

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
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COMMONWEALTH OF PENNSYLVANIA : Case No. PERA-U-01-68-E
OFFICE OF ATTORNEY GENERAL : (PERA-R-99-182-E)
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FINAL ORDER

On April 3, 2001, the Narcotics Agents Regional Committee, Pennsylvania Fraternal Order of Police, Lodge No. 74 (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the decision of the Secretary of the Board declining to direct a hearing on the Union's petition for amendment of certification. The Union currently represents a unit of narcotics agents I and II employed by the Commonwealth of Pennsylvania, Office of Attorney General (Employer) pursuant to a nisi order of certification issued by the Board on October 25, 1999 under the Public Employee Relations Act (PERA) at Case No. PERA-R-99-182-E. On February 9, 2001, the Union filed the instant petition for amendment of certification under PERA, seeking a declaration by the Board that the petitioned-for employees are, in fact, "police" within the meaning of Act 111 of 1968 (Act 111) and the Pennsylvania Labor Relations Act (PLRA) and creating an obligation on the part of the Employer to negotiate with the Union pursuant to Act 111 and the PLRA. In declining to direct a hearing on the petition for amendment of certification, the Board Secretary reasoned that a petition for amendment of certification filed under PERA is not the appropriate vehicle to secure bargaining rights under Act 111 and the PLRA.

In its exceptions, the Union contends that the Board Secretary erred in concluding that a petition for amendment of certification filed under PERA could not achieve the purpose of securing a certification of the Union to represent these employees as police employees under Act 111 and the PLRA.

We agree with the Board Secretary that a petition invoking the Board's jurisdiction under PERA is an inappropriate vehicle to secure bargaining rights under Act 111. In Philadelphia Fire Officers Association v. PLRB, 470 Pa. 550, 369 A.2d 259 (1977), our Supreme Court concluded that the Board had jurisdiction to conduct representation proceedings under Act 111 and certify bargaining representatives with whom the employer was obligated to bargain under Act 111. Thereafter, in Commonwealth of Pennsylvania (Capitol Police), 10 PPER ¶ 10101 (Order and Notice of Pre-Election Conference, 1979), aff'd in relevant part sub nom. Commonwealth of Pennsylvania v. PLRB and FOP, 502 Pa. 7, 463 A.2d 409 (1983) the Board was faced with a question of representation in which it was alleged that employees who had previously been certified as "public employees" within the meaning of PERA, were actually "police" within the meaning of Act 111. The Board determined in that case that the proper procedure to secure bargaining rights under Act 111 was the filing of a representation petition under Act 111. So too here, an employe organization must invoke the Board's jurisdiction under Act 111 by filing an appropriate representation petition under Act 111 in order to gain bargaining rights under that statute for the instant employes. Accordingly, the Board Secretary's decision declining to direct a hearing on the Union's petition for amendment of certification under PERA was appropriate.

In its exceptions, the Union further faults the Board Secretary's decision "[t]o the extent" (Exceptions, p. 3) that the Secretary's decision was based upon the Board's previous decision in Commonwealth of Pennsylvania (Office of Attorney General), 22 PPER ¶ 22220 (Proposed Order of Dismissal, 1991), in which the Board concluded that the instant employees were not "police" within the meaning of Act 111 because their law enforcement authority was limited. The Board Secretary neither cited nor relied upon that case in her decision and the Board similarly places no reliance on that case in its decision here. The Union has alleged in its petition that there have been changes in the employees' law enforcement authority since the Board's previous determination and if such an allegation is included in an appropriate representation petition under Act 111, the Board will examine the alleged changes and their possible influence upon a determination of "police" status under Act 111. Simply stated, the Board's decision here is based upon the fact that an Act 111 bargaining obligation cannot be created by invoking the Board's jurisdiction under PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the PLRA, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the above case number be and the same are hereby dismissed and the Secretary's decision declining to direct a hearing on the petition for amendment of certification be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this eighteenth day of December, 2001. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.