

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : Case No. PERA-R-02-626-W  
 :  
 BUTLER COUNTY :

**FINAL ORDER**

On December 15, 2003, the Butler County Deputy Sheriffs Unit (Union) timely filed with the Pennsylvania Labor Relations Board (Board) exceptions to a Proposed Order of Dismissal (POD) issued November 24, 2003. Also on December 15, 2003, the Sheriff filed exceptions to the POD. In the POD, the Hearing Examiner dismissed the petition seeking designation of the deputy sheriffs as security guards under Section 604(3) of the Public Employee Relations Act (PERA). The Hearing Examiner concluded that the deputy sheriffs have not enforced rules for the protection of property or other persons during times of labor unrest, within the meaning of Section 604(3), and therefore shall not be placed into a separate guard unit.

The deputy sheriffs' daily responsibilities, as found by the Hearing Examiner, include providing security at the county courthouse and the government center, which is connected to the courthouse by a walkway. All persons and packages entering the front entrance of the courthouse are subject to searches by deputy sheriffs. The other entrances to the courthouse have alarms. Deputy sheriffs monitor and respond to these alarms. During crisis situations or special events, deputy sheriffs may perform security duties at other County properties. However, County employes have not engaged in a work stoppage, and the deputy sheriffs have not protected County property during a work stoppage by County employes.

On or about February 12, 2003, the County commissioners and the president judge of the court of common pleas approved an amendment to the security policy for the county courthouse/government center. This amendment included a provision assigning the Sheriff's Office the responsibility for the security and protection of County facilities and property in the event of breaches of the peace, including work stoppages. On April 10, 2003, the County commissioners and the president judge rescinded this amendment to the security policy.

The Board first addresses the exceptions filed by the Sheriff. The Sheriff did not move to intervene, and he is not a party as of right. (POD at 1, fn. 1). In Donatucci v. PLRB, 547 A.2d 857 (Pa. Cmwlth. 1988), the Commonwealth Court held that, pursuant to Section 1620 of the County Code, Act of August 9, 1955, P.L. 323, as amended, 16 P.S. § 1620, which provides that the county commissioners "shall have the sole power to represent all elected or appointed county officers having any employment powers over the affected employes'" in representation matters before the Board, Donatucci, 547 A.2d at 59-60 (quoting 16 P.S. § 1620), the Board properly denied party status to the register of wills in a proceeding involving the union representation of

employees working in the office of the register of wills. Accordingly, the Board will not address the Sheriff's exceptions because he is not a proper party in this representation case.<sup>1</sup>

In its exceptions, the Union claims that the Examiner erred in the following manner: (1) "by disregarding evidence that the County has expressed its intent to consider utilizing the Sheriff's Department to enforce peace in the event of a work stoppage;" and (2) by dismissing the petition, the County is prohibited from utilizing the Sheriff's Department in case of a work stoppage. (Union's Exceptions ¶ 7).

Section 604 of PERA provides as follows:

The [B]oard shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the [B]oard shall:

. . . .

(3) Not permit . . . any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employes . . . .

43 P.S. §1101.604(3). The Board recently addressed the limited circumstances in which the Board and the Commonwealth Court will approve the certification of a separate guard unit of deputy sheriffs pursuant to Section 604(3) of PERA. In the Matter of the Employes of Franklin County (PERA-R-02-625-E, Final Order, December 16, 2003). The Franklin County Board relied on Washington County v. PLRB, 613 A.2d 670 (Pa. Cmwlth. 1992) and Appeal of Deputy Sheriffs Benevolent Ass'n of Bucks County, 620 A.2d 622 (Pa. Cmwlth. 1993), and an abundance of Board and court precedent repeatedly holding that a proponent of a separate guard unit of deputy sheriffs must demonstrate on the record that the deputy sheriffs, in fact, have enforced the employer's rules for the protection of property and the safety of persons as against other county employes during labor unrest and that general, daily security functions in county buildings do not warrant placing the deputies in a separate unit. Id.

Here, The Union did not meet its burden of producing evidence, and thereby its burden of proof, that the County actually used the deputy sheriffs to enforce rules for the protection of property and persons in times of labor unrest. The courts and the Board have consistently required that a union establish the employer's intent to use the deputy sheriffs as guards by showing that the deputies were in fact used in that capacity in the past. The record must demonstrate

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<sup>1</sup> In the POD the Examiner granted amicus curiae status to the Sheriff's brief. The Sheriff's exceptions are not supported by an additional brief based on the specific exceptions filed by him. Rather, the Sheriff expressly incorporates by reference the post-hearing brief that he filed with the Hearing Examiner. Accordingly, the Sheriff's previously submitted arguments have already been considered.

that deputies "went beyond the usual court-related security functions and thereby implicated actual conflicts of loyalty." Washington County, 613 A.2d at 674.

In this regard, 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).

The Union claims that the Examiner ignored evidence of the County's intent to use the deputy sheriffs to protect persons and property at times of labor unrest. This argument is flawed for two reasons. First, the Board has expressly held that, absent evidence that the County actually utilized the deputy sheriffs as guards during labor unrest involving county employes, a policy or employment manual setting forth the proposed duties of the deputies is insufficient to establish a county's intent to utilize the deputies in that capacity. Franklin County, *supra*. Also, assuming arguendo that the policy alone were sufficient to establish the County's intent here, which it is not, the Union ignored Finding of Fact Number 10 in the POD which states the County rescinded the amendment thereby expressing a change in its intent to utilize the deputy sheriffs in that capacity. Therefore, if the amended policy statement were sufficient to establish the County's intent to utilize the deputies as guards during labor unrest, then the subsequent rescission of that policy demonstrates the County's more recent intent not to utilize the deputies in that capacity. Accordingly, the security policy amendment, and indeed its rescission, which the Union claims that the Examiner ignored, are not necessary to support the Examiner's conclusion that the Butler County deputy sheriffs are not guards within the meaning of Section 604(3) where the Union failed to meet its burden of proving that the deputies actually were utilized to enforce the County's rules for the protection of property or other persons during periods of labor unrest.

The Union also claims that, by dismissing the petition, the County is prohibited from utilizing the Sheriff's Department in case of a work stoppage. Absent further explanation, the Union has failed to establish how the County is "prohibited" from relying on the deputy sheriffs to enforce its rules for the protection of property or other persons during times of labor unrest in the future. The Examiner's dismissal of the Union's petition merely precludes certifying the deputies as a separate bargaining unit of guards at this time. It does not prevent the County from exercising its managerial prerogative under Section 702 to direct its workforce or changing its intentions in the future to utilize the deputies in the capacity of Section 604(3) guards during labor unrest. Consequently, if the County changes its intentions regarding the deputies, the County may seek the protection of Section 604(3) and petition the Board for a separate guard unit. Additionally, should the County demonstrate such an intention by actually using the deputies in that capacity, the Union may also petition the Board alleging changed facts.

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 seventeenth day of February, 2004. 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.