

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PERA-R-06-508-W  
: (PERA-R-6509-W)  
: (PERA-U-82-676-W)  
ERIE COUNTY :

**FINAL ORDER**

The Erie County Deputy Sheriffs' Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on April 20, 2007, challenging a Proposed Order of Dismissal (POD) issued on April 3, 2007. In the POD, the Hearing Examiner concluded that deputy sheriffs employed by Erie County (County) are not guards within the meaning of Section 604(3) of the Public Employee Relations Act (PERA)<sup>1</sup> and therefore should not be placed in their own bargaining unit separate and apart from the existing court-related bargaining unit represented by the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME). On May 8, 2007, AFSCME filed an Answer in opposition to the exceptions. After requesting and receiving an extension of time to file a brief, AFSCME filed a brief in support of the Answer on June 4, 2007.

The Association filed a Petition for Representation with the Board on October 11, 2006 seeking to represent "All full-time and regular part-time security guards necessary to the functioning of the Court, (Erie County Court of Common Pleas), including but not limited to the Deputy Sheriffs." The Association attached a letter to the petition indicating that the County refused to join the Petition for Representation.<sup>2</sup> On October 26, 2006, the Secretary of the Board issued an Order and Notice of Hearing assigning this case to a Hearing Examiner and scheduling a hearing. Following the hearing, the Hearing Examiner issued the POD.

The facts as found by the Hearing Examiner are briefly summarized as follows: AFSCME has been certified as the exclusive representative of a bargaining unit that includes deputy sheriffs employed by Erie County since March 20, 1975. On July 5, 1983, the Board issued an order that consolidated several bargaining units represented by AFSCME, including the unit that contained the deputy sheriffs, into one single unit of nonprofessional, court-related employees who are not hired, fired or directed by the court. (Finding of Fact Nos. 3 and 4). During a county employee strike in the 1970s the Erie County Court of Common Pleas issued a court order directing the deputy sheriffs to ensure ingress and egress to the courthouse. (Finding of Fact No. 5). In 1980, the deputy sheriffs ensured that people had access to the courthouse while the county prison guards were engaged in informational picketing. (Finding of Fact No. 6). Also in 1980, deputy sheriffs intervened during a strike by county employees when those employees attempted to

<sup>1</sup> That Section provides, in relevant part, as follows:

The board 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 board 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 employee 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. (emphasis added).

<sup>2</sup> In a letter to the Board dated November 17, 2006, the County confirmed that it "is not taking a position regarding which Union will eventually represent the Deputy Sheriffs."

interfere with deliveries to the county jail, which was located in the courthouse. (Finding of Fact No. 7). In 1993, prison guards conducted informational picketing outside the new county jail, and deputy sheriffs were stationed outside during this time. (Finding of Fact No. 8). In 1994, a group of professional employees represented by AFSCME conducted a six-day strike at the County health department. However, deputy sheriffs did not work the picket line or provide security during this strike. (Finding of Fact No. 9). Also, County employees conducted informational picketing for one day sometime between 1995 and 2000. However, deputy sheriffs were not in the vicinity of the picket line. (Finding of Fact No. 10).

The Hearing Examiner concluded that the deputy sheriffs were not guards for purposes of Section 604(3) of PERA because: 1) they were not involved in the more recent instances of labor unrest in the County, 2) the Association failed to prove that their involvement in previous labor unrest among County employees was at the direction of the County Commissioners and 3) the County Commissioners did not assert that they would use deputy sheriffs to protect County property in such situations in the future. Accordingly, the Hearing Examiner dismissed the Petition for Representation filed by the Association.

In its exceptions, the Association argues that the Hearing Examiner erred by failing to make certain findings of fact and by failing to conclude that the deputy sheriffs are guards within the meaning of PERA and therefore are entitled to be represented in a separate bargaining unit.

The Association first argues that the Hearing Examiner erred by failing to make certain findings of fact. However, as we stated in Colonial Intermediate Unit 20 Education Association v. Colonial Intermediate Unit, 36 PPER 36113 (Final Order, 2005), a Hearing Examiner is only required to set forth those facts that are necessary to support the decision and is 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. See Page's Department Store v. Velardi, 464 Pa. 276, 287, 346 A.2d 556, 561 (1975) ("When the fact finder in an administrative proceeding is required to set forth his findings in an adjudication, that adjudication must include all findings necessary to resolve the issues raised by the evidence and which are relevant to a decision."); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988). In this case, after reviewing the record and the Hearing Examiner's POD, the Board concludes that the Hearing Examiner made findings that are based upon substantial evidence of record that were necessary to support his conclusion that the deputy sheriffs are not guards under Section 604(3) of PERA.

