

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-R-99-408-E
: (PERA-R-13,396(a)-C)
: :
BERKS COUNTY :

FINAL ORDER

On November 22, 2000, the Deputy Sheriffs Association of Berks County (Association) filed timely exceptions and a supporting brief to an Amended Proposed Order of Dismissal issued on November 9, 2000, in which a hearing examiner of the Pennsylvania Labor Relations Board (Board) dismissed a Petition for Representation filed by the Association seeking to represent a unit of deputy sheriffs of Berks County (County) separate and apart from the existing bargaining unit of court-related, non-court-appointed employees of the County who are currently represented by the American Federation of State, County and Municipal Employees, District Council 88, AFL-CIO (AFSCME) as certified by the Board at Case No. PERA-R-13,396(a)-C. After the Board Secretary granted a request by AFSCME for an extension of time in which to file its response to the Association's exceptions, AFSCME filed a brief in opposition to the exceptions on January 16, 2001. The County did not file a response to the Association's exceptions.

In the Amended Proposed Order of Dismissal, the hearing examiner dismissed the Association's Petition for Representation, concluding that a bargaining unit limited to the County's deputy sheriffs was inappropriate because the deputy sheriffs share an identifiable community of interest with the remaining court-related, non-court-appointed employees included in the existing bargaining unit represented by AFSCME. In concluding that the deputy sheriffs have an identifiable community of interest with the other employees in the existing bargaining unit, the hearing examiner found as fact that all the employees in the unit have the same or similar wages, hours, overtime entitlement, pay increases, probationary period, leave benefits, including personal, disability, child rearing, sick, bereavement, civil, and military leaves of absence, paid holidays, vacations, health and life insurance benefits and grievance/arbitration procedure. These similarities more than support the hearing examiner's conclusion that an identifiable community of interest exists.

The Association contends that the job duties and functions of the deputy sheriffs are so different from the job duties and functions of the other employees in the existing unit that the Supreme Court's decision in Fraternal Order of Police, Conference of Liquor Control Board Lodges v. PLRB, 557 Pa. 586, 735 A.2d 96 (1999)(FOP) requires that a separate bargaining unit limited to deputy sheriffs must be certified. However, the Association misreads FOP. The Court in FOP discounted the use of evidence of similar wages and benefits because the similarities were the result of the two groups of employees having previously been a single job classification. The same cannot be said of the deputy sheriffs and the other employees in the existing unit.

A similar argument and reliance upon FOP was recently rejected by both the Board and the Commonwealth Court in a case involving the deputy sheriffs of Luzerne County. In Luzerne County, 31 PPER ¶ 31061 (Final Order, 2000), aff'd sub nom., Deputy Sheriffs of Luzerne County v. PLRB, No. 648 C.D. 2000 (unreported opinion, October 31, 2000), petition for allowance of appeal pending, No. 865 M.D. Allocatur Docket 2000, both the Board and the Commonwealth Court rejected an attempt to sever the deputy sheriffs from the existing certified unit of court related, non-court-appointed county employes. In that case, the petitioner made the same argument that the Association makes here i.e., that the training, job functions and duties of deputy sheriffs are so different from the remaining employes in the court-related, non-court-appointed unit that FOP requires the conclusion that an identifiable community of interest does not exist. Like the hearing examiner in this case, the Board in Luzerne County relied upon wages, hours and working conditions contained in the existing collective bargaining agreement which applied equally to both the deputy sheriffs and the other court-related, non-court-appointed employes to find that an identifiable community of interest existed between the deputy sheriffs and the other bargaining unit employes. In this case, the Association argues that the Board cannot rely on those various factors which involve negotiable terms and conditions of employment simply because those similarities are the result of those classifications being included in the same bargaining unit for a period of over twenty years.¹ However, the same was true in Luzerne County and the Commonwealth Court specifically affirmed the Board's reliance upon those factors as evidencing an identifiable community of interest. Id., slip opinion at 7. The Commonwealth Court concluded that the Board's determination that the differences between the deputy sheriffs and the other court-related, non-court-appointed employes did not destroy the identifiable community of interest as evidenced by the various terms and conditions of employment that the two groups of employes shared as a reasonable conclusion. The record in this case is substantially similar to that in Luzerne County and accordingly the same result must prevail. West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, ___ Pa. ___, ___ A.2d ___ (2000) (custodial/maintenance employes and cafeteria employes share an identifiable community of interest despite differences in job duties and functions).

Where severance of an existing bargaining unit is requested, the Board will grant severance if either (1) the employes sought to be severed no longer exhibit an identifiable community of interest with the remaining employes, or (2) the interests of the group of employes seeking severance have not been fairly and adequately represented in the existing unit. Scranton Public School District, 13 PPER ¶ 13237 (Proposed Order of Dismissal, 1982); Philadelphia School District (Get Set), 10 PPER ¶ 10006 (Nisi Decision and Order Dismissing Petition for Representation, 1978); Commonwealth of Pennsylvania (Department of Public Welfare), 7 PPER 186 (Final Order, 1976); Chichester School District, 7 PPER 161 (Final Order, 1976). The Association has failed to prove that there is no identifiable community of interest between the deputy sheriffs and the other employes in the existing unit and the Association neither argued nor attempted to prove that the deputy sheriffs were not being fairly and adequately represented

¹ It should be additionally noted that bargaining history, like the long-standing bargaining history here, was specifically cited in FOP to be a factor in the examination of the existence of an identifiable community of interest.

by AFSCME. Accordingly, severance of the bargaining unit is not appropriate.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Association and make the Amended Proposed Order of Dismissal absolute and final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Amended Proposed Order of Dismissal in the above-captioned matter be and the same are hereby dismissed and the Amended Proposed Order of Dismissal issued by the hearing examiner 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 twenty-seventh day of March, 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.