COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	
	:	Case No. PERA-U-01-354-E
	:	(PERA-R-96-207-E)
DAUPHIN COUNTY	:	

FINAL ORDER

On June 2, 2003, Dauphin County (County) timely filed with the Pennsylvania Labor Relations Board (Board) exceptions, a supporting brief and a request for oral argument to a Proposed Order of Dismissal (POD) issued May 12, 2003.[1] In the POD, the Hearing Examiner dismissed the petition for unit clarification filed by the County and concluded that the bargaining unit members at the Schaffner Youth Center (Schaffner) are prison guards within the meaning of Section 604(3) of the Public Employe Relations Act (PERA) for purposes of remaining included in the previously stipulated bargaining unit with the prison guards employed at the Dauphin County Prison (DCP). On June 23, 2003, the Teamsters Local Union No. 776 (Union) timely filed its response to exceptions and a supporting brief.

On July 21, 2003, the County filed a letter challenging certain representations made by the Union in its brief as being either inconsistent with or non-existent in the record. On August 18, 2003, the Union filed its response. The Board's regulations do not authorize such a filing and Section 35.211 of the General Rules of Administrative Practice and Procedure specifically limits the filings on exceptions to a brief in support of exceptions and briefs opposing exceptions and expressly states that "[n]o further response will be entertained unless the agency head, with or without motion, so orders." 1 Pa Code § 35.211. This provision is analogous to Rule 2501 of the Pennsylvania Rules of Appellate Procedure, which forbids post-submission communications with an appellate court after oral argument without application or request at oral argument seeking permission for such a communication. Attempts to present new arguments and facts not of record are forbidden, Scheidemantle v. Senka, 371 Pa. Super. 500, 538 A.2d 552 (1988), and a response to an unauthorized post-submission communication is also forbidden. Commonwealth v. Garrison, 478 Pa. 356, 386 A.2d 971 (1978); Triester v. 191 Tenants Ass'n, 272 Pa. Super. 271, 415 A.2d 698 (1979). Accordingly, the Board, in its discretion, will consider submissions after the filing of a response brief only in limited and extraordinary circumstances, not purely to entertain further argument regarding matters of record. Absent extraordinary and/or changed circumstances justifying or requiring the Board's attention, post-response-brief filings will not be reviewed on the merits. Examples of extraordinary or changed circumstances justifying a post-response filing would be a post-filing event or occurrence that renders the matter under consideration moot or satisfies the Board's standard for reopening the record. See, e.g. Hatfield Township Police Dept.

[1] Although the Board received the exceptions on June 3, 2003, which is one day beyond the twenty-day filing period, the exceptions were postmarked June 2, 2003, which constitutes a timely filing. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 31 PPER ¶ 31036 (Final Order, 2000).

v. Hatfield Township, 18 PPER ¶ 18226 (Final Order, 1987). Rule 2113 of the Pennsylvania Rules of Appellate Procedure authorizes a reply brief only where the appellee raises matters not previously addressed in the appellant's brief, but does not authorize a reply by the appellant merely to get in the last word in response to appellee's rebuttal of appellant's arguments. Also, the Board notes that counsel are under a legal obligation to notify the Board any time they are made aware of a change in or subsequent disposition of legal authority relied upon in their previous submissions to the Board. Pa. R.P.C. 3.3; Pa. R.A.P 2501. The County's July 21, 2003 submission merely presents further argument, rebutting arguments and representations made by the Union in its response, and thereby constitutes an unauthorized filing.

After a review of the exceptions, briefs in support and opposition and the record, the Board makes the following:

ADDITIONAL FINDING OF FACT

39. Some Schaffner residents are large individuals. Controlling violent behavior sometimes requires four or more bargaining unit members. Some Schaffner residents are hallucinatory, psychotic or suicidal. Schaffner Staff are permitted to use mechanical restraints such as a restraint chair and handcuffs and/or shackles to control a resident within the facility. One female bargaining unit member suffered a broken nose caused by a Schaffner resident. The juvenile residents often threaten bargaining unit members at Schaffner. (N.T. 430-31, 444-45, 552, 537).

DISCUSSION

The facts upon which the Hearing Examiner issued the POD are summarized as follows. On August 20, 1996, following an election and pursuant to an agreement between the County and the Union that that the employes at issue were "prison guards" under Section 604(3) of PERA, the Board included the employes into an existing unit of prison guards as follows:

> "All full-time and regular part-time professional and nonprofessional prison guards, including but not limited to correctional officers, sergeants, records office clerks, maintenance employes, youth program specialist aides, and youth program specialists I and II; and excluding management level employes, supervisors, first level supervisors, confidential employes and security guards as defined in the Act."

(PERA-R-96-207-E). Schaffner is a County operated juvenile detention center that is subject to the regulations of the Pennsylvania Department of Public Welfare (DPW). The bargaining unit positions at Schaffner include youth program specialist aide, youth program specialist I and II, and several maintenance positions.

