4. The wage rates for employees assigned to Alternate Duty Positions will be as set forth in the Wage Rate Manual. Employees in the VRC, Loader, Cashier or other Permanently Budgeted positions will be subject to the wage progression. Employees in the Scraper position will be subject to the MCD wage progression and longevity schedule. All such employees will be eligible for across-the-board wage increases provided in the Labor Agreement.

5. If an Alternate Duty Position is to be filled, and no employee remains on the MD List, the Authority shall be entitled to offer the position to any employee who is medically capable of performing the duties of the position, including Transitional Duty assignments.

6. Any IOD employee who turns down an Alternate Duty Position that he/she is medically capable of performing, regardless whether or not Medically Disqualified, will be dropped from the Authority's employment, and the Authority may petition to terminate or modify his/her workers' compensation benefits. A sick employee who is Medically Disqualified and offered an Alternate Duty Position that he/she is medically capable of performing may refuse the assignment only if the wage rate for the position is less than the wage rate for the permanently budgeted

position held by the employee prior to the sick leave, in which case the employee will remain on sick leave and on the MD List.

7. The Authority may offer a Medically Disqualified employee a job in another bargaining unit, but the employee is not required to accept such job. If an employee agrees to accept such job, the employee must accept the conditions of the applicable labor agreement. If an IOD employee turns down such job, he/she will be dropped from the Authority's employment, and the Authority may petition to terminate or modify his/her workers' compensation benefits. If a sick employee turns down such job, he/she will be returned to sick leave. An employee who accepts an assignment to another bargaining unit will have his/her name placed on the MD List with the right to return to the bargaining unit if an Alternate Duty Position becomes available.

8. Except as modified herein, transfers of Medically Disqualified employees into Alternate Duty positions shall be subject to the transfer provisions of Section 304; provided that, under Section 304(f), sick employees who voluntarily opt to return to leave status will be placed back on sick leave, and IOD employees who voluntarily opt to return will be deemed to have turned down available Alternate Duty work. Under no circumstances will an employee be permitted to return to a former MDTD assignment.

9. Employees who have transferred into an Alternate Duty Position pursuant to this Section and are deemed no longer to be Medically Disqualified shall return to their regular permanently budgeted position with no loss of seniority.

10. The Medical Dispute Resolution Procedures will not apply to the assignment of Medically Disqualified IOD employees to Alternate Duty Positions or to the assignment of Temporarily Disqualified IOD employees to Transitional Duty assignments.

11. The Medical Review Board established pursuant to Section 1204 of this Labor Agreement shall convene within fourteen (14) days of ratification of this agreement to review the medical status of all employees currently in the MDTD program. The Medical Review Board will be responsible for reviewing the classifications of employees as Medically Disqualified. SEPTA's Medical Department or its designee shall retain final authority for making medical classifications under this Section.

IV. IOD Leave

1. Injured on duty employees receiving workers' compensation benefits will be entitled to "IOD Leave," on a career basis, during which the employee will continue to participate in the Authority's fringe and employee benefit plans/programs (except vacation, which is subject to the Vacation Proration provision of this labor agreement) and accrue seniority during such leave.

2. For employees hired before the ratification of this agreement, the total career entitlement of IOD Leave will be fifty-two (52) weeks upon hire for the first year of active service, plus ten (10) weeks for each year of active service thereafter.

3. For employees hired on or after the ratification of this agreement, the total career entitlement of IOD Leave will be fifty-two (52) weeks upon hire for the first year of active service, plus nine (9) weeks for each year of active service thereafter.

4. For purposes of this Section, an employee completes a year of active service when he/she has been actively at work for the entire year. An employee may earn IOD Leave on a pro-rated basis in 1/12 increments for each completed calendar month of active service when he/she has been actively at work for the entire calendar month.

Authorized periods of leave for sick leave, military leave, jury leave and union leave, pursuant to the terms of this labor agreement, count as active service and will not disqualify the calendar year or month in question. All other forms of personal leave including but not limited to IOD leave will not qualify as active service, thereby disqualifying the calendar year or month in question for purposes of calculating IOD Leave entitlement. Periods of continuous leave before ratification of this agreement for compensable injuries or illnesses under the workers' compensation act will be counted as active service at half rate (e.g., two years of leave equals one year of active service), provided that any employee will be granted no less than one (1) year of IOD Leave commencing with the ratification of this agreement.

