

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY SECURITY :
GUARDS ASSOCIATION :
 :
v. : Case No. PERA-C-07-265-E
 :
BUCKS COUNTY :

PROPOSED DECISION AND ORDER

On June 20, 2007, the Bucks County Security Guards Association (Union) filed a charge of unfair practices (Charge) with the Pennsylvania Labor Relations Board (Board) alleging that Bucks County (County) violated Section 1201(a)(1), (3) & (5) of the Public Employe Relations Act (PERA). In the Charge, the Union specifically alleged that the County engaged in unfair practices for refusing to proceed to interest arbitration for the Security Guards under PERA.

On July 12, 2007, the Secretary of the Board (Secretary) issued a Complaint and Notice of Hearing (CNH) directing that a hearing be held on October 4, 2007 in Philadelphia. By letter dated August 30, 2007, the examiner ordered that the location of the hearing be changed to Doylestown Borough Hall on the same date for the convenience of the parties. The parties met before the examiner at the designated time and place. Prior to the hearing, the examiner entertained the "Respondent, County of Bucks', Motion to Dismiss Unfair Labor Practice Charge, As It Is Precluded By Statute" (Motion). For purposes of considering the Motion, the parties stipulated to certain facts on the record. Based on the stipulations of fact, the examiner herein grants the County's Motion and dismisses the Union's charge.¹ The parties waived post-hearing briefs, however, both parties presented oral arguments in support of their respective positions on the County's Motion.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).
3. The Board's certification for the bargaining unit of Security Guards defines the bargaining unit. The bargaining unit as defined therein makes no reference to guards at prisons or mental hospitals or employes directly involved with and necessary to the function of the courts. (Nisi Order of Certification, Case No. PERA-R-05-293-E).
4. All of the Security Guards in the unit are hired, disciplined, discharged and directed by the Director of Emergency Services for Bucks County. (N.T. 15, 17, 24).
5. None of the Security Guards in the unit is hired, fired or directed by any court-related row official or the Bucks County Court. (N.T. 18, 24, 25)
6. The Security Guards monitor and protect County property at a variety of locations in the County, including the County Administration Building. (N.T. 11, 13-14).

¹ Although the examiner orally granted the County's Motion at the hearing when it was presented, thereby precluding further hearing on the merits of the charge, a written order on any dispositive decision is required by the Board's regulations, and the Union has twenty (20) days from the issuance of the written proposed decision and order to file exceptions. 34 Pa. Code §§ 95.981(k)(1) & 95.98(a)(1). Accordingly, the order granting the County's Motion is deemed herein granted and will be effective on the date of the issuance of this proposed decision and order.

7. The main courts are located in the County Administration Building and share that building with other County offices. (N.T. 14).

8. The deputy sheriffs are primarily responsible for security within the individual courtrooms, not the Security Guards. (N.T. 22-23).

DISCUSSION

Prior to a hearing to address the substantive allegations in the Union's Charge, the County submitted the Motion, which raised the legal question of whether the employees in the bargaining unit of Security Guards are entitled to interest arbitration under PERA. The examiner entertained the Motion before the hearing on the Charge, as authorized by 34 Pa. Code § 95.91(e), because the disposition of the Motion directly determined whether a hearing on the merits would be necessary.

In its Motion and oral argument in support, the County contends that Security Guards are not court-related employees, as required by Section 805 of PERA. Therefore, argues the County, the Security Guards are not among those three classifications of employees expressly granted the right to proceed to interest arbitration and correspondingly precluded from striking under Section 1001.

Section 604 of PERA provides, in relevant part, 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 guards at prisons and mental hospitals, employees directly involved with and necessary to the functioning of the courts of this Commonwealth, or any individual employed as a guard to enforce against employees 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 employees, each may form separate homogenous employee organizations with the proviso that organizations of the latter designated group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

43 P.S. 1101.604. This Section establishes four narrow classifications of public employees that must be segregated from other public employees and placed into separate bargaining units. However, of the four classifications established in Section 604, only three of those four classifications are granted the statutory right to interest arbitration under Section 805 of PERA, with a concomitant prohibition on the right to strike under Section 1001 of PERA.