Schaffner is a temporary placement facility for youths who commit a delinquent act that is designated a crime if committed by an adult. Individuals are brought to Schaffner to await a detention hearing, which determines detention status until his/her delinquency hearing, which determines guilt or innocence. At the detention hearing, a judge determines whether, based on the juvenile's record and accused conduct, he should be detained at Schaffner's detention side, shelter side or a prison and tried as an adult. When a court determines that a juvenile has committed a

delinquent act, that individual is referred to as an “adjudicated delinquent.” The courts send adjudicated delinquents and persons who are charged with the commission of delinquent acts to Schaffner. Following the delinquency hearing, there is a disposition hearing, which is similar to sentencing in the criminal justice system. Juveniles are often returned to Schaffner after disposition to await placement in a long-term facility.

Some individuals who are detained at Schaffner are over 18 years old because the acts that they committed occurred before they were 18. One individual who was detained at Schaffner was at least 20 years old. Juveniles who are charged with commission of certain serious crimes are subject to being tried as adults under appropriate circumstances. However, they may be sent to Schaffner if a judge determines that they should be processed through the juvenile system rather than the adult system. Conversely, the court may determine that individuals who are detained at Schaffner should be processed through the adult system and transferred to an adult detention facility. Some residents of Schaffner have been moved to adult detention facilities after being certified as adults due to the nature of the charges against them. Some Schaffner residents are very large. Controlling violent behavior sometimes requires four or more bargaining unit members. Some Schaffner residents are hallucinatory, psychotic or suicidal. Schaffner Staff are permitted to use mechanical restraints such as a restraint chair and handcuffs and/or shackles to control a resident within the facility. One female bargaining unit member suffered a broken nose caused by a Schaffner resident. The juvenile residents often threaten bargaining unit members at Schaffner.

Dependent children who do not have an adequate family structure and are awaiting placement in a different setting, such as a foster home, may also be sent to Schaffner. These dependent children reside in the “shelter” side of the facility. The shelter side of Schaffner is separated from the detention side of the facility by two locked doors. Most of the residents of the shelter side of Schaffner are pre-adjudicated or adjudicated delinquents. As of May 14, 2002, only 2 of the 15 residents of Schaffner’s shelter side were dependent children. The other 13 shelter residents were under the jurisdiction of the juvenile detention and/or juvenile probation system. A resident of Schaffner’s shelter side was transferred to the County’s adult detention facility based on a judge’s determination that he was not amenable to treatment in the juvenile system.

The detention side of Schaffner is considered to be a secure residential facility by DPW. Important to our determination is that the purpose of the detention side of Schaffner is to keep the persons who are detained there from leaving the premises. The residents of the detention side are only permitted to leave if they are released or are transferred to another facility. There are metal bars on the windows in the residents’ rooms. The windows are sealed shut and do not open. There are fences around the outside exercise areas and the “sally port” entrance to the facility. The doors to the residents’ rooms in the detention side of Schaffner are ordinarily locked at night and are not opened until the next morning. The door locks are controlled electronically from the control board in Schaffner’s control room, and are locked or unlocked at the request of the facility’s staff. Members of the bargaining unit--youth program specialist aides or youth program specialist I’s--occupy the control room at Schaffner and operate the electronic door locks and the gate in the sally port area. The control board in the control room operates all locking mechanisms on the doors that may be locked and unlocked electronically, including: the doors to

the residents' rooms in detention; the doors to the various housing units in detention (A, B, C and D pods); the door to the intake area; the doors to the shelter side and the gymnasium; the sally port gate; and the building entrance door in the sally port area. The main entrance door to the lobby at Schaffner is only open during daytime hours when a receptionist is present. Otherwise, the door is locked and a visitor must contact the control room through a call box to be admitted into the building. To proceed from the lobby at the main entrance of Schaffner into the various areas of the facility, one must pass through doors that are locked or unlocked electronically from the control room or require a key. Access to these areas is controlled by the bargaining unit employes who are stationed in the control room. To proceed between the detention side of Schaffner and one of the building's entrance/exit doors, one must pass through a series of doors that must be unlocked by the bargaining unit employes in the control room.

DPW prohibits locking of doors in the shelter side of the facility. Thirteen of fifteen shelter residents are detained for delinquent acts. The doors to the residents' rooms in the shelter side of Schaffner are not locked. There is a door at the back of the shelter side, which is not locked, although one cannot gain access through this door from outside the building. However, the door has an alarm, which will sound if someone attempts to pass through the door. There is also a light on the control panel to indicate that the door has been opened. Shelter residents are not permitted to leave Schaffner on their own volition, and the bargaining unit employes are responsible for monitoring their activity and insuring that they do not leave the building. In addition to the main entrance door, Schaffner also has an entrance door in the sally port area. There is a fence around the sally port area with an electronically-controlled gate. To enter the fenced-in area of the sally port, one must communicate with control-room personnel through a call box. If the control-room personnel admit a visitor into the sally port area by opening the electronically controlled gate, the visitor must again communicate with the control room through a call box that is located next to the building entrance door. This door is also electronically locked and unlocked by control room personnel. Schaffner residents are transported to court proceedings by County sheriffs or juvenile probation officers. The sheriffs are armed and the probation officers may be armed. Bargaining unit employes transport Schaffner residents off grounds for various reasons such as medical appointments and treatment. When certain Schaffner residents are transported off grounds for court proceedings or medical care, their hands are handcuffed and their legs are shackled.