5. Once an eligible employee has expired his/her career entitlement to IOD Leave, all Authority benefits and seniority accrual will stop, and the employee shall be placed on the Priority Recall List for the length of his/her IOD Leave entitlement, not to exceed two (2) years. Any employee who is recalled to active employment from the Priority Recall List will have his/her benefits reinstated upon return to active employment.

6. The period of IOD Leave will be measured as the total cumulative number of lost-time work weeks from the commencement of a lost-time claim with one (1) lost-time work week being counted for each work week in which the employee's lost time exceeds twenty (20) hours.

7. Nothing in this section obviates the rights previously held by the Authority in regards to dropping employees when it is appropriate.

V. Priority Recall List

1. Upon expiration of sick leave (or IOD Leave), an employee will be kept on the Priority Recall List for a period equal to the employee's original amount of sick leave (or IOD Leave), not to exceed two (2) years. During the recall period, the employee will not accrue any seniority or be entitled to any Authority benefits.

2. While on the Priority Recall List, an employee may be recalled to his/her former permanently budgeted position, if medically capable of performing the job, or assigned to an Alternate Duty Position, if eligible under the terms of this Article. Once recalled, an employee will not be eligible to return to the Priority Recall List.

Section 505. Earned Days Off - Paid Excused Days.

(a) Effective July 1, 1989, all hourly employees will be entitled to one (1) earned excused day (without pay) for every ninety (90) calendar days with no sick days, I.O.D. days, misses or suspension days. These days could be used with a minimum of forty-eight (48) hours notice. Up to four (4) days may be accumulated. Quotas will be established in the particular location based on the number of outstanding "earned" excused days at that location, the daily number of requests to use those days, and the needs of the service. "Earned" excused days will be given a priority which is less than personal days but more than other excused days and can be used to address child care and other personal needs.

(b) Upon ratification, employees will receive one (1) paid excused day for each one hundred and eighty (180) consecutive days of perfect attendance achieved thereafter. Paid excused days may be taken by an employee like any other personal day or floating holiday. Alternatively, employees may cash in a paid excused day at any time and receive eight (8) hours pay at their straight time rate. Paid excused days may be accumulated and carried over from year to year.

(c) In the event an employee reports I.O.D. from work and is precluded by the Authority from returning to work the same or next working day, such absence will not be counted as an I.O.D. for the purposes of consecutive months attendance.

medical practice with respect to the underlying medical condition and the drug being administered therefor:

(1) require the employee and his/her physician to provide information on the employee's usage of the prescribed medication, including the dosage, frequency and time of use, and relevant side effects on the employee, if any;

(2) conduct a medical examination of the employee, including body fluid tests, for the purpose of determining whether the employee is taking the prescribed medication in conformity with the prescription.

(e) Whenever the Medical Director and the prescribing physician disagree as to whether an employee's use or failure to use a prescribed medication renders such employee unable to perform safely the requirements of his/her specific job, such dispute shall be resolved by the procedures referred to in section 1301 above. For purposes of resolving such a dispute, the proviso set forth in the second paragraph of section 1301 above shall not apply.

Section 1203. Drug and Alcohol Testing

The parties agree that drug and alcohol testing will be conducted in accordance with the Authority's Drug and Alcohol Policy, and that such policy shall supersede the Authority's Integrated Program of Education, Assistance, and Testing for Intoxicants and Controlled Substances. The provisions of this section are intended to accompany and, where inconsistent, to supersede (but only as to employees represented by Local 234), the Authority's Drug and Alcohol Policy.

I. Types of Testing

(a) Reasonable Suspicion Testing

The Authority may require an employee to submit to drug and alcohol testing on a reasonable suspicion basis when a supervisor trained in the detection of drug and alcohol use can articulate and substantiate specific behavioral, performance, or contemporaneous physical indicators of probable drug or alcohol use. The Authority and the Union understand such indicators to include such of the following as would reasonably lead the supervisor to conclude in good faith that drug or alcohol use is a contributing factor: e.g., behavior or actions which differ from normal behavior or actions under the circumstances, inappropriate or disoriented behavior, and incidents involving serious violations of safety or operating rules and practices.

(b) Post-accident Testing

(i) An accident is any incident involving a SEPTA vehicle that causes damage in excess of \$3500 to that vehicle or any other vehicle, or death, or injury requiring immediate medical treatment away from the scene to any person.

(ii) Any employee operating a SEPTA vehicle involved in an on-duty fatal accident is subject to post-accident testing.

(iii) A safety-sensitive employee operating a SEPTA vehicle in an on-duty non-fatal accident is subject to post-accident testing, unless at the scene of the accident the employee's performance can be completely discounted as a contributing factor to the accident.

