

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-98-495-E
:
: (PERA-R-13,276-C)
LUZERNE COUNTY :

FINAL ORDER

The Deputy Sheriffs of Luzerne County (Petitioner) filed timely exceptions and a supporting brief on April 9, 1999, to a Proposed Order of Dismissal issued on March 24, 1999, in which a hearing examiner of the Pennsylvania Labor Relations Board (Board) dismissed a Petition for Representation filed by the Petitioner seeking to represent a unit of deputy sheriffs of Luzerne County (Employer) separate and apart from the existing bargaining unit of court-related, non-court-appointed employees currently represented by the American Federation of State, County and Municipal Employees, District Council 87, Local 1390, AFL-CIO (AFSCME) as certified by the Board at Case No. PERA-R-13,276-C. On April 14, 1999, the Board Secretary informed the Petitioner that its exceptions and brief were served upon AFSCME's counsel at the wrong address. Thereafter on April 22, 1999, the Board received an amended certificate of service filed by the Petitioner indicating service upon AFSCME's counsel at the correct address. On May 10, 1999, AFSCME filed its response to the Petitioner's exceptions and the brief in opposition to those exceptions. The Employer did not file a response to the Petitioner's exceptions.

In the Proposed Order of Dismissal, the hearing examiner dismissed the Petition for Representation, concluding that the petitioned-for unit limited to deputy sheriffs was inappropriate because the deputy sheriffs are not security guards within the meaning of Section 604(3) of the Public Employe Relations Act (Act) and the deputy sheriffs share an identifiable community of interest with the remaining court-related, non-court-appointed employees included in the bargaining unit represented by AFSCME.

In its exceptions the Petitioner contends that the hearing examiner erred in (1) making various findings of fact; (2) concluding that the deputy sheriffs are not security guards within the meaning of Section 604(3) of the Act; and (3) concluding that the deputy sheriffs share an identifiable community of interest with the other members of the court-related, non-court-appointed bargaining unit.

The Petitioner's exceptions are without merit. The Petitioner initially excepts to numerous findings of fact made by the hearing examiner as not being supported by substantial evidence on the record. After a review of the record and the findings of fact, which are annotated to the notes of testimony and exhibits where support can be found for each finding, the Board concludes that there is substantial evidence on the

record to support the hearing examiner's findings.¹ The Board has examined the record and the hearing examiner's findings of fact and is satisfied that the findings of fact accurately reflect the job duties and the utilization of the deputy sheriffs in Luzerne County.

The Petitioner next contends that the hearing examiner erred in failing to conclude that the deputy sheriffs are guards within the meaning of Section 604(3) of the Act which mandates that security guards be separated from other employes in their own collective bargaining unit "to insure an employer that during strikes or labor unrest among his other employes, the employer would have 'guards' that could enforce rules for the protection of property and safety of persons without being confronted with a division of loyalty between the employer and dissatisfied fellow union members." Township of Falls v. PLRB, 322 A.2d 412, 414 (Pa. Cmwlth. Ct. 1974) (citing McDonnell Aircraft Corporation, 109 NLRB 967 (1954)). The Petitioner relies upon the deputy sheriffs' duties in 1980 in which the deputy sheriffs performed guard duties during a strike by other county employes. The hearing examiner noted that the Employer currently has a separate security department that could provide the Employer with the necessary employes to protect its property during any future labor unrest and correctly relied upon Deputy Sheriffs Benevolent Association of Bucks County, Inc., 620 A.2d 622 (Pa. Cmwlth. Ct. 1993), petition for allowance of appeal denied, 535 Pa. 663, 634 A.2d 225 (1993), in which the Commonwealth Court relied upon the current existence of a separate security force in rejecting the contention that deputy sheriffs were security guards within the meaning of the Act based upon the performance of security duties during labor unrest in the distant past. In doing so, the Commonwealth Court stated as follows:

"The County currently has a separate security department with employes conferred guard status under Section 604(3) who can protect County property and provide for the safety of persons during any future labor unrest. This fact is relevant in determining whether the deputy sheriff employes should be characterized as guards. See Commonwealth of Pennsylvania (Fire Marshall), 15 PPER ¶ 15212 (1984)."

620 A.2d at 625. So too here, we agree with the hearing examiner that the deputy sheriffs' duties in 1980 are not dispositive of their security guard

¹ The Petitioner contends, inter alia, that finding of fact 10 is not supported by substantial evidence on the record because the finding is based upon inadmissible hearsay evidence. In finding of fact 10, the hearing examiner found that members of the non-court-appointed, court-related unit, who in 1980 had been on strike, "crossed the picket line and returned to work after a judge instructed them to do so upon pain of termination..." Proposed Order of Dismissal, page 2, finding of fact 10. The hearing examiner relied on testimony that those employes had received a letter from a judge of the Court of Common Pleas of Luzerne County instructing them to return to work. The letter itself was never admitted into evidence. However, the hearing examiner's reliance upon this testimony is not to prove the truth of the matters asserted in the letter, but to merely evidence the reason why the employes returned to work. "An out of court statement which is not offered for its truth, but to explain the witness' course of conduct is not hearsay." Commonwealth v. Sneed, 514 Pa. 597, 526 A.2d 749 (1987).

status nearly twenty years later in light of the current existence of a separate security department. Further, the Employer, for whose benefit the security guard classification exists, is not arguing that the deputy sheriffs must be segregated into a separate security guard unit.

The Petitioner finally contends that the deputy sheriffs have no identifiable community of interest with the other court-related, non-court-appointed employees with whom they are currently included in the same bargaining unit. The hearing examiner correctly noted that the deputy sheriffs and the other court-related, non-court-appointed employees are subject to all of the provisions of the existing collective bargaining agreement covering the myriad of negotiable terms and conditions of employment, with the exception of special provisions in the agreement pertaining only to the deputy sheriff involving uniform allowance, training for transportation of infectious individuals and payment for testing and inoculation for infectious diseases. The Petitioner notes the various different job duties of the deputy sheriffs and the fact that the deputy sheriffs wear uniforms, carry guns and have different work schedules than other county employees, relying upon these differences to support its argument that an identifiable community of interest is lacking. However, in a case with a virtually identical record, the Board, with judicial approval, concluded that the deputy sheriffs shared an identifiable community of interest with the other court-related, non-court-appointed employees. See Montgomery County, 26 PPER ¶ 26086 (Final Order, 1995), affirmed sub nom. Deputy Sheriffs Association of Montgomery County v. PLRB, 27 PPER ¶ 27100 (Court of Common Pleas of Montgomery County 1996), affirmed in an unreported decision, 687 A.2d 432 (Pa. Cmwlth. Ct. 1996), petition for allowance of appeal denied, 548 Pa. 639, 694 A.2d 623 (1997). Similarly here, although differences in job functions and requirements exist between the deputy sheriffs and the other court-related, non-court-appointed employees, those differences are not numerous enough to destroy the identifiable community of interest that otherwise exists between these employees in their wages, hours and other terms and conditions of employment. Accordingly, the hearing examiner correctly concluded that the deputy sheriffs share an identifiable community of interest with the remaining employees in AFSCME's bargaining unit.

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 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 Proposed Order of Dismissal in the above captioned matter be and the same are hereby dismissed and the Proposed Order of Dismissal issued by the hearing examiner be and the same is hereby 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 Members L. Dennis Martire and Edward G. Feehan, this fifteenth day of February, 2000. 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.