Bargaining unit employes are on duty at Schaffner 24 hours a day, 7 days a week. Bargaining unit employes are present when teachers conduct classes at Schaffner to protect the safety of the teachers, provide security, and keep the residents under control. Bargaining unit employes process residents into Schaffner, conduct strip searches and searches with a body wand when residents come and go from Schaffner. Bargaining unit employes at Schaffner are generally assigned to work in either shelter or detention. However, the unit members move back and forth between shelter and detention on an as needed basis, such as when there is a staffing issue, an intake, an emergency or other incident, a restraint that needs extra support, or a need for coverage so that employes may take breaks. On both the shelter and detention sides of Schaffner, bargaining unit employes are responsible for ensuring that residents do not leave the facility, and for restraining residents when necessary to prevent them from leaving. There is interchange of shelter and detention staff based on job bidding and overtime.

If there is an escape from either side of Schaffner, bargaining unit employes are required to pursue the resident within the grounds of the facility and report the incident to the control room and a supervisor. The control room personnel report an escape from the facility to the police, who conduct any searches off grounds.

Initially, the County has submitted a request for oral argument before the Board. In support of its request, the County asserts that the issues presented are significant and novel for the following reasons: (1) they involve the statutory construction of PERA, regarding whether Schaffner constitutes a prison within the meaning of PERA; and (2) they require the Board to re-examine its certification of several other bargaining units claiming that such units would be unlawful if Schaffner is determined to be a prison under PERA. Although the Board has not previously addressed the precise issue of whether Schaffner constitutes a prison under PERA, units at county youth detention facilities have routinely been determined and the Board has routinely construed the operative provisions of PERA relevant here. Moreover, the County's characterization that an adverse decision in this case could make the composition of other bargaining units unlawful is not compelling. Bargaining units are determined by performing a case-by-case analysis of the facts and circumstances of each case. A determination here cannot be generally applied to fit all bargaining units involving juvenile detention centers. Further, the Board finds that the parties have comprehensively researched the issues and well presented their positions in their briefs. Consequently, the Board fully understands the issues presented and the parties' positions without the need for oral argument. Accordingly, the County's request for oral argument is denied.

In its exceptions, the County objects to findings of fact numbers 11 and 15 claiming that they do not accurately state the circumstances regarding juvenile detentions and custody. Findings of fact must be supported by substantial, legally competent evidence. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942); State System of Higher Education v. PLRB, 737 A.2d 313, 315, n.6 (Pa. Cmwlth. 1999); Teamsters Local 429 v. Lebanon County and Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000); Manuel Zavala-Lopez v. Kaolin Mushroom Farms, Inc., 29 PPER ¶ 29025 (Final Order, 1997). Substantial evidence is "`relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Kaufman, supra (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938)).

Finding of Fact No. 15 merely provides that "[a]s of the third day of hearing in this matter on May 14, 2002, only 2 of the 15 residents of Schaffner's shelter side were dependent children. The other 13 shelter residents were under the jurisdiction of the juvenile detention and/or juvenile probation system. (N.T. 559-560)." (POD at 2). A review of the cited references to the notes of testimony reveals that the record contains substantial evidence to support this finding.

Finding of Fact Number 11 provides a synoptic overview of the ways in which juveniles may be, and are, processed and placed when they initially enter the juvenile system at Schaffner, without quoting statutes and regulations. The finding accurately provides a general understanding of the available options for initially dealing with juveniles entering the system, depending on the alleged conduct. This finding is not an attempt to provide verbatim all the procedural options available and utilized at Schaffner under the Juvenile Act, Act of June 27, 1978, P.L. 586, as amended, 42 Pa. C.S. §§

6301-6364, or the pertinent regulations, nor was it necessary to do so. A review of the cited references to the notes of testimony reveals that the record contains substantial evidence to support the procedural synopsis provided by this finding.

The County also excepts to finding numbers 19 thru 27 inclusively, which related to the security equipment, personnel and procedures at Schaffner and claims that the Examiner precluded the County from presenting evidence concerning the security features at other County facilities. The County is essentially arguing that findings of fact numbers 19 thru 27 are in error because the Examiner precluded the County from offering evidence of the security at other buildings. However, to successfully challenge these findings, the county has the burden of establishing to the satisfaction of the Board that the challenged findings are not supported by substantial evidence. Kaufman, supra. The County has neither claimed nor established that the findings are not supported by substantial evidence in the record. The County's argument, therefore, cannot invalidate the findings or establish that they are in error. After reviewing these findings and the cited support for them, the Board concludes that they are indeed supported by substantial evidence. Also, the Examiner was required to set forth only those facts that were necessary to support his decision. He was not required to make findings that would support another decision. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). What security may exist elsewhere in the County does not detract from the nature of the security at Schaffner. Accordingly, the challenged findings will not be disturbed.