(iv) In addition to employees actually operating the vehicle at the time of the accident, other safety sensitive employees whose actions may have contributed to the accident, such as but not limited to mechanics, are subject to post-accident testing.

(v) The specimen collection under this Section shall be done as soon as possible but in no event later than thirty-two (32) hours after the accident or after the relevant repairs were made (in the case of the mechanic) for urine drug testing, nor more than eight (8) hours after the accident or after the relevant repairs were made for alcohol testing.

(vi) Following any accident, employees subject to testing must be so notified and are required to abstain from consuming any alcohol for eight (8) hours, or until tested, whichever occurs first. Additionally, all employees subject to testing must remain available for urine drug testing for thirty-two (32) hours and breath testing for eight (8) hours by ensuring that their usual supervisor knows of their whereabouts during that period.

(c) Signal Violations

An employee who has committed a signal violation(s) shall be subject to drug and alcohol testing in accordance with the Authority's Drug and Alcohol Policy. When an operator plugs into the wrong route, it shall not be considered a signal violation unless the train moves. The Authority agrees to clarify the training manual at Elmwood and standardize the methods used for manual signals.

(d) Random Testing

(i) The following employees represented by Local 234 are safety sensitive employees and shall be subject to random testing: (1) Bus Persons, Surface Train Persons, Subway-Elevated Train Persons and employees required to hold a Commercial Driver's License to operate revenue or non-revenue service vehicles; (2) Construction Equipment Operators; (3) Towerpersons; (4) Signal Maintainers;

(5) Power Distribution Maintainers; (6) Inspectors (vehicle, mechanical, track and structural); (7) Vehicle Mechanics/Maintainers who repair or who perform routine maintenance on revenue service vehicles; (8) Welders; and (9) other employees whose duties relate to safe operation of passenger service and who operate a revenue service vehicle, whether or not such vehicle is in revenue service; who control the dispatch or movement of a revenue service vehicle; or maintain revenue service vehicles or equipment used in revenue service.

(ii) The above employees shall be in a pool from which random selection is made. Each employee in the pool shall have an equal chance of selection and shall remain in the pool, even after the employee has been tested. An employee shall be selected for testing on a random basis by using a scientifically valid random number generation method.

(iii) The selection rate is set at fifty percent (50%), which means that SEPTA will conduct a total number of tests during a year equal to fifty percent (50%) of the total number of the TWU employees who are subject to testing. Random alcohol and drug testing will be conducted at the same rates.

(e) Transfer Testing

The Authority may require a drug and alcohol test of an employee applying for a transfer from one Authority position to another only when such employee is applying to transfer from a job not subject to random testing to a job subject to random testing.

(f) Follow-up Testing

Employees who are returned to duty after a Mandatory Referral shall be subject to unannounced follow-up drug and alcohol testing for up to sixty (60) months, the number and frequency of such tests to be determined by the Substance Abuse Professional, except that there shall be a minimum of six (6) follow-up drug tests with Verified Negative Results and six (6) alcohol tests with Verified Negative Results during the first twelve (12) months after returning to duty.

(g) Physical Examination Testing

The Authority reserves the right to include drug and alcohol tests as part of periodic physical examinations to the extent that such examinations are required by law. Such examinations shall occur during the month of the employee's birthday unless otherwise required by law or unless the employee is not available (in which case the examination shall occur as soon as the employee is available). The

Authority will give thirty (30) days advance notice to each employee before such examination.

(h) Protective Testing

(i) The Authority may require an employee to submit to a drug and alcohol test in a situation where the Authority receives a reliable report that the employee has had an off-duty drug or alcohol-related arrest.

(ii) An employee whose test result cannot be confirmed, or following tests in which there is a failure or defect in the testing procedure or chain of custody, shall be required to submit to an additional test before being permitted to return to work (if the employee has been held off pending the test results) or on the employee's next working day following the Authority's receipt of notice of the failure or defect (in all other cases). If Tampering is the suspected cause of the defect in the testing procedure, such protective testing shall be conducted under Observed Conditions.

(i) No Other Testing

The Authority shall not require any employee to submit to drug or alcohol testing except as set forth in the Authority's Drug and Alcohol Policy; this section; and in full compliance with existing FTA regulations and all future changes or interpretations thereof.

