

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-01-468-E
 : (PERA-R-96-514-E)
LEBANON COUNTY :

FINAL ORDER

On June 13, 2002, the Lebanon County Deputy Sheriffs' Association (Association) filed timely exceptions and a supporting brief to a Proposed Order of Dismissal issued on May 24, 2002, 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 Lebanon 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 Teamsters Local Union No. 429 (Teamsters) as certified by the Board at Case No. PERA-R-96-514-E. The deputy sheriffs are currently included in the unit certified at Case No. PERA-R-96-514-E. On July 5, 2002, the County and the Teamsters filed their responses to the Association's exceptions.

In the 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 are not guards within the meaning of Section 604(3) of the Public Employee Relations Act (Act) and that 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 the Teamsters. In concluding that the deputy sheriffs are not security guards under Section 604(3) of the Act, the Hearing Examiner noted that in accordance with well-established precedent, the deputy sheriffs' court-related security functions and their authority to enforce court injunctions do not prove alleged guard status under the Act, citing Deputy Sheriffs Benevolent Association of Bucks County Inc., 620 A.2d 622 (Pa. Cmwlth. 1993), petition for allowance of appeal denied, 535 Pa. 663, 634 A.2d 225 (1993). The Hearing Examiner further noted that the Association failed to demonstrate that the deputy sheriffs would be required to protect the County property or safety of persons on the premises in the event of a strike by County employees. It should be further noted that an actual strike by County employees occurred in the 1990's and the deputy sheriffs were not used by the County in a security guard capacity.

The Hearing Examiner also concluded that the deputy sheriffs share an identifiable community of interest with the other members of the court-related, non-court-appointed bargaining unit. The Hearing Examiner relied upon the fact that the deputy sheriffs work in the offices with other members of the bargaining unit, have substantial interaction in the performance of their duties with other unit members, and are covered by provisions of the collective bargaining agreement that applies to the remainder of the bargaining unit including provisions addressing hours of work, break periods, seniority, furloughs, bumping and recall rights, job bidding, just cause for discipline, grievance and arbitration procedure, probationary period,

personnel records, leaves of absence, compensation for mandatory training, travel expenses, sick leave, workers' compensation, bereavement leave, military leave, compensation while on jury duty, personal leave, vacation time, holidays, health insurance, prescription benefits, life insurance, pension benefits, overtime, compensatory time, "flex" time, wage increases and compensation for working out of class.

In its exceptions, the Association contends that the Hearing Examiner erred in failing to conclude that the deputy sheriffs are security guards within the meaning of the Act. The Association contends that the Hearing Examiner erred in finding that there was no evidence that the deputy sheriffs would be called upon in the event of labor unrest by other County employes and requiring that the Association adduce evidence that the deputy sheriffs were actually used as security guards in the past. The Association also contends that the Hearing Examiner erred in concluding that an identifiable community of interest exists between the deputy sheriffs and the other court-related, non-court-appointed employes.

The Association's exceptions are without merit. Section 604(3) of the Act 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 who 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. 1974)(citing McDonnell Aircraft Corporation, 109 N.L.R.B. 967 (1954)). Instead, the Association relies upon the deputy sheriffs' court-related security functions and mere speculation that the deputy sheriffs may be used in the future to provide security guard services for the County. The Board and the courts have consistently rejected the notion that deputy sheriffs' court-related security functions constitute evidence that the deputy sheriffs are security guards within the meaning of Section 604(3) of the Act. Deputy Sheriffs Benevolent Association of Bucks County Inc., *supra*; Luzerne County, 31 PPER ¶ 31061 (Final Order, 2000)¹, petition for allowance of appeal denied, 565 Pa. 652, 771 A.2d 1289 (2001); Montgomery County, 26 PPER ¶ 26086 (Final Order, 1995), *aff'd*, 27 PPER ¶ 27100 (Court of Common Pleas of Montgomery County, 1996)², petition for allowance of appeal denied, 548 Pa. 639, 694 A.2d 623 (1997); Monroe County, 28 PPER ¶ 28119 (Final Order, 1997).

The Association's further notion that there exists the possibility that the deputy sheriffs would be used as security guards in the event of labor unrest by other County employes and that the mere possibility of such use requires the conclusion that the deputy sheriffs are security guards within the meaning of Section 604(3) of the Act is similarly without merit. The Association's argument in this regard is undermined by the fact that a strike by County employes did occur in the 1990's, and the deputy sheriffs were not used in a security guard capacity. Further, the Board and the courts have examined the status of deputy sheriffs in counties throughout the

¹ The Board's Final Order was affirmed by the Commonwealth Court in an unreported opinion. Deputy Sheriffs of Luzerne County v. PLRB, No. 648 C.D. 2000 (unreported opinion, October 31, 2000).

² The decision of the Court of Common Pleas of Montgomery County was affirmed by the Commonwealth Court in an unreported opinion. Deputy Sheriffs Association of Montgomery County v. PLRB, No. 66 C.D. 1996 (Pa. Cmwlth. 1996) (unreported opinion, December 6, 1996).

Commonwealth and concluded that deputy sheriffs will be found to be security guards where there is evidence that they were actually used in a security guard capacity in the past. See, Washington County v. PLRB, 613 A.2d 670 (1992).

The Association next contends that the job functions and duties of the deputy sheriffs are so different from the duties and functions of the other employes in the existing court-related, non-court-appointed 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), requires a separate bargaining unit limited to deputy sheriffs. However, the Commonwealth Court has recently rejected the same argument made with regard to the deputy sheriffs in Berks County where the record was substantially similar to that adduced in this case. Deputy Sheriffs Association of Berks County v. PLRB, 795 A.2d 1064 (Pa. Cmwlth. 2002), petition for allowance of appeal denied, ___Pa.___, 800 A.2d 934 (2002), see also, Montgomery County, supra, Luzerne County, supra. Accordingly, the Hearing Examiner correctly determined that an identifiable community of interest exists between the deputy sheriffs and the other bargaining unit employes based upon the factors noted.

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 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 Edward G. Feehan, Member, this seventeenth day of September, 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.