

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-02-625-E
 : (PERA-R-2207-C)
 :
 FRANKLIN COUNTY :

FINAL ORDER

On October 23, 2003, the Franklin County Deputy Sheriffs Association (Union) timely filed with the Pennsylvania Labor Relations Board (Board) exceptions and a supporting brief to a Proposed Order of Dismissal (POD) issued October 3, 2003. In the POD, the Hearing Examiner dismissed the petition for representation filed by the Union and concluded that the deputy sheriffs in the bargaining unit of court-related non-court appointed employes have not protected persons or property from other County employes during times of labor unrest, within the meaning of Section 604(3), and shall not be placed into a separate guard unit. On November 17, 2003, Franklin County (County) timely filed a response brief opposing the Union's request to have the deputy sheriffs be designated as guards under Section 604(3) of PERA.

On February 16, 1973, the Board certified the American Federation of State, County and Municipal Employees, District Council 13 (AFSCME) as the exclusive representative of a bargaining unit that is comprised of County employes who are involved with and necessary to the functioning of the courts, including the Sheriff's office. (PERA-R-2207-C).¹ The County employs eleven full-time and four regular part-time deputy sheriffs.

The deputy sheriffs have arrest powers and wear uniforms. They carry firearms, handcuffs, pepper spray and radios. The duties of the deputy sheriffs include the following: providing courtroom security; transporting and guarding prisoners; serving civil process, bench and arrest warrants and subpoenas; and maintaining order in other courthouse areas. Deputy sheriffs operate metal detectors in the county courthouse annex and the county administration annex. They also conduct patrols in and around several county buildings, respond to emergency situations on county property, and enforce civil, criminal and vehicle laws. They also serve protection from abuse orders and conduct executions on real estate. There have been no strikes by County employes and no use of deputy sheriffs to protect County property during a strike by County employes. Only one strike has recently occurred in Franklin County, and that strike involved employes of a private company. The strike began in approximately April 1990, and was limited to the premises of the private company. During that strike, deputy sheriffs maintained a daily presence on the picket line.

¹ By letter dated February 26, 2003, AFSCME informed the Board that it disclaimed any interest, past or present, in this representation petition to segregate the deputy sheriffs from the bargaining unit represented by AFSCME.

In its exceptions, the Union claims that the Examiner erred in concluding that the County deputy sheriffs are not guards within the meaning of Section 604(3) of PERA and in dismissing its representation petition. Specifically, the Union claims that the Examiner erred in the following manner: (1) by failing to find that a written Sheriff's office policy manual identifies the deputy sheriffs as the primary law enforcement officers in the event of a strike by County or other public employes; (2) by failing to conclude that such a written policy is alone a sufficient basis for determining that the deputy sheriffs would enforce rules for the protection of County property and persons in the event of labor unrest or a strike; and (3) by failing to consider that the deputy sheriffs actually responded to an incident of County employe labor unrest.

The policy for separating a group of employes from a broader public employe unit into a unit of guards under Section 604(3) is to permit an employer to prevent his guard employes' divided loyalty from affecting their ability to enforce the employer's rules for the protection of property and the safety of persons on its premises when those responsibilities are against fellow County employes who may be in the same bargaining unit or otherwise represented by the same union. Township of Falls v. PLRB, 322 A.2d 412 (Pa. Cmwlth. 1974); In the Matter of the Employes of Luzerne County, 31 PPER ¶ 31061 (Final Order, 2000), aff'd sub nom., 32 PPER ¶ 32001 (Pa. Cmwlth. 2000). Creation of a guard unit requires the proponent, usually an employer, to demonstrate a specific type of guard function as against fellow county employes warranting the establishment of a separate unit.

The Board and the courts have repeatedly held that general court-related security functions do not warrant severing a unit of deputy sheriffs absent a showing on the record that those deputies have in fact enforced the employer's rules for the protection of property and the safety of persons as against other county employes during labor unrest where the public employer does not intend to use them in that capacity. Appeal of Deputy Sheriffs Benevolent Ass'n of Bucks County, 620 A.2d 622 (Pa. Cmwlth. 1993); Washington County v. PLRB, 613 A.2d 670 (Pa. Cmwlth. 1992); Township of Falls, supra; In the Matter of the Employes of Westmoreland County, 33 PPER ¶ 33191 (Final Order, 2002); In the Matter of the Employes of Lebanon County, 33 PPER ¶ 33164 (Final Order, 2002); Luzerne County, supra; In the Matter of the Employes of Monroe County, 28 PPER ¶ 28119 (Final Order, 1997); In the Matter of the Employes of Montgomery County, 26 PPER ¶ 26086 (Final Order, 1995), aff'd sub nom., 27 PPER ¶ 27100 (Montgomery County Court of Common Pleas, 1996); In the Matter of the Employes of Chester County, 27 PPER ¶ 27003 (Final Order, 1995). The courts agree that the Board must not speculate to the contrary when the County's position is that it will not utilize deputy sheriffs to protect persons or property in the event of labor unrest. Deputy Sheriffs, supra; Washington Township Municipal Auth. v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990); County of Berks v. PLRB, 28 PPER ¶ 28234 (Berks County Court of Common Pleas, 1997); Saucon Valley Education Ass'n v. Saucon Valley Sch. Dist. 32 PPER ¶ 32167 (Final Order, 2001), aff'd, 33 PPER ¶ 33198 (Northampton County Court of Common Pleas, 2002); In the Matter of the Employes of Lower Marion Sch. Dist., 32 PPER ¶ 32031 (Final Order, 2000). Moreover, job titles or descriptions alone are inadequate to overcome the Board's requirement that it make unit determinations based on actual job functions. West Perry Sch. Dist. v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000); Saucon Valley, supra; Lower Marion, supra.

Therefore, a policy manual or written job description alone is insufficient as a matter of law to establish that the County will in fact utilize deputy sheriffs, instead of an outside security agency, to enforce rules for the protection of County property and the safety of persons on its premises in the event of County employe labor unrest, especially since the County, which the guard unit provisions of Section 604(3) are meant to protect, is opposing the Union's petition to separate the deputy sheriffs from the broader court-related unit in this case. Luzerne County, supra.

Accordingly, the Hearing Examiner was required to set forth only those facts that were necessary to support his decision. He was not required to summarize all the evidence presented, make findings that are unnecessary or make findings that would support another decision, even if there is substantial evidence to support such findings. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988); AFSCME v. Dep't Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986). Absent evidence that the deputies actually performed those functions, the written policy is not necessary to the Examiner's conclusion that the deputy sheriffs do not protect persons or County property from County employes in times of labor unrest involving those employes. The record in this case is analogous to the facts of the above-cited cases where the Board and the courts have determined that deputy sheriffs are not guards under PERA.

Additionally, the Union's claim that deputy sheriffs responded to an incident of County employe labor unrest is simply not supported in the record. A review of the record reveals that deputy sheriffs were called upon to contain labor unrest at a private corporation. Although the private sector workers may have been employed within the County, they certainly were not employes of the County as required by PERA. The divided loyalties and conflicts of interest, remedied by the guard provisions of Section 604(3) of PERA, were simply not present, as a matter of law. Therefore, the privately employed workers were not County employes as the Union argues, and this claim is dismissed.

After a thorough review of the exceptions, briefs in support and opposition, and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Order of Dismissal of the Examiner.

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 that the Proposed Order of Dismissal is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Anne E. Covey, Member, this sixteenth day of December, 2003. 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.