To the extent that the County is challenging the Examiner's evidentiary ruling precluding the County from offering evidence regarding the security at the County Administration Building, the Work Release Center and Dauphin Manor, the challenge is denied.[2] On pages 286 thru 305 and again on pages 503 thru 506 of the notes of testimony, the Union's attorney twice objected to the County's attempt to introduce pictures and testimony of the level of security at county buildings other than DCP or Schaffner as not relevant to the issue under consideration, i.e., whether Schaffner constituted a prison for purposes of PERA. The Examiner sustained both objections. Section 95.91(f) of the Board's regulations states that "[t]he hearing examiner shall have full authority to control the conduct and procedure of the hearing and the record thereof, to admit or exclude testimony or other evidence and to rule upon motions and objections subject to review by the Board." 35 Pa. Code § 95.91(f). Section 95.91(h)(3) of the regulations specifically authorizes hearing examiners to exclude irrelevant or immaterial evidence. 35 Pa. Code § 95.91(h)(3). Rule 401 of the Pennsylvania Rules of Evidence defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Pa. R.E. 401.

[2] The Dauphin County Work Release Center is operated by the Court of Common Pleas and is part of Adult Probation and Parole. Its function is to ensure involuntary detention of prisoners during nights and weekends who are trusted to maintain employment and return to the Work Release Center after work. Dauphin Manor is a long term care and assisted living facility for aged or medically infirm who, in varying degrees, are incapable of caring for their own daily needs and functions.

In her offer of proof, counsel for the County indicated that she intended to compare the level of security at other county buildings that are not prisons to that of Schaffner to establish that Schaffner was not a prison. Security for the purpose of keeping unknown threats out of other County buildings has no relevance either to the security at Schaffner, which is designed to keep known threats in, or to determining what constitutes a prison within the context of PERA. Accordingly, the evidence regarding the County Administration Building and the Manor was properly excluded.[3] In support for the introduction of evidence pertaining to the Work Release Center, counsel for the County stated the following:

> the employees who staff the work release center are not guards at prisons. They're not in a prison guard unit. They're in the unit with the other adult probation and parole, juvenile probation and parole, domestic relations hearings, hearing officers and accountants and there is another non-professional unit. That's who staffs this and the security here is as great or, as you will see in cases, greater than that at Schaffner.

(N.T. 296). However, this argument ignores the fact that the County stipulated to the composition of the bargaining unit of court appointed professionals and non-professionals and thereby agreed to have the guards at the Work Release Center included in the court appointed unit of professional and non-professional employes. (PERA-R-97-169-E and PERA-R-95-223-E). Accordingly, the classification of the employes at the work release center or the composition of the bargaining unit has not been litigated resulting in a Board determination regarding whether the Work Release Center constitutes a prison or whether the employes at the Work Release Center are prison guards.

Moreover, the security at the Work Release Center does not have any tendency to establish the existence or non-existence of a fact material to the issue under consideration as required by Pa. R.E. 401. In her offer of proof, County's counsel argues that the security at the Work Release Center is relevant because there is as much or more security at the Work Release Center which the County argues is not a prison and that will show by comparison that Schaffner cannot be a prison with its level of security. This bootstrapping argument is premised on counsel's own conclusion that the Work Release Center is not a prison. However, no such determination has been made by the Board or the Courts in the context of the Commonwealth's labor statutes. Accordingly, absent such a legal determination, the level of security at the Work Release Center is not relevant to determining whether Schaffner constitutes a prison within the meaning of Section 604(3) of PERA. Moreover the level of security at Schaffner was not a basis for the Examiner's or the Board's decision. The Examiner's decision here and the decisions in other cases[4] were based on the presence of security for the

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[3] To the extent that security at the Manor may prevent certain residents from leaving, the purpose of that security is to prevent those residents, who are physically incapable of caring for themselves, from injuring themselves. They are no threat to anyone else, and they are not involuntarily detained to protect the community as are the Schaffner residents. As the County conceded in its brief, it is the "purpose the facility serves . . . that must be the basis for the determination as to whether a facility is a prison." (County brief at 42).

[4] In the Matter of the Employes of Luzerne County, 15 PPER ¶ 15155 (Proposed Order of Unit Clarification, 1984); In the Matter of the Employes of

purpose of ensuring involuntary confinement and separation from society. Therefore, the Board agrees with the Examiner that the level and nature of security equipment, personnel and procedure at other county facilities would not have a tendency to establish whether Schaffner was a prison for purposes of PERA, absent a prior Board or court determination that the level and nature of security at those facilities constituted them as prisons or not. The level of security varies among different prison facilities. Under the County's argument only a maximum security facility could be deemed a prison where a less secure facility is not. The relevant inquiry in determining whether Schaffner is a prison for purposes of PERA is the existence and purpose of security at Schaffner.

