

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : Case No. PF-R-98-189-E  
STATE SYSTEM OF HIGHER EDUCATION :

**FINAL ORDER**

On July 27, 1999, the Conference of Pennsylvania College Police Lodges (Union) filed timely exceptions to a Proposed Order of Dismissal issued on July 7, 1999, by a hearing examiner of the Pennsylvania Labor Relations Board (Board) in which the hearing examiner dismissed the Petition for Representation filed by the Union seeking to represent a bargaining unit comprised of the campus police officers at the fourteen universities that comprise the State System of Higher Education (SSHE). The petitioned-for employes are currently represented by the United Plant Guard Workers of America (UPGWA) for purposes of collective bargaining under the Public Employe Relations Act (PERA). In its Petition for Representation, the Union contended that the campus police officers are jointly employed by SSHE and the Commonwealth of Pennsylvania (Commonwealth) and sought to represent those employes for purposes of collective bargaining under Act 111 of 1968 (Act 111). On August 17, 1999, SSHE filed its brief in opposition to the Union's exceptions.

In the Proposed Order of Dismissal, the hearing examiner rejected the Union's argument that SSHE and the Commonwealth are joint employers of the campus police, concluding that SSHE was the sole employer. The hearing examiner additionally concluded that the campus police could not be organized under Act 111 because Act 111 only applies to police officers employed by the Commonwealth and its political subdivisions, of which SSHE is neither, citing Conference of Pennsylvania College Police Officers v. PLRB, 537 A.2d 108 (Pa. Cmwlth. 1988).

In its exceptions, the Union contends that the hearing examiner erred in 1) concluding that SSHE is the sole employer of the campus police; 2) concluding that the Commonwealth is not a joint employer of the campus police along with SSHE; and 3) dismissing the Petition for Representation without conducting a hearing and making findings of fact regarding the Union's allegation that the Commonwealth controls significant aspects of the conditions of employment of the campus police.

The Union's exceptions are without merit. SSHE was created by the General Assembly by Act 188 of 1982, 24 P.S. § 20-2001-A et seq. (Act 188). Act 188 specifically designates SSHE as the employer by defining "employer" as "the Board of Governors of the State System of Higher Education as the successor employer to the Commonwealth of Pennsylvania." 24 P.S. § 20-2001-A(7). In Board of Governors of the State System of Higher Education v. PLRB, 514 A.2d 223 (Pa. Cmwlth. 1986), petition for allowance of appeal denied, 515 Pa. 585, 527 A.2d 545 (1987), the Commonwealth Court concluded that, as a matter of law, SSHE was the sole employer of the managerial and professional employes of SSHE and rejected arguments, similar to those made by the Union here, that the Commonwealth was a joint employer along with SSHE because the Commonwealth controlled significant aspects of the

employment relationship. The only difference noted by the Union between the professional and managerial employees at issue in that case and the non-instructional campus police involved in this case is that Act 188 provides that with respect to non-instructional employees, SSHE "shall make a coalition bargaining arrangement with the Commonwealth for the negotiation of new collective bargaining agreements..." 24 P.S. § 20-2003-A(c). Act 188 further defines "coalition bargaining" as "two (2) or more employers bargaining jointly with all of their employees in a particular category or bargaining unit so that one collective bargaining process would determine the conditions of employment for all employers in the appropriate units involved." 24 P.S. § 20-2001-A(3). The Union relies upon this coalition bargaining arrangement mandated by Act 188 as support for its contention that the Commonwealth and SSHE are joint employers of the campus police officers.

The Union's reliance on the coalition bargaining arrangement mandated by Act 188 is misplaced. The hearing examiner correctly determined that the coalition bargaining arrangement under Act 188 does not thereby make the Commonwealth the joint employer of SSHE's non-instructional employees. Such a construction flies in the face of the specific provision of Act 188 that designates SSHE as the successor employer to the Commonwealth of Pennsylvania. The General Assembly clearly stated its intention that the Commonwealth was no longer the employer of SSHE's employees. The Union's construction of Act 188 would place the Commonwealth in the position of being a successor employer to itself, a result that, as pointed out by the hearing examiner, violates the rule of statutory construction that the General Assembly does not intend a result that is absurd. 1 Pa.C.S.A. § 1922 (1).