II. Testing Methodology

(a) Drugs Tested For

Specimens shall be tested for (i) marijuana, (ii) cocaine, (iii) opiates, (iv) phencyclidine (PCP), (v) amphetamines, (vi) alcohol, (vii) barbiturates, (viii) benzodiazepines, (ix) methaqualone, (x) such other substances as may be required by law and (xi) any other substance now or hereafter classified as a Schedule I or II controlled substance by the provisions of 21 U.S.C. § 812 or the Regulations of the Drug Enforcement Administration at 21 C.F.R. § 1308.11.

(b) Definition of Positive and Negative Results

An employee shall be deemed to have a positive test result when the testing procedure complied with the requirements of the Authority's Drug and Alcohol Policy and this agreement and the test result showed the presence of a prohibited drug, prohibited drug metabolite or alcohol at a level equal to or above the cut-off level prescribed in the Authority's Drug and Alcohol Policy, including Appendix B thereto (e.g., a 50 ng/ml cut-off level for marijuana metabolites on the initial screen

and 15 ng/ml on the confirmatory test, and .04% cut-off for alcohol on the confirmatory test.)

(c) Applicability of Medical Review Procedure

The Medical Review procedure outlined in the Authority's Drug and Alcohol Policy shall apply to all drug testing performed by the Authority.

III. Consequences of Failing or Refusing a Test

(a) Refusal to Submit to a Test

(i) Refusal to Submit to a Drug or Alcohol Test properly required under the circumstances is a dischargeable offense.

(ii) If the employee is unable to provide the required amount of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluids and, after a period of up to three (3) hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded and testing discontinued. The Medical Review Officer shall refer the individual for a medical evaluation to determine if there is a medical reason for failure to produce the required specimen.

If it is determined that there was no such medical reason, and if the employee has had no prior positive tests, or a prior incident of shy bladder with no medical reasons, the employee shall undergo mandatory EAP referral and follow-up testing under I(f) above. If the employee has had a prior positive test or incident of shy bladder with no medical reasons, he/she will be subject to discharge.

(b) Reasonable Suspicion Testing

When, following the Medical Review procedure outlined in the Authority's Drug and Alcohol Policy, a positive result from a properly required reasonable suspicion test stands, the employee shall be discharged.

(c) Post-Accident Testing

When, following the Medical Review procedure outlined in the Authority's Drug and Alcohol Policy, a positive result from a properly required post-accident test stands, the employee shall be discharged.

(d) Signal Violation Testing

When, following the Medical Review procedure outlined in the Authority's Drug and Alcohol Policy, a positive result from a properly required signal violation test stands, the employee shall be discharged.

(e) Random Testing

When, following the Medical Review procedure outlined in the Authority's Drug and Alcohol Policy, a positive result from a properly required random test stands, non-probationary employees shall be referred to the EAP for the first such positive result in a career, and discharged for the second such positive result in a career. Newly hired employees on probation shall be discharged for the first positive test result.

(f) Other Testing

When, following the Medical Review procedure outlined in the Authority's Drug and Alcohol Policy, a positive result from a properly required test of any other type stands, the employee shall be discharged.

(g) The Authority's Notice of Entry Into Follow-Up shall require employees to indicate whether the employee desires Union representation at the meeting and whether the employee desires that his/her test result be sent to the Union.

IV. Alcohol Use

(a) Measurable Presence of Alcohol

An employee whose alcohol test indicates an alcohol level greater than 0.02 but less than 0.04 will be sent home without pay for the balance of the shift.

(b) Pre-Duty Use of Alcohol

An employee in a safety sensitive position who has consumed alcohol Pre-Duty (four hours prior to the employee's scheduled report time) shall not be permitted to work and shall not be paid. An employee's second violation of this provision in his/her career shall result in a one (1) day suspension without pay and a Mandatory Referral to the EAP. An employee's third violation of this provision in his/her career shall result in a three (3) day suspension without pay and a Mandatory Referral to the EAP. An employee's fourth violation of this provision in his/her career shall result in a five (5) day suspension without pay and a Mandatory Referral to the EAP. An employee's fifth violation in his/her career shall result in discharge.

V. Conformity to Law/Severability

(a) Effect of Court Rulings

If any part or section of the Authority's Drug and Alcohol Policy is held invalid by any court of last resort or by any regulatory commission or agency with jurisdiction, or if compliance with or enforcement of any part or section shall be

restrained by such tribunal pending final determination as to its validity, the remainder of the Policy shall not be effected thereby.