The County also contends that the Examiner erred by failing to make several findings of fact concerning the job responsibilities and training requirements of the employes at DCP and Schaffner claiming that such findings would demonstrate that bargaining unit employes at Schaffner are not guards at a prison. However, the 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, supra; Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988); AFSCME v. Dep't Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986). While training may tend to support a finding and conclusion regarding status for certain purposes under PERA, that guards at the adult prison and Schaffner receive different training, owing largely to the age of the persons in their custody, does not detract from the finding and conclusion that the employes here are prison guards. In Cambria County Deputy Sheriffs Ass'n v. PLRB, 799 A.2d 957 (Pa. Cmwlth. 2002), the Commonwealth Court affirmed the Board and dismissed the union's argument that the "statutory training authorizes deputies, with their common law powers, to perform those functions that the legislature has specifically designated for police officers." Id. at 960. Accordingly, training is not determinative in defining classifications of employes under PERA.

The Board disagrees with the County's assertion that the Examiner failed to make several necessary findings regarding the job responsibilities of the bargaining unit employes at Schaffner. Findings of fact numbers 21, 27, 29, 30, 31-35 and 38 individually address and collectively define the job responsibilities of those employes. Moreover, these findings support the Examiner's conclusion that "[t]he bargaining unit employes at Schaffner are prison guards within meaning of Section 604(3) of PERA." (POD at 9). The presence of security for the purpose of confining adjudicated delinquents is the relevant inquiry. The manner of providing that security varies from institution to institution, indeed from prison to prison. DPW's regulations mandate that security be provided without weapons and chemicals at Schaffner while DOC sanctions such weapons at adult detention facilities. Accordingly, training in weapons, which is one of the differences that the County focuses on in its brief, is not necessary for Schaffner guards. Findings of fact concerning the job duties of the prison guards at DCP or differences in the training requirements between Schaffner guards and DCP guards are not necessary to support the Examiner's conclusion that Schaffner is a prison for

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Lancaster County, 30 PPER ¶ 300058 (Order Directing Submission of Eligibility List, 1999).

purposes of PERA and that the Schaffner bargaining unit members are indeed guards.

The County argues that the Examiner "erred" by relying on Lancaster County, supra. Specifically, the County argues that the Lancaster County decision was unappealable because it was an order directing the submission of eligibility list and the Union lost the election in that case. The County also asserts that the Examiner should not have relied on Lancaster County because the decision in that case, i.e., that the juvenile detention facility at Barnes Hall in Lancaster County constituted a prison for purposes of including the Barnes Hall employes in the same unit as the guards at the Lancaster County Prison, was based on the stipulated unit in Dauphin County which was not litigated and which is the subject of this litigation. The Board disagrees with the County's characterization of the basis of the examiner's decision in Lancaster County. As noted by the Examiner in this case in response to this same argument made below, "while the examiner did reference that stipulation, his decision indicates that the stipulation was not a determinative factor in the result. Rather, the decision in Lancaster County was based on the examiner's application of the rules of statutory construction." (POD at 8).

The Lancaster County decision relied on by this Examiner here was an order directing the submission of an eligibility list. An election was directed, which the union lost, and the legal issue then became moot and the Board did not review the decision of the hearing examiner in Lancaster County. It should be noted that hearing examiner decisions not appealed to the Board are not precedential for the Board and those hearing examiner decisions which are mooted before reaching the Board are in no way binding precedent on the Board. Commonwealth of Pennsylvania, Pennsylvania Emergency Management Agency (PEMA) v. PLRB, 768 A.2d 1201 (Pa. Cmwlth. 2001). However, this is not to say that a PLRB hearing examiner errs by relying on a decision by another Board hearing examiner. The order directing submission of eligibility list in Lancaster County while not binding on this Board may be cited as persuasive authority to the Board or to a Board hearing examiner. Accordingly, we must reject the County's claim that the hearing examiner "erred" by his reliance on Lancaster County.

Before the Examiner, and again before the Board, the County cited certifications of other unionized county juvenile detention facilities where those employes were not included in the same bargaining unit as the guards at the county prison. The County assigns error to the Examiner's determination that the composition of these units is not determinative to the disposition of this case. The Examiner determined that, in certifying the cited units, the Board did not specifically address the issue of whether the juvenile detention center in any of those counties constituted a prison for purposes of PERA. The Board agrees with the Examiner's analysis that, unless the issue of whether a particular facility's employes are prison guards for purposes of PERA is specifically determined by the Board based on the facts of each case, then those units are similarly not determinative here.