Act 188's coalition bargaining arrangement is not unlike the various multi-employer bargaining arrangements, voluntarily entered into in private sector collective bargaining, in which a number of individual employers bargain as a group with the union representing a particular class of employees, with each employer agreeing to be bound by the terms and conditions of employment resulting from the multi-employer bargaining with their employees' representative. However, such an arrangement does not result in the conclusion that the employers engaged in the multi-employer bargaining arrangement are joint employers of all of the employees of each individual employer. So too here, the fact that Act 188 mandates a coalition bargaining arrangement between SSHE and the Commonwealth does not make the Commonwealth a joint employer of SSHE's employees. Nothing in the coalition bargaining arrangement diminishes SSHE's authority over the terms and conditions of employment of its employees as set forth in the various other provisions of Act 188<sup>1</sup>. The Union's construction of the coalition bargaining arrangement would result in the absurd result that SSHE is also a joint employer of all of the Commonwealth's employees in those classifications common to each employer. Accordingly, the hearing examiner correctly determined that, as a matter of law, SSHE is the sole employer of the campus police.

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<sup>1</sup> It should be noted that in granting SSHE broad employment powers, Act 188 specifically refers to the negotiation of collective bargaining agreements under PERA, either solely or in a coalition bargaining arrangement with the Commonwealth. 24 P.S. §20-2006-A(a)(8). Act 111 is not even mentioned in Act 188 and SSHE is only authorized to bargain under PERA, not Act 111.

In light of the conclusion that Act 188 designates SSHE as the sole employer of the campus police, there was no need for the hearing examiner to conduct a hearing regarding the Union's contention that the Commonwealth controls significant conditions of the employment of the campus police and is, by virtue of that control, a joint employer of the campus police. In Board of Governors of the State System of Higher Education v. PLRB, *supra*, the Commonwealth Court rejected the argument that the Commonwealth was a joint employer of the professional and managerial employes of SSHE as a result of the Commonwealth's control over various aspects of the employment relationship. Accordingly, the hearing examiner correctly dismissed the Union's petition without a hearing.

There is an additional reason supporting the dismissal of the Union's petition that the hearing examiner did not rely upon. The doctrine of res judicata provides that a final and valid judgment on the merits by a court of competent jurisdiction precludes any future action on the same cause of action between the parties and their privies. In order for the doctrine of res judicata to apply, the prior and present actions must share 1) identity of the thing sued upon or for; 2) identity of the cause of action; 3) identity of the parties; and 4) identity of the capacity of the parties to sue or be sued. Philadelphia Fraternal Order of Correctional Officers v. Rendell, et al., 701 A.2d 600 (Pa. Cmwlth. 1997), *aff'd on other grounds*, No. 159 M.D. Appeal Docket 1997, slip op., July 23, 1999. It is important to note that the doctrine of res judicata will bar subsequent litigation not only of issues actually litigated in the prior proceeding, but also issues which could or should have been litigated. Commonwealth ex rel. Bloomsburg State College v. Porter, 610 A.2d 516 (Pa. Cmwlth. 1992), *petition for allowance of appeal denied*, 534 Pa. 650, 627 A.2d 181 (1993). In Conference of Pennsylvania College Police Officers v. PLRB, *supra.*, the Union filed a petition for representation with the Board seeking to represent these same employes for purposes of collective bargaining under Act 111. The Union raised the issue of the joint employer status of the Commonwealth and SSHE on appeal in the Commonwealth Court after the Board had dismissed the Union's petition. The Commonwealth Court concluded that the Union had waived that issue by failing to raise it before the Board. Since the Union could have raised this issue in the prior proceeding, the doctrine of res judicata precludes the Union from relitigating the issue of the joint employer status of the Commonwealth and SSHE in this proceeding.

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

#### ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 of 1968 and the Pennsylvania Labor Relations Act, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Union 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 nineteenth day of October, 1999. 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.