Section 805 of PERA provides, in relevant part, as follows:

Notwithstanding any other provisions of this act [PERA] where representatives of units of guards at prisons or mental hospitals or units of employees directly involved with and necessary to the functioning of the courts of this Commonwealth have reached an impasse in collective bargaining and mediation as required in section 801 of this article has not resolved the dispute, the impasse shall be submitted to a panel of arbitrators whose decision shall be final and binding upon both parties

43 P.S. § 1101.805. Section 805 noticeably and deliberately excludes security guards, employed to enforce the employer's rules to protect property and other persons, from the classifications of employees that are entitled to interest arbitration. Moreover, Section 1001 complements Section 805 by establishing that the classifications of employees that

are entitled to interest arbitration under PERA are also the same classifications of employes that are prohibited from striking at any time. Section 1001 provides, relevant part, as follows:

Strikes by guards at prisons or mental hospitals, or employes directly involved with an necessary to the function of the courts of this Commonwealth are prohibited at any time.

43 P.S. § 1101.1001. Even a cursory comparison of sections 805 and 1001 demonstrates that the classification of security guards was intentionally excluded from both sections. Security guards are not entitled to interest arbitration because they are not prohibited from striking at any time.

The Union argues that the Bucks County Security Guards are entitled to interest arbitration as a court-related unit because their job duties, if permitted to have a hearing, would establish that they perform courthouse security and are therefore directly involved with and necessary to the function of the Bucks County Court. However, contrary to the Union's argument, job duties are irrelevant, as a matter of law, in these unfair practice proceedings, for refusing to interest arbitrate, for three reasons: (1) the Board's binding unit certification has already determined that the Security Guards are not court related; (2) only a unit clarification proceeding can change the unit description and designate the Security Guards as court related; and (3) testimony regarding daily job duties would not change the dispositive nature of the record stipulations which clearly establish that courtroom security is not the majority of the duties performed by the Security Guards.

The Board's unit certification for the bargaining unit of Security Guards defines the bargaining unit in a manner that supports the County's position. There is no dispute that the Security Guards are not guards at a prison or a mental hospital. The Board's certification makes no reference to employes who are directly involved with and necessary to the function of the Bucks County Court, which is included in certifications of court-related employes. (Nisi Order of Certification, Case No. PERA-R-05-293-E). In the instant unfair practice proceeding, the examiner is bound by the Board's unit certification, in which the Board has determined that the Security Guards are not directly involved with and necessary to the function of the Bucks County Court. If the Union wishes to place evidence of job duties on the record before a Board hearing examiner in an effort to change the Board's previous determination that the Security Guards are not court-related employes, the proper procedure is the Board's unit clarification procedure. In a unit clarification procedure the Board would entertain evidence of job duties to determine whether the majority of those duties are court related and whether the unit description should be modified accordingly. In the Matter of the Employes of New Castle Area Transit Authority, 14 PPER ¶ 14144 (Final Order, 1983), aff'd, Amalgamated Transit Union, Local 89 v. PLRB, 498 A.2d 485 (Pa. Cmwlth. 1985). In this manner, the Board could, in a proper unit clarification proceeding, revisit its prior determination that the Security Guards are not court-related employes.

The Board and the Courts have repeatedly held that unfair practice proceedings are not the proper proceedings to litigate either the removal of bargaining unit work or the unit placement of employes/positions. City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004); City of Bethlehem v. PLRB, 621 A.2d 1184 (Pa. Cmwlth. 1993); City of Clairton v. PLRB, 528 A.2d 1048 (Pa. Cmwlth. 1986). The Board has emphasized that "[t]he purpose of the unit clarification procedure is to determine whether certain job classifications are properly included in or excluded from a bargaining unit, based upon the actual functions of the job." New Castle, supra (citing School District of the Township of Millcreek v. Millcreek Education Ass'n, 440 A.2d 673 (Pa. Cmwlth. 1982)). The Board has already determined, through its certified description of the Security Guard bargaining unit, that the Security Guards are not court-related employes. Therefore, evidence of job duties in the instant unfair practice proceeding was not relevant to ruling on the Motion, which was dictated by the terms of the Board's binding unit certification. A unit clarification proceeding, to change the description of the bargaining unit, is a condition precedent to any right to interest arbitration. The County, therefore, was entitled to rely on the Board's unit certification and refuse to submit to interest arbitration, as it would justifiably do with any other non-court related unit of County employes. For example, a complaint would not be issued, and no hearing would be necessary, if the instant Charge was

filed by the bargaining unit of employes at Neshaminy Manor, the Bucks County nursing home (PERA-R-6810-E), even if allegations of court-related duties were averred, because the certification of that unit as a non-court-related unit governs the employes' entitlement to interest arbitration, as a matter of law. Indeed, one of the primary purposes of certifying a unit of employes under PERA is to define the nature of the unit such that the employer knows whether it must submit to interest arbitration.