The County also repeats the argument presented in its request for oral argument that, if bargaining unit employes at Schaffner are deemed prison guards, then all the county units in the Commonwealth, where the employes at the county juvenile detention facility are not included in the same units as the county prison guards, are illegal under Section 604(3) of PERA. However, the Board's determinations of the composition of bargaining units has always been on a case-by-case basis after examining the relevant and dispositive

facts of each case. FOP v. PLRB, 695 A.2d 926 (Pa. Cmwlth. 1997); In the Matter of the Employes of PUC, 20 PPER ¶ 20047 (Final Order, 1989). In a given case, the Board could conclude that, based on the management, operation and employes' duties at a particular juvenile detention facility, the employes at that particular facility are not prison guards.

The County also objects to the Examiner's ultimate conclusion that the bargaining unit employes at Schaffner are prison guards within the meaning of PERA and thereby precluded from striking in exchange for interest arbitration for the settlement of impasses reached during negotiation. In its brief, the County argues that the differences in the level of security between Schaffner and the DCP, the differences in the physical construction and features of the two facilities and the differences in the statutory schemes and purposes governing the two facilities yields the conclusion that Schaffner is not a prison. The Board has already rejected the argument that the physical construction and the level of security at the DCP as compared to that of Schaffner has any relevance to deciding whether Schaffner constitutes a prison for purposes of PERA. The County's argument discounts the fact that there are minimum security prisons that are statutorily created and operated as prisons for adult inmates where the physical construction and level of security is similar to that of Schaffner. The security personnel at a minimum security prison are no less prison guards than their maximum security counterparts as long as their function and duty is to confine individuals assigned to the institution.

Further, the County's objection to the conclusion that Schaffner employes are essential and thereby entitled to interest arbitration in exchange for the right to strike is also without merit because Schaffner employes are involved with and necessary to the functioning of the courts within the meaning of Section 604(3) of PERA. Schaffner is a temporary detention/shelter facility for children who are being processed through hearings, adjudications and determinations of the Dauphin County Court of Common Pleas. Therefore, if the issue were presented, the Schaffner employes could be deemed court related. Accordingly, even if the Schaffner employes were not deemed guards at a prison, they would be deemed court related employes who are also essential employes statutorily entitled to interest arbitration, under Section 805 of PERA.

The County compares provisions of the County Prison Act, 61 P.S., the Prison Facilities Improvement Act (PFIA), Act of July 1, 1990, P.L. 315, 61 P.S. §§ 390.101-390.1303, the Juvenile Act, supra, and the DOC and DPW regulations. The County further cites case law detailing the status accorded juveniles in our system of justice as well as the difference in rights bestowed upon children accused of engaging in unlawful conduct. The County asserts that, because PERA does not define the term prison, the statutory construction act requires that those definitions be provided by other related statutes. In so doing, the County emphasizes that the DCP is regulated and inspected by the Department of Corrections and the County Prison Act which repeatedly refers to prisons and prisoners and that the guards at these prisons may exercise the powers of peace officers. At these adult prisons, guards are permitted to use weapons, mechanical restraints and pain-inducing force against inmates. Further, argues the County, Section 95.403 of the DOC regulations expressly excludes juvenile detention centers from its definition of prison facility. The County argues that, in contrast, Schaffner is inspected and regulated by the DPW not DOC. The County has focused the Board's attention on the legislative polices embodied in the Juvenile Act which expressly treats children in the juvenile system

differently than adults in the criminal justice system and thus removed the stigma associated with incarceration of adjudicated criminals in adult prisons. In doing so, the legislature also changed the labels associated with otherwise criminal conduct. Under the Juvenile Act, behavior that constitutes a crime under the crimes code is labeled a delinquent act. A child under 18 who is accused of such an act is not normally tried, convicted and sentenced, rather he is adjudicated delinquent and receives a disposition. The Juvenile Act also makes it unlawful for any person at a jail to knowingly receive for detention a person who he has reason to believe is a child unless detained for certain violent acts whereby the juvenile may be tried and detained as an adult.

The Board recognizes that the General Assembly has statutorily implemented its stated policy to treat children in the juvenile justice system differently than adults in the criminal justice system for purposes of those statutes and for rehabilitating, reforming and punishing delinquent and criminal behavior respectively. We believe this policy is effectively carried out in Dauphin County by the separate existence of Schaffner and DCP and the separate operating procedures of each institution. However, the Board rejects the notion that the purposes and policies of the Juvenile Act, the PFIA, or the County Prison Act are intended to address collective bargaining and strike rights so as to authorize strikes by security personnel at Schaffner and not at DCP. The Board disagrees that the nomenclature and labels designed to facilitate legislative policies established for juvenile and criminal justice manifest a legislative intent about labor policy for a county youth detention facility. Indeed nothing in any of the statutes or regulations referred to by the County indicates that the General Assembly contemplated the ramifications of either the Juvenile Act, the PFIA, the County Prison Act or the pertinent DOC and DPW regulations on labor relations and the employes at county detention centers. By way of example, our Supreme Court sanctioned in pari materia construction of Act 111 and the Pennsylvania Labor Relations Act. Philadelphia Fire Officers Ass'n v. PLRB, 470 Pa.550, 369 A.2d 259 (1977). Both of those statutes are labor statutes that expressly address labor policy and regulate employment relationships within the Commonwealth. As such, there is a symbiotic relationship between the two statutes such that the PLRA fills the voids in Act 111. Such a relationship does not exist between PERA and the Juvenile Act, the PFIA the County Prison Act or the concomitant regulations. Those definitions are intended to facilitate an entirely unrelated goal in the context of rehabilitation and punishment. Accordingly, those statutes do not provide the meaning of the term "guards at prison" within the meaning of PERA.