In Butler County Deputy Sheriff's Unit v. PLRB, 911 A.2d 218 (Pa. Cmwlth. 2006), the Commonwealth Court recognized that the standard for determining whether deputy sheriffs should be considered guards under Section 604(3) of PERA depends on whether or not the employer supports the petition for representation. When the employer supports the petition, the more relaxed standard set forth in Erie County Area Vo-Tech School v. PLRB, 417 A.2d 796 (Pa. Cmwlth. 1980) applies. Pursuant to that standard, employees will be classified as guards if there is a mere possibility that they will be called to protect the employer's property during a period of labor unrest. In Butler County, the Court explained that:

[t]he rationale behind utilizing a more relaxed standard is that **Section 604(3) is an employer-protection** to ensure that during labor unrest, the employer would have guards to enforce its rules for the protection of property and safety of persons, without being confronted with a division of loyalty between the employer and dissatisfied fellow union members.

Id. at 224 (emphasis added). When the employer does not support the petition, a stricter standard is appropriate. Pursuant to that standard, outlined in Washington County v. PLRB, 613 A.2d 670 (Pa. Cmwlth. 1992) and Franklin County Deputy Sheriff's Association v. PLRB, 885 A.2d 613 (Pa. Cmwlth. 2005), the union must show that the employees were either actually directed by the County Commissioners to protect County property during a past period of labor unrest or there must exist a policy of the County Commissioners that they intend to use those employees in that capacity in the future. In this case, because the

County did not seek to avail itself of the protections provided to it by Section 604(3) by contending that the deputy sheriffs are in fact guards within the meaning of PERA, we agree with the Hearing Examiner that the stricter standard set forth in Franklin County and Washington County must apply.

In Franklin County, the Commonwealth Court held that the County Commissioners must express the intent to utilize the deputy sheriffs to protect county property during labor unrest by other county employes to qualify deputy sheriffs as guards under PERA. The Court made clear that guard status in court settings is only achieved when the necessary security functions are performed at the behest of the County Commissioners and not at the direction of the elected sheriff or pursuant to an order of the court of common pleas. The Court rejected the notion that the elected sheriff could create guard status by either directing deputy sheriffs to guard county property during labor unrest by county employes or by promulgating a policy to use deputy sheriffs as guards in the future. Because the Franklin County Commissioners had not used the deputy sheriffs as guards in the past and there was no clear indication that the County Commissioners would use the deputy sheriffs in a guard capacity in the future, they were found not to be guards. In contrast, in Washington County, it was undisputed that the County Commissioners directed deputy sheriffs to provide security at a picket line during a strike that occurred while the petition was pending before the Board. As such, even though the employer opposed the union's representation petition, the deputy sheriffs were found to be guards.

In this case, the deputy sheriffs were directed by the Court of Common Pleas, as part of an injunction proceeding, to protect county property during a strike in the early 1970s. However, it is well settled that security functions performed by deputy sheriffs that are part of their "court-related" functions cannot be the basis for the conclusion that those employes are guards within the meaning of Section 604(3) of PERA. Franklin County, supra; County of Allegheny v. Venneri (Venneri I), 289 A.2d 523 (Pa. Cmwlth 1972); Venneri v. County of Allegheny (Venneri II), 316 A.2d 120 (Pa. Cmwlth. 1974); Appeal of Deputy Sheriffs Association of Bucks County, 620 A.2d 622 (Pa. Cmwlth. 1993). Thus, because the Court of Common Pleas, not the County Commissioners, directed the deputy sheriffs in this situation, the activity of the deputy sheriffs during this strike does not support the Association's contention that they should be classified as guards.

In 1980 and 1993 the deputy sheriffs were also involved in situations where county employes in the AFSCME bargaining unit were picketing or striking. However, the Association provided no evidence that the County Commissioners directed the activities of the deputy sheriffs. Absent evidence in this regard, the Association failed to show any clear intention by the County Commissioners to use the deputy sheriffs as guards and has thus failed to meet the standard set forth in Franklin County. Further, the uncontroverted evidence shows that the deputy sheriffs were not involved at all during the most recent periods of labor unrest among County employes.

The Association further argues that a provision of the collective bargaining agreement that prohibits the County from subcontracting bargaining unit work requires the County to use the deputy sheriffs as guards in the future. However, as noted above, the Association has failed to prove that the deputy sheriffs were ever directed by the County Commissioners to perform guard duties in the past. Accordingly, guard duties are not presently part of the deputy sheriffs' bargaining unit work. Therefore, the provision in the collective bargaining agreement that prohibits the County from subcontracting the deputy sheriffs' bargaining unit work provides no support for the Association's guard argument here.

The Association also argues that the Hearing Examiner erred by establishing a new element of the test for guard status under PERA that would disregard the actual performance of guard duties that are remote in time. Initially, it should be noted that we agree with the Hearing Examiner that the Association simply failed to provide sufficient evidence that the deputy sheriffs ever performed guard functions at the direction of the County Commissioners during the periods of labor unrest. That failure alone is fatal to the Association's argument that the deputy sheriffs' activity during those periods supports a guard determination. However, the Board and the Courts have in fact cited remoteness in time as a factor in concluding that particular employes are not

guards. Bucks County, supra