

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
:
PERA-R-98-249-W
ALLEGHENY COUNTY :
(Nonprofessional Court Employees) :

FINAL ORDER

On February 17, 1999, a duly designated hearing examiner of the Pennsylvania Labor Relations Board (Board) issued a Proposed Order of Dismissal (POD) in which he concluded that the petition for representation filed on June 3, 1998 by the Federation of Independent Salaried Unions (Federation) be dismissed. The Federation sought to represent a bargaining unit comprised of all full-time and regular part-time nonprofessional secretaries of the district courts of Allegheny County (County). At the time of the petition, the General Teamsters, Chauffeurs and Helpers, affiliated with the International Brotherhood of Teamsters, AFL-CIO, Local Union No. 249 (Local 249) represented a unit certified by the Board at PERA-R-95-3-W,¹ which included secretaries. The County and Local 249 had agreed to exclude district justice secretaries from the unit as certified in that case.

On November 30, 1998, Local 249 filed a motion to intervene, seeking the dismissal of the Federation's Petition to the extent that the Federation sought representation of the district justice secretaries in a separate unit. Local 249 further requested that the Board consider these secretaries to be part of the existing unit of nonprofessional court employees that it represents. The motion was not supported by a showing of interest, and was granted at the hearing on December 7, 1998. Alternatively, the County asserts that district justice secretaries are confidential employees within the meaning of Section 301(13) of the Public Employee Relations Act (PERA), and are therefore prohibited from inclusion in any bargaining unit.

The hearing examiner relied on County of Lehigh v. Commonwealth, PLRB, 507 Pa. 270, 489 A.2d 1325 (1985), wherein the Supreme Court opined that secretaries to common pleas judges are confidential employees because the judges have input into collective bargaining through county commissioners, and their secretaries necessarily have access to crucial collective bargaining information. The

¹ All full-time and regular part-time nonprofessional employees who are directly involved with and necessary to the functioning of the courts and who are hired, fired and directed by the courts, including but not limited to court reporters II, min. clerks I, tipstaves, mnte. clerks I civil, clerk stenos II, cashiers II, data coordinators, clerks I, clerk typists I, domestic relations investigators, account clerks, mnte. clerks I criminal, arb. clerks II, clerk stenos I, clerk typists pt., motns. clerks criminal, magistrate clerks, coordinators Oph. Ct., clerk typists, viewer stenos, clerks II, clerk typists II, mnte. clerks II criminal, mnte. clerks II civil, arb. clerks I, clerk supervisors, D.J. clerks I, data coordinators II, data processing clerks, min. clerks I fam., Tr. Mte. clerks II criminal, cashiers I, data coordinators I, tab. mach. operators II, jury clerks, clerk stenos, mnte. clerks I Orph., assistant secretaries, decree clerks, secretaries, intake receptionists, and court reporters; and excluding management level employees, supervisors, first level supervisors, confidential employees, and guards as defined in the Act (emphasis added).

hearing examiner determined that the district justice secretaries are likewise confidential employes, because they must be expected to have access to crucial communications by the district justices regarding collective bargaining (POD at 4). He further determined that the secretaries share the same relationship with the district justices as the secretaries to common pleas judges share with common pleas judges (POD at 5).

The Federation filed no exceptions, and therefore the dismissal of its petition is final. Local 249 timely filed its brief and exceptions to the POD on March 5, 1999, and the County timely filed its response and brief on March 22, 1999. Local 249 excepts to the conclusion that the district justice secretaries are confidential employes under Section 301(13) of PERA, and asserts that secretaries share an identifiable community of interest with existing members of Local 249's unit of nonprofessional court employes. Local 249 seeks to have the district justice secretaries included in the existing unit that it represents. Because the Petitioner (Federation) has filed no exceptions, the Board is unable to make such a determination on the strength of Local 249's intervention on a dismissed petition for representation that is now final. The Board does not reach the merits of the case, and will not determine whether district justice secretaries are indeed confidential.