However, due to the fact that the term "prison" as used in PERA is not defined in PERA, the Board agrees with the Examiner, and adopts his analysis herein, that statutory construction of PERA in light of the legislative intent and objectives embodied in that statute is necessary. "The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa. C.S. § 1921(a). "When the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters" the occasion and necessity for the statute, the circumstances under which it was enacted, the mischief to be remedied, the object to be attained, the consequences of a particular interpretation and more. 1 Pa. C.S. 1921(c). Although the term "prisons" is not ambiguous on its face, it becomes latently ambiguous when applied to Schaffner because Schaffner is labeled something other than a prison and PERA lacks a definition explicitly including or excluding the

types of facilities that come within the purview of the term for purposes of PERA. Accordingly, the Examiner properly recognized the following:

> PERA was enacted to promote orderly and constructive relationships between public employers and their employes through the grant of collective bargaining rights, including the right to strike, while insuring that essential personnel such as prison guards remain on the job to protect the public. 43 P.S. § 1101.101, 1101.1001. In return for not being granted the strike rights bestowed upon other public employes, guards at prisons and other essential personnel have the right to binding interest arbitration to resolve collective bargaining impasses with their employers. 43 P.S. § 1101.805. The examiner in Lancaster County found that the legislative objective in enacting PERA would not be effectuated by construing "guards at prisons" narrowly to exclude guards at juvenile detention facilities, leaving no one to guard the juveniles in the event of a strike, but would be effectuated by construing the relevant statutory language more broadly to include guards at both adult and juvenile detention facilities.

(POD at 8). The County's proposed method of statutory construction is premised on the erroneous assumption that the purposes and policies of adult criminal and juvenile statutes somehow direct the Board to sanction strikes by Schaffner security personnel while banning strikes by DCP security personnel. The Board, however, adopts the Examiner's construction as properly fulfilling the intent and goals of the General Assembly embodied in PERA.

We believe that Sections 604(3) and 805 of PERA were intended simply to identify certain categories of employes whose services are essential (court employes, mental hospital and prison guards) and should not engage PERA sanctioned strikes. As noted by the hearing examiner, the obvious reason for banning strikes by those charged with securing confinement of individuals remanded by the courts is to prevent those employes from abandoning their posts in times of labor negotiations. Although we agree with the County that adult criminal and juvenile justice polices may differ in other respects, they do not differ as to the need for ensuring the effectiveness of adult sentences and juvenile dispositions and protection of society from those confined under adult and juvenile justice policies.

The County cites several cases for the proposition that Schaffner is not a prison. (Brief at 27-28). The first grouping of cases cited focuses on the duties of various personnel at prisons where the issue was whether certain individuals actually guarded prisoners. In this case, however, the County does not dispute that the bargaining unit members at Schaffner are responsible for guarding or securing its residents. Additionally, the record is clear that the bargaining unit members are responsible for the care, custody and control of the Schaffner residents on both the detention and shelter sides of the facility. Accordingly cases focusing on the guard duties of various personnel at prisons are inapposite.

The County also cites Sunnyside Up Corp. v. City of Lancaster Zoning Hearing Bd., 739 A.2d 644 (Pa. Cmwlth. 1999), for the proposition that Schaffner should not be deemed a prison. Sunnyside Up was a zoning case. The issue in Sunnyside Up was whether a juvenile detention facility constituted a "criminal detention facility" within the meaning of a zoning ordinance such that its location was restricted to the area zoned for such facilities or whether it qualified for an exception that entitled it to be

placed in a "mixed use" district as a government facility. The Commonwealth Court relied on the Juvenile Act and held that for purposes of that zoning statute, the proposed juvenile detention facility was not a "criminal" detention facility because the Juvenile Act expressly separates delinquent acts from criminal ones and further provides that the juvenile justice system is separate and distinct from the criminal justice system. However, as noted by the Examiner in this case and the examiner in Lancaster County, supra, Sunnyside Up interpreted a local zoning ordinance not a labor statute. The policies and objectives of the zoning ordinance are not the same as those of PERA.