Should any final and non-appealable decision of the United States Supreme Court, the United States Court of Appeals for the Third Circuit, the United States District Court for the Eastern District of Pennsylvania or a Pennsylvania appellate court, in litigation not involving the Authority and the Union, hold that a provision of a drug or alcohol testing program substantially identical to a provision of this section or the Authority's Drug and Alcohol Policy violates the Constitution or a statute of the United States or the Constitution, a statute or the common law of Pennsylvania, the Authority shall immediately cease application of that provision, until such time as the decision is vacated, reversed or overruled or otherwise invalidated. All other provisions of this section and the Authority's Drug and Alcohol Policy shall continue in effect.

(b) Effect of Legislation

The Authority's Drug and Alcohol Policy is subject to all applicable laws now or hereinafter in effect and to the lawful regulations, rulings and orders of regulatory commissions or agencies having jurisdiction. If any part or section of the Policy is in contravention of the laws or regulations of the United States, or the Commonwealth of Pennsylvania, such part or section shall be superseded by the appropriate provision of such law or regulation, but all other parts and sections of the Policy shall continue in full force and effect.

VI. Voluntary Rehabilitation

Non-probationary employees who are not subject to Mandatory Referral to the EAP may choose to utilize EAP drug and alcohol rehabilitation services of their own volition. SEPTA encourages this use. However, if the employee requests assistance or treatment after she/he has been notified of selection for any test, asking for the assistance will not block the test from occurring and she/he must still submit to the testing. Asking for assistance after being notified of a test will not alter the administrative or disciplinary consequences of such testing. Moreover, the employee shall not avoid any disciplinary charges or pending disciplinary charges by entering voluntary referral.

The EAP will disclose the progress of any employee who voluntarily refers her/himself to SEPTA staff only if obligated to do so under its duty to warn SEPTA that an employee who is not cleared for Safety-Sensitive work may attempt to return to such work.

Aside from fulfilling such obligation, the EAP will maintain the confidentiality of employees who utilize its services, including drug and alcohol rehabilitation and treatment services.

VII. Education and Training

(a) Drug and Alcohol Free Awareness Program

SEPTA has developed a Drug and Alcohol Free Awareness Program to assist employees to understand the perils of drug and alcohol abuse. As part of this Program, SEPTA will engage in an educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace. At a minimum, each new hire, each employee, and each supervisor shall receive educational materials and training in:

- (i) the Authority's Drug and Alcohol Policy;
- (ii) the effects and dangers of drug and alcohol abuse in the workplace;
- (iii) recognition of the signs and symptoms of individuals who use drugs and/or alcohol;
- (iv) the availability of treatment and counseling for employees who voluntarily seek such assistance including how to use the EAP;
- (v) the consequences of positive test results and other violations of the Policy.

Additionally, supervisors who may make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use.

(b) Anti-Drug Information/Wellness Program

In addition to the EAP services offered to provide drug and alcohol treatment under the Authority's Drug and Alcohol Policy and this labor agreement, the Medical Department will provide educational mailings and/or distributions concerning a wide variety of lifestyle issues, including drug and alcohol abuse, to all employees and their families.

VIII. Advisory Committee

It is the ongoing responsibility of the Assistant General Manager for Operations, the Medical Director, the Program Coordinator, and the Chief Labor Relations Officer (hereinafter collectively referred to as "Responsible Officials") to monitor and evaluate the operation of the Authority's Drug and Alcohol Program and to make such amendments as may be necessary from time to time to carry out its purposes.

To provide information and advice to the foregoing persons, the Authority will invite an equal number of representatives of the labor organizations representing affected Authority personnel to serve on an Advisory Committee. One member of the Advisory Committee shall be a representative of the labor organization representing the transportation and maintenance employees of the Authority's City Transit Division. Other representatives shall be chosen by the remaining labor organizations on a basis to be agreed upon by such organizations.

The Responsible Officials or their designees will meet with the members of the Advisory Committee and discuss with them the views, suggestions, and other input of the labor organizations representing affected Authority personnel (a) semi-annually concerning the overall functioning of the program; (b) prior to adding positions beyond those already classified in Section 1203 I(d)(i) above as safety sensitive; (c) prior to implementing a substantive change in the program as written; (d) prior to the final selection of any change in the EAP Provider, the Referral Agency or the testing laboratory; and (e) at other times upon reasonable request.

To the extent that any aspect of, concern with, or decision or employment action taken as a result of this policy is properly the subject of (a) the collective bargaining obligation between the Authority and any labor organization, or (b) the grievance and arbitration procedure of any collective bargaining agreement between the Authority and any labor organization, this meet and discuss procedure neither supersedes nor substitutes for those obligations or contractual procedures.