Local 249 acknowledges in its post-hearing brief and brief in support of exceptions, that Local 249 and the County agreed to exclude as confidential the district justice secretaries from the unit when it was certified at PERA-R-95-3-W. Consistent with this agreement, Local 249 has not represented the secretaries from the time of the unit's certification in 1995, until the present. In order to attain representation of these secretaries, Local 249 must comply with established Board rules and regulations.

Local 249 cannot gain representation of the district justice secretaries under the circumstances. A motion to intervene, unsupported by any showing of interest is insufficient to gain representation of any employees. The Board's rules and regulations permit intervention by a party to a pending representation matter where such intervention is supported by a showing of interest. Reading Area Community College, 10 PPER ¶ 10087 (Order and Notice of Election, 1979). Local 249 would have been required to obtain a 10% showing of interest to intervene as a party. 34 Pa. Code § 95.13(b)(6) and § 95.14(10). However, in its motion to intervene, Local 249 did not present any showing of interest at all as required by the rules. It cannot therefore seek to represent the district justice secretaries merely through intervention.

Further, the petition by the Federation has been dismissed. The Board has stated that once the petition for representation has been dismissed, withdrawn, or no longer pending for any reason, an intervention on that petition must demonstrate a 30% showing of interest to proceed independently. Exeter Township, 11 PPER ¶ 11059 (Order and Notice of Election, 1980); Reading Area Community College, *supra*. As discussed above, Local 249 has presented no showing of interest, and therefore could not proceed with an election or any claim of representation after the dismissal of the Federation's petition.

In absence of the statutorily required showing of interest, Local 249's intervention was limited to an intervention for the purpose of defeating the Federation's petition for representation. The motivation for such an intervention no longer exists because the Federation's petition has been dismissed. The Federation has not filed exceptions, and thus the issue is moot upon review by the Board. The doctrine of mootness was described by the

Pennsylvania Supreme Court in In re Gross, 476 Pa. 203, 382 A.2d 116 (1978) as follows:

The cases presenting mootness problems involve litigants who clearly had standing to sue at the outset of the litigation. The problems arise from events occurring after the lawsuit had gotten underway - changes in the facts or the law - which allegedly deprive the litigant of the necessary stake in the outcome. The mootness doctrine requires that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.

At the moment of the intervention, Local 249 had a stake in the outcome. It sought to defeat the Federation's petition, and thereby bar it from representing nonprofessional court employees. The dismissal of the Federation's petition constituted a significant change that deprived Local 249 of its stake in the outcome. There is no longer a controversy regarding the Federation's representation of district justice secretaries, rendering the issue moot. The Board has stated that as a general matter, it will not decide moot issues. Citizen Care, Inc., 10 PPER 10183 (Final Order, 1979).

Local 249 is not precluded from seeking representation of the district justice secretaries through proper statutory mechanisms. Like the Federation, it is free to file a petition for representation under 34 Pa. Code § 95.14, with a showing of interest of not less than 30% of the employees to be included in the unit. Alternatively, it is free to seek the County's consent to a joint request for certification, once it represents a majority of the employees. 34 Pa. Code § 95.11. It may also seek the County's consent to an election request, upon a 30% showing, pursuant to 34 Pa. Code § 95.13. Local 249 cannot, however, obtain representation through a motion to intervene, unsupported by the requisite showing of interest.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions as moot.

CONCLUSIONS

That CONCLUSIONS numbers 1 through 3 inclusive, as set forth in the Proposed Order of Dismissal are hereby affirmed and incorporated herein by reference and made a part hereof.

That CONCLUSIONS numbers 4 and 5 are vacated.

6. That Local 249's exceptions to the Proposed Order of Dismissal are moot.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Order on page 6 of the Proposed Order of Dismissal is affirmed, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the exceptions filed to the Proposed Order of Dismissal in the above-captioned matter be and the same are dismissed as moot.

SIGNED, SEALED, DATED and MAILED this twenty-second day of September, 1999.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN MARKLE JR., CHAIRMAN

L. DENNIS MARTIRE, MEMBER

EDWARD G. FEEHAN, MEMBER