Further, the holding in Sunnyside Up does not stand for the proposition that Schaffner is not a prison for purposes of PERA; it stands for the proposition that Schaffner is not a "criminal" institution within the meaning of a particular zoning ordinance recognizing that there is a statutory mandate to separate youth detention facilities from adult criminal facilities. The Board recognizes that Schaffner is not a criminal institution and its decision does not commingle adults and juveniles. As the County recognized in its brief, what drove the decision in Sunnyside Up was that the local zoning ordinance being interpreted contained an express provision that where a term within the ordinance was not defined, "the Ordinance indicates that Webster's Dictionary should be utilized to provide meaning." Sunnyside Up, 739 A.2d at 649. Because the dictionary definition of the term "criminal" was circular, the Commonwealth Court searched for meaning in other statutory sources such as the Juvenile Act. However, Webster's Encyclopedic Unabridged Dictionary does not provide circular definition of prison. Rather, "prison" is defined therein as "any place of confinement or involuntary restraint." Webster's Encyclopedic Unabridged Dictionary, 1540 (New Deluxe Edition, 1996). Webster's New International Dictionary defines prison as "a place or state of confinement or restraint." Specifically, "a building or other place for the safe custody or confinement of criminals or others committed by lawful authority." Webster's New International Dictionary, 1968 (2d ed. 1934)(emphasis added). Blacks Law Dictionary broadly defines "prison" as "[a] public building or other place for the confinement of persons, whether as a punishment imposed by the law or otherwise in the course of the administration of justice." Blacks Law Dictionary, 1194 (6th Ed. 1990). A "prisoner" is "one who is deprived of his liberty." Id. Collectively, these definitions demonstrate that the essence of a prison is involuntary confinement, an intended result under the Juvenile Act. Accordingly, because the statutory purposes are separate and distinct and three different dictionaries provide adequate definitions for defining prison, the Sunnyside Up rationale is inapposite. Also, in confining its analysis to resolving the zoning issue, the Sunnyside Up Court did not have occasion to examine the job duties of the detention center employes, which the courts and the Board have consistently required in determining the appropriateness and complement of a bargaining unit. FOP, supra; PUC, supra.

On this record, we find the policies of PERA mandate that the security staff of Schaffner are statutorily barred from striking. The Schaffner residents are involuntarily confined and they cannot voluntarily leave. If they attempt to leave, a bargaining unit member will physically prevent their escape from Schaffner by using passive restraint procedures. Mechanical restraints may be used temporarily to contain an aggressive or violent resident. When Schaffner residents are outside, they are contained within a twenty-foot-high fence. At night, the detention side residents are locked in their rooms. Residents may not have access to objects that could be used as or transformed into a weapon or a tool of escape. There are no glass

mirrors. The residents on the shelter side are not locked in but they cannot leave and will be stopped. DPW regulations mandate that staff maintain visual and auditory observation of and contact with all residents at all times. 37 Pa. Code § 3800.283(9). The Schaffner residents are indeed confined involuntarily. The bargaining unit staff at Schaffner is responsible for safely maintaining that condition of involuntary confinement and are barred from striking under Section 604(3) of PERA.

An authorized governmental institution, i.e. the court of common pleas, has determined that involuntary incarceration was necessary for the Schaffner residents. To permit the Schaffner employes to strike and risk the escape of some or all of the Schaffner residents would be to permit Schaffner employes to undermine those court orders as well as threaten the safety and welfare of the local community and, in some cases, the residents themselves. Schaffner residents are sometimes very large, exhibit dangerous behavior, such as threatening and striking bargaining unit members or engaging in hallucinatory, psychotic or suicidal conduct, requiring a significant amount of restraint, control and supervision to prevent harm to themselves, bargaining unit members and the community. Notwithstanding the labels chosen to describe the Schaffner facility, the record clearly establishes that it is a place of involuntary incarceration for dangerous juveniles and PERA's policy to prevent labor disputes from threatening continued service is applicable.

In making this decision, the Board is mindful that the shelter side temporarily houses non-delinquent dependent children who have been removed from their home, due to inadequate parenting, or other causes unrelated to the child's behavior, until a more suitable and longer term foster care facility is available. For these dependents, Schaffner and subsequent foster homes stand in loco parentis in providing care, custody and control for dependent children. Punishment, rehabilitation and involuntary confinement to prevent harm to themselves or the community is not the purpose of their stay at Schaffner. The County's interest in securing dependent children is for their own protection (not societal protection from them) nor are they sheltered pursuant to a court disposition. However, the record established that the overwhelming majority of Schaffner residents, on both the shelter and detention sides, are involuntarily detained for committing a delinquent act. Accordingly, the Board is constrained to conclude that the existence and purpose of security on both sides is, as a practical and record matter, the same.

After a thorough review of the exceptions, the request for oral argument and all matters of record, the Board shall dismiss the exceptions and the request for oral argument and sustain the Proposed Order of Dismissal of the Hearing Examiner, as amended herein.

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, as amended herein, 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 August, 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.