COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	Case No. PERA-R-01-466-W
	:	(PERA-U-4322-W)
WESTMORELAND COUNTY	:	(PERA-R-2040-W)
	:	

FINAL ORDER

On July 29, 2002, the Westmoreland County Deputy Sheriffs' Wage and Policy Committee (Union) filed timely exceptions to a Proposed Order of Dismissal issued on July 12, 2002, in which a Hearing Examiner of the Pennsylvania Labor Relations Board (Board) dismissed a petition for representation filed by the Union seeking to represent a unit of deputy sheriffs of Westmoreland County (County) separate and apart from the existing bargaining unit of court-related, non-court-appointed employes (including the deputy sheriffs) of the County who are currently represented by Service Employees International Union, Local 585, AFL-CIO (Incumbent) pursuant to a Board certification issued at Case No. PERA-R-2040-W, as amended at Case No. PERA-U-4322-W. After the Union perfected its filing by providing the Board with an affidavit of service upon the other parties to the case, the County filed its response to the Union's exceptions on August 28, 2002.

In the Proposed Order of Dismissal, the Hearing Examiner concluded that a bargaining unit limited to the County's deputy sheriffs was inappropriate, rejecting the Union's assertion that the deputy sheriffs must be segregated into a separate bargaining unit because the deputy sheriffs are security guards within the meaning of Section 604(3) of the Public Employe Relations Act (PERA). In its exceptions, the Union contends that the Hearing Examiner erred in discounting the deputy sheriffs' involvement in general security functions related to the courthouse and also in rejecting the deputy sheriffs' involvement in a strike ten years prior to the filing of the instant Petition for Representation as evidence of their security guard status.

The Hearing Examiner correctly applied the established case law, especially the recent cases specifically involving the security guard status of deputy sheriffs, in concluding that the petition for representation should be dismissed. With regard to the deputy sheriffs' general security functions related to the courthouse, the Hearing Examiner relied on the Commonwealth Court's decision in Bucks County, 21 PPER ¶ 21039 (Final Order, 1990), aff'd sub nom., Deputy Sheriffs Benevolent Association of Bucks County, Inc., 620 A.2d 622 (Pa. Cmwlth. 1993)(Bucks County), in which the Commonwealth Court examined similar court-related security functions and concluded, as the Hearing Examiner did here, that those duties do not evidence security guard status under PERA. See also, Chester County, 27 PPER ¶ 27003 (Final Order, 1995); Monroe County, 28 PPER ¶ 28119 (Final Order, 1997).

With respect to the limited involvement by the deputy sheriffs in the strike ten years ago, which occurred on a Sunday when the courthouse was closed and was limited to walking around the perimeter of the closed courthouse, we agree with the Hearing Examiner that this isolated instance does not provide a basis for characterizing the deputy sheriffs as security guards under PERA. The Hearing Examiner again relied upon the Bucks County decision in rejecting this limited and remote evidence of security guard status.[1] The Hearing Examiner did not even make a finding of fact regarding this limited activity by deputy sheriffs during the strike, noting that the "record provide[d] little detail regarding the nature of any strike activity in the vicinity of the courthouse." (Proposed Order of Dismissal, p.5). Further, as noted by the Hearing Examiner, PERA's requirement to segregate security guards into a separate security guard unit is to provide the employer with a separate security force unaffiliated with any other organization to protect its property during labor unrest by its own employes. In its response to the Union's exceptions, the County notes that it has a separate bargaining unit of park police whose primary duty is the protection of the County's property on a twenty-four hour, seven-day-a-week basis. It is this unit of employes that the County contends could adequately provide for its needs in the event of labor unrest. See Luzerne County, 31 PPER ¶31061 (Final Order, 2000), aff'd in an unreported opinion at No. 648 C.D. 2000 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 565 Pa. 652, 771 A.2d 1289 (2001). Accordingly, the Hearing Examiner's determination that the deputy sheriffs are not security guards within the meaning of PERA will be affirmed.

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 the Public Employe Relations Act, the Board

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[1] The Union attempts to distinguish Bucks County based upon the fact that the park police in this case were in existence at the time of the strike ten years ago and the security department in Bucks County was established after the strike that occurred in that case. While this could be a factor in the Board's consideration of the deputy sheriffs' security guard status, the deputy sheriffs' strike-related activity was extremely limited in nature and the record failed to support a finding that any strike activity occurred at the courthouse. The record also reveals that during a fourteen-day strike by County employes in 1980, it was the park police and not the deputy sheriffs who provided security guard functions for the County. This evidence, along with the contention of the County that the park police satisfies its need for protection during labor unrest, is more probative of the deputy sheriffs' lack of security guard status than the limited involvement of the deputy sheriffs in the one-day strike that occurred ten years ago.

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 pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Anne E. Covey, Member, this nineteenth day of November, 2002. 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.