

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-R-01-90-W
 :
 CAMBRIA COUNTY :

FINAL ORDER

On July 11, 2001, the Cambria County Deputy Sheriff's Association (Union) filed timely exceptions to a letter issued by the Secretary of the Pennsylvania Labor Relations Board (Board) declining to direct a hearing on a petition for representation filed by the Union seeking to represent a bargaining unit of deputy sheriffs of Cambria County (Employer) as police employes under Act 111 of 1968 (Act 111).¹ The exceptions were accompanied by a request by the Union for an extension of time to file its brief in support of its exceptions, which request was granted by the Board Secretary on July 13, 2001. The Union filed its brief in support of its exceptions on July 19, 2001. The Employer filed its response to the Union's exceptions on August 10, 2001.

In the letter declining to direct a hearing on the Union's petition, the Board Secretary reasoned that the petitioned-for deputy sheriffs are not "police" within the meaning of Act 111, citing Venneri v. County of Allegheny, 316 A.2d 120 (Pa. Cmwlth. 1974) and Allegheny County Deputy Sheriffs' Association v. PLRB, 504 A.2d 437 (Pa. Cmwlth. 1986), pet. for allowance of appeal denied, September 26, 1986, at No. 121 W.D. Allocatur Docket 1986. In its exceptions, the Union alleges that the recent Pennsylvania Supreme Court decisions in Commonwealth v. Leet, 537 Pa. 89, 641 A.2d 299 (1994) and Commonwealth v. Kline, 559 Pa. 646, 741 A.2d 1281 (1999) overruled Venneri and Allegheny County and that the Board Secretary accordingly erred in failing to direct a hearing to permit the Union to adduce evidence that the deputy sheriffs performed police functions.

In granting bargaining rights to police personnel in the Commonwealth, Act 111 fails to define who is or is not a policeman within the meaning of Act 111. The Board and the courts have consistently applied a two-part test that in order for employes to be determined to be a police officer under Act 111 they must (1) be legislatively authorized to act as police officers and (2) in fact act effectively as police officers. Hartshorn v. County of Allegheny, 460 Pa. 560, 333 A.2d 914 (1975). Venneri, supra; Allegheny County Deputy Sheriffs' Association v. PLRB, supra; Commonwealth v. PLRB and FOP, 441 A.2d 470 (Pa. Cmwlth. 1982) aff'd in relevant part, 502 Pa. 7, 463 A.2d 409 (1983); AFSCME, Council 13, AFL-CIO v. PLRB, 593 A.2d 4 (Pa. Cmwlth. 1991); Chester County, 26 PPER ¶ 26081 (Final Order, 1995). In applying the established two-part test to deputy sheriffs in Venneri and Allegheny County Deputy Sheriffs' Association, the Commonwealth Court examined the historical

¹ The petitioned-for deputy sheriffs are currently represented by the Pennsylvania Social Services Union, Local 668, SEIU (Incumbent) under the Public Employee Relations Act in a unit that includes other court-related, non-court-appointed employes of Cambria County pursuant to Nisi Order of Certification issued by the Board on October 29, 1979 at Case No. PERA-R-11,955-C.

powers of the office of Sheriff and recognized the common law authority of deputy sheriffs to make arrests, but failed to find any statutory authorization for deputy sheriffs to act as police so as to meet the first part of the test for police status under Act 111. The Union's reliance upon Leet and Kline is misplaced. In those cases, the Supreme Court once again recognized the common law authority of the deputy sheriffs to make arrests, but, like the Commonwealth Court in Venneri and Allegheny County Deputy Sheriffs' Association, failed to discover any legislative authority empowering deputy sheriffs to act as police. Notably, in a footnote in Leet, the Supreme Court specifically stated that the issue of the status of deputy sheriffs as police under Act 111 was not presented in that case and, citing Venneri, noted that Act 111 police status is not a question determined merely by the sheriffs' arrest powers. See Leet, 537 Pa. at 96, n. 3, 641 A.2d at 303, n. 3. The Union has cited no subsequent statutory authorization for deputy sheriffs to act as police since Venneri and Allegheny County Deputy Sheriffs' Association were decided. Accordingly, those cases compel the conclusion that deputy sheriffs are not police for purposes of collective bargaining under Act 111.

After a thorough review of the exceptions and all matters of record, the Board herein shall dismiss the exceptions filed by the Union and affirm the decision of the Board Secretary declining to direct a hearing on the petition for representation.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the above case number be and the same are hereby dismissed, and the decision of the Board Secretary declining to direct a hearing on the petition for representation 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 sixteenth day of October, 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.