Moreover, the Board, in New Castle, emphasized that the determinative duties are those that the employe(s) perform the majority of the time, in order to determine which unit enjoys the primary relationship to the employes. New Castle, supra. To the extent that courtroom security may qualify the Security Guards for court-related status, the Union has stipulated herein that the deputy sheriffs are primarily responsible for courtroom security. The Security Guards, therefore, are primarily not responsible for courtroom security and may, during the minority of their time, perform some courtroom security functions. Accordingly, evidence that the Security Guards perform some courtroom security functions at this point could not change the result herein obtained. The Security Guards would have to allege and prove that the majority of their duties and time is spent providing courtroom security in order to be considered court-related in a unit clarification proceeding. The stipulations already on this record preclude such a contradictory offering and determination.

Also, the bargaining unit of Security guards was certified on October 26, 2005. The Union waited approximately one-and-one-half years to demand interest arbitration. It appears that the Union is trying to force into interest arbitration that which they could not obtain through bargaining. The Union also seems to be attempting to obtain through the unfair practice process that which may not have been obtainable in the representation and certification procedure. To agree with the Union in this posture, before the bargaining unit is redefined by the Board, would unlawfully expand the classification of employes entitled to interest arbitration in contravention to the express mandate of the General Assembly and PERA.

Furthermore, all of the Security Guards in the unit are hired, discharged and directed by the Director of Emergency Services for Bucks County. None of the Security Guards in the unit is hired, fired or directed by any court-related row official or the President Judge or any other Bucks County Court administrator. The Security Guards monitor and protect County property at a variety of locations in the County, including the County Administration/ courthouse building. However, the deputy sheriffs, not the Security Guards, primarily provide courtroom security. Relative to these stipulations, working at, in or near the courthouse does not, by itself, satisfy the statutory requirement of being "directly involved with and necessary to the functioning of the courts." For example, courthouse maintenance personnel, whose jobs are important to the Bucks County Court and its ability to physically function, are not sufficiently related to the business of the Court, as contemplated by Section 805. Similarly, although important to the physical operations of the Bucks County Court, the Security Guards in this case are not necessary to fulfill the essential business functions and operations of the Court, as required by Section 805. They are not sufficiently involved with the business of the Bucks County Court to satisfy the statutory requirement that they be "directly involved with and necessary to the functioning of the [Bucks County Court]." By contrast, deputy sheriffs, who execute Court orders, serve process, transport prisoners and levy property, in addition to security details, are clearly an integral and necessary component of the business of the Court. The Court could not carry out its essential judicial functions without deputy sheriffs, employes in the prothonotary's office or the office of the register of wills all contributing to the Court's fundamental mission and enterprise. Therefore, the Security Guards are not members of those statutorily designated classes of employes entitled to interest arbitration under Section 805 of PERA and prohibited from striking under Section 1001 of PERA, as previously determined by the Board in certifying the unit as non-court-related.

In response to the Motion, the Union argued that it is entitled to a hearing on its Charge because the Secretary issued a CNH and thereby made a determination that the Union stated a cause of action. However, the Board's hearing examiners are not bound by initial discretionary determinations by the Secretary to issue complaints. West Shore Sch. Dist. V. West Shore Educ. Ass'n, 20 PPER ¶ 20073 (Proposed Decision and Order, 1989). Indeed, hearing examiners of the Board have often concluded that complaints issued by the Secretary

fail to state a cause of action under PERA. Id. The independence of Board's examiners, established by statute and regulations, is necessary to ensure the proper functioning of the Board through independent review and analysis of various decisions and conclusions.

Also, Section 95.91(e) of the Board's regulations authorizes hearing examiners to limit evidence to that which pertains to a motion to dismiss. 34 Pa. Code § 95.91(e). Moreover, Section 95.91(h)(5) of the Board's regulations authorizes independent hearing examiners to "[t]ake action during the progress of a hearing which will properly effectuate the policy of the Act [PERA]." 34 Pa. Code § 95.91(h)(5). Therefore, this examiner was not required by the Secretary's CNH to permit a hearing where the Charge failed to state a cause of action. It was within the authority of the examiner to limit the evidence to that which was relevant to the Motion. It was also within the examiner's authority to effectuate the policies of PERA by granting the Motion. 34 Pa. Code § 95.91(h)(5).

Accordingly, assuming the allegations in the Charge are true, those allegations fail to state a cause of action against the County. Indeed, the County properly refused to proceed to interest arbitration with the Security Guards, and the examiner is without authority to order the County to proceed to interest arbitration before the unit is redefined by the Board. Therefore, the County did not engage in unfair practices in violation of Section 1201(a)(1), (3) or (5) of PERA, and the charge is hereby dismissed.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The County a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The County has not committed unfair labor practices within the meaning of Section 1201(a)(1), (3) or (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifteenth day of October, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner