

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: Case No. PF-R-02-130-E
SOUTHEASTERN PENNSYLVANIA : (PERA-R-92-110-E)
TRANSPORTATION AUTHORITY :

FINAL ORDER

On December 17, 2002, the Fraternal Order of Transit Police (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to a letter issued by the Board Secretary declining to direct a hearing on a Petition for Representation filed by the Union seeking to represent a unit of transit police officers employed by the Southeastern Pennsylvania Transportation Authority (SEPTA) for purposes of bargaining under Act 111 of 1968. The Union currently represents SEPTA's transit police officers pursuant to a certification issued under the Public Employee Relations Act. In declining to direct a hearing on the Union's Petition, the Board Secretary cited the Supreme Court's decision in Philadelphia Housing Authority v. PLRB, 508 Pa. 576, 499 A.2d 294 (1985), and concluded that SEPTA is neither the Commonwealth nor a political subdivision of the Commonwealth so as to be an employer for purposes of collective bargaining under Act 111.¹ In its exceptions, the Union contends that the Secretary erred in concluding that SEPTA is not an employer for purposes of bargaining under Act 111.

The Union's exceptions are without merit. The Union relies upon Crilly v. Southeastern Pennsylvania Transportation Authority, et al., 529 F.2d 1355 (3rd Circuit 1976), in which the court determined that SEPTA was so closely associated with the Commonwealth of Pennsylvania that it was, in essence, a political subdivision of the Commonwealth so as to be immune from suit under federal labor law. However, the interpretation of the term "political subdivision" under federal labor law is clearly broader than that term is defined under Pennsylvania law. In construing Act 111, the Board and the courts are bound by the definition of "political subdivision" contained in the Statutory Construction Act, which provides as follows:

"Political subdivision- any county, city, borough, incorporated town, township, school district, vocational school district and county institution district."

1 Pa.C.S.A. § 1991. It is clear from this definition that SEPTA, like the Philadelphia Housing Authority, is not a political subdivision of the Commonwealth of Pennsylvania and cannot be an Act 111 employer.²

¹ Section 1 of Act 111 provides for collective bargaining for police and firemen employed by the Commonwealth of Pennsylvania or a political subdivision of the Commonwealth. 43 P.S. § 217.1.

² The more restrictive interpretation of "political subdivision" under Pennsylvania law as opposed to the federal law at issue in Crilly is apparent in Feingold v. Southeastern Pennsylvania Transportation Authority, 512 Pa. 567, 517 A.2d 1270 (1986). In Feingold, our Supreme Court noted the federal court's disposition in Crilly, but went on to conclude, not that SEPTA was a political subdivision of the

Further, the Union's argument ignores language in Philadelphia Housing Authority in which our Supreme Court rejected Act 111 employer status for the Housing Authority as follows:

Critical to the effectiveness of Act 111 is its provision for binding interest arbitration which resolves negotiation impasses and supplies through the award of the panel a basis for the continuing employment relationship. 43 P.S. § 217.4 (Supp. 1985). Unlike the Commonwealth or one of its political subdivisions, [Philadelphia Housing Authority] does not have the ability to fund an Act 111 arbitration award since [the Housing Authority] has no power to levy taxes. Thus, the interpretation urged by appellants would create the anomaly that this group of employees would receive the right to interest arbitration without the award issuing therefrom having binding effect. Nevertheless, these employees would be stripped of their right to strike, thereby undercutting the very heart of collective bargaining. The legislature intentionally limited its definition of "public employer" under Section 1 of Act 111 to avoid such an unfair and absurd result.

499 A.2d at 301 (citations and footnotes omitted). This underlying rationale for the rejection of Act 111 employer status for the Philadelphia Housing Authority is equally applicable to SEPTA. Accordingly, the Secretary's decision that SEPTA is not an employer under Act 111 is fully supported by the case law and must 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 affirm the Secretary's decision declining to direct a hearing on the Petition for Representation.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 of 1968 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions be and the same are hereby dismissed and the Secretary's decision declining to direct a hearing on the Petition for Representation is 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 twentieth day of May, 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.

CHAIRMAN JOHN MARKLE, JR. DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THIS CASE

Commonwealth as the federal court did in Crilly, but was, like Philadelphia Housing Authority, a Commonwealth agency and therefore not subject to the punitive damages at issue in that case.