

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-00-423-E
 :
 PENNSYLVANIA STATE UNIVERSITY :

FINAL ORDER

On September 25, 2001 the International Brotherhood of Police Officers (IBPO) filed with the Pennsylvania Labor Relations Board (Board) timely exceptions and a supporting brief to a September 7, 2001 Proposed Order of Dismissal (POD), wherein the Hearing Examiner dismissed IBPO's petition to represent Police Service Officers (PSOs) and Community Service Officers (CSOs) employed by the Pennsylvania State University (PSU). On October 15, 2001 PSU filed a brief in opposition to IBPO's exceptions. In its exceptions, IBPO asserts that the Hearing Examiner (1) erred in failing to find that the PSOs and CSOs are police officers and (2) erred by concluding that the PSOs and CSOs are guards within the meaning of Section 604(3) of the Public Employe Relations Act (PERA).

The Hearing Examiner's findings of fact were drawn from a series of stipulated facts and exhibits filed jointly by the parties on April 30, 2001 and are adopted by the Board herein. PSU is an instrumentality of the Commonwealth and a public employer under PERA. IBPO is a division of, and is affiliated with, the National Association of Government Employees, Service Employees International Union, AFL-CIO (SEIU) and is an employe organization under PERA. The IBPO and SEIU represent public employes other than "guards" as defined in Section 604(3) of PERA. A vast majority of PSOs and CSOs are vested with law enforcement authority under Section 2416.1 of the Administrative Code, 71 P.S. § 646.1 and are police officers within the meaning of 53 Pa.C.S.A. § 2162, because they are responsible for carrying out the functions of protection of life and property; preservation of peace and good order; enforcement of laws; investigation of crimes and automobile accidents; issuance of citations; etc. The PSOs and CSOs are an integral part of PSU's police and security forces, which are responsible for protecting PSU's property; protecting the safety of persons on PSU's property; and preserving peace and good order of the PSU community throughout the Commonwealth, including each of PSU's branch campuses.

The IBPO excepts to the Hearing Examiner's characterization of the PSOs and CSOs as "guards" under Section 604(3) of PERA. The IBPO urges the Board to examine the police functions and duties of these employes, as compared with the functions and duties of the employes that the Board and the Supreme Court found to be police officers under Act 111 in Commonwealth of Pennsylvania v. PLRB, 502 Pa. 7, 463 A.2d 409 (1983).

Section 604(3) prohibits the Board's certification of any collective bargaining unit that includes both "guards" and any other

public employes. This section also provides that organizations of guards "may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification." 43 P.S. 1101.604(3). The IBPO is affiliated with SEIU, an organization that represents persons other than guards. The IBPO thus reasons that if the PSOs and CSOs are classified as "police officers" rather than "guards," this proviso will not apply.

As support for its argument, IBPO cites to the Administrative Code, which vests campus police officers with law enforcement authority and argues that the Pennsylvania Legislature intended to grant campus police officers the "full panoply of police powers." (IBPO, Br. at 7.) The Board does not dispute the fact that the Legislature may have intended that PSOs and CSOs be "police officers" for purposes of the Administrative Code. However, that does not invalidate the Legislature's intent that public employes under PERA who perform guard functions be represented in a separate unit by an organization that does not represent other public employes. Nor does such a designation for purposes of one statutory scheme mandate the same designation for purposes of a separate statutory scheme. Millcreek Sch. Dist. v. PLRB, 440 A.2d 673 (Pa. Cmwlth. 1982)(provisions of Public School Code are not dispositive of employe status under PERA).

The Board and the Courts have consistently defined as guards as employes who are

responsible for enforcing the employer's rules to protect the employer's property. During a strike or labor dispute this could mean possibly protecting the employer's property from striking employes; there the divided loyalty problems which necessitate the guards' exclusion from the bargaining unit could become apparent.

Erie County Vocational-Technical Sch. v. PLRB, 417 A.2d 796, 798 (Pa. Cmwlth. 1980). As the Hearing Examiner found, the PSOs and CSOs protect PSU's property and protect the safety of persons on university premises. Further, these employes performed guard functions during a work stoppage in the past and will do so during any future work stoppage. (POD, F.F. 10-12.) Therefore, these employes meet the test for guard status set forth in Erie Vo-Tech. Further, if an employe is found to perform a guard function, that employe may not be represented by an organization that also represents non-guards. In the Matter of the Employes of Montgomery County, 13 PPER ¶ 13151 (Proposed Order of Dismissal, 1982) aff'd, 13 PPER ¶ 13252 (Final Order, 1982). Because the PSOs and CSOs perform guard functions, they may not be represented by IBPO, due to its affiliation with SEIU. "[W]e are mindful that . . . policemen are, inter alia, involved in protecting their employer's property and the safety of persons on their employer's premises. To that extent, it might be argued that there does not exist sufficient distinction between a guard and a policemen to require dismissal of this Petition. However, the separate legislative coverage of police and guard employes and separate dispute resolution procedures available to them requires guards and policemen to be placed in separate units for bargaining." In the Matter of the Employes of the Philadelphia Housing Authority, 10 PPER ¶ 10289 (Nisi Order of Dismissal, 1979). Despite their law enforcement authority, the PSOs and CSOs perform

guard functions for PSU, a PERA employer, and are therefore "guards" under that statute and the IBPO may not represent these "guards" due to its affiliation with SEIU.

The IBPO urges the Board to instead apply Commonwealth v. PLRB, supra, wherein the Supreme Court affirmed the Board's decision that the capitol police were police officers within the meaning of Act 111 because they performed "functions and powers beyond the realm of the security guard" Id., 502 Pa. at 12, 463 A.2d at 411. The Board acknowledges that the PSOs and CSOs also perform functions that are beyond the realm of a security guard, however, "[t]he legislative grant of powers is of substantial concern in determining the status of employes for applicability of Act 111." Id., 502 Pa. at 14, 463 A.2d at 413. The employes at issue in Commonwealth v. PLRB were public employes of an Act 111 employer, the PSOs and CSOs are not.

The IBPO urges the Board to disregard this distinction and conclude that despite the fact that PSU is neither the Commonwealth nor a political subdivision thereof, its PSO and CSO should be classified as "police officers" under the Act 111 analysis set forth in Commonwealth v. PLRB. The Board was reversed by the Commonwealth Court for doing just that in Philadelphia Housing Authority (PHA) v. PLRB, 472 A.2d 1188 (Pa. Cmwlth. 1982). The Board concluded that the PHA security officers were police officers as defined by Act 111, and therefore certified the Housing Police Association as their exclusive collective bargaining representative. The Court reversed the Board's decision because the PHA is not a public employer under Act 111. The Board will therefore not apply the Act 111 police officer analysis to these PERA employes.

After a thorough review of the exceptions and all matters of record and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions be and the same are dismissed, and the Proposed Order of Dismissal be and the same is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle, Jr., Chairman, and Member L. Dennis Martire, this nineteenth day of November, 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.