IX. Notification

The Authority will give thirty (30) days advance notice prior to implementation of any changes in its Drug and Alcohol Policy including those contained in this labor agreement.

Section 1204. Medical Department

(a) Employees visiting SEPTA's Medical Department shall receive prompt, courteous and respectful treatment from the Department's doctors and non-medical staff. Diagnosis and treatment will conform to professional standards.

(b) The Authority will provide a form, jointly developed by the parties, for employees to fill out to evaluate each visit to the Medical Department. The form will evaluate factors such as, but not limited to, the quality of physical and personal treatment and promptness thereof. Copies of all completed forms will be available to the Union on a monthly basis.

EXHIBIT B

EXHIBIT B

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

MAINTENANCE UNIT

JOB DESCRIPTION

Job Number:	2204
Job Title:	Vehicle Readiness Coordinator (VRC)
Department/Division:	Surface and Subway-Elevated Rolling Stock and Shops Department and Division
Date Established:	November 11, 1998
Date Revised:	March 15, 1999

JOB NUMBER: 2204 JOB TITLE: VEHICLE READINESS CORRINATOR (VRC)

FUNCTIONS:

Uses various information sources including computer to track arrivals and vehicle defects. Assigns operators to appropriate vehicles. Informs maintenance and operating personnel as to the proper disposition of revenue vehicles within the garage. Notes and inputs into VMIS System vehicle defects. Prepares vehicle assignment information and informs operators.

1. Collects operator-generated vehicle defect reports.
2. Receives vehicle defect and other information from operators and/or shop personnel and informs operators and/or maintenance personnel as to appropriate disposition within the garage.
3. Informs maintenance supervision of the number and type of repairs required.
4. Receives information as to vehicles scheduled for preventative maintenance and cleaning and advises operators or maintenance personnel as to the appropriate disposition within the garage.
5. Assigns vehicle to operators in accordance with vehicle availability.
6. Periodically checks to ensure that vehicles have been correctly parked.
7. Prepares reports for both maintenance and transportation personnel including vehicle assignment reports.
8. Ensures and protects the integrity of electronic data files and equipment.
9. Reports problems to management as they arise.
10. Responsible for guiding placement of vehicles for proper servicing.
11. Records location of revenue service vehicles in District's bays, parking and shop area on blocking sheets.
12. Expeditiously assigns operators reporting for duty to appropriate vehicles. Records route and block number of vehicles assigned to service on blocking sheets.
13. Assists operators in backing up and pulling out their vehicles as requested.
14. Perform other duties related to the responsibilities of the job.

QUALIFICATIONS:

- High School Diploma or equivalent required.
- Work experience in a transit operating environment (such as bus operation or vehicle repair).
- Must be able to work variable hours (night, weekends, and holidays).

JOB NUMBER: 2204 JOB TITLE: VEHICLE READINESS CORRINATOR (VRC)

ELIGIBILITY

1. VRC is an Alternate Duty Position as defined in the collective bargaining agreement. It is reserved initially for Medically Disqualified employees on the MD List who possess the requisite skills and are medically capable of performing the job.
2. If no eligible employee on the MD List is qualified to fill a vacant position, the VRC position may be offered as a Transitional Duty assignment to Temporarily Disqualified employees.
3. The Authority may opt to fill the position through the customary posting and award process outlined in the collective bargaining agreement if no employee on the MD List possesses the requisite skills and is medically capable of performing the job.

COMMENTS:

Work outside subject to environmental elements. Subject to emergency assignment during service interruption and unusual circumstances. May work swing shifts.

NOTE: This position replaces QC Assistant (#2205).

EXHIBIT C

EXHIBIT C




Southeastern Pennsylvania Transportation Authority

NOTICE

8/14/2009

To: All Vehicle Readiness Coordinators
Subject: Random Drug and Alcohol Testing

Because Vehicle Readiness Coordinators (VRCs), job #2204, are required to possess commercial drivers' licenses, they are considered FTA safety sensitive employees and are subject to random drug and alcohol testing in accordance with 49 CFR Part 40, the SEPTA Drug Free Workplace Policy, and the Labor Agreement. This notification is to advise all VRCs that effective Sunday, September 6, 2009; they will be subject to random drug and alcohol testing.


John R. Jamison, Jr.
Director of Administration and Finance
Vehicle Engineering and Maintenance

Post: 8/14/2009 through 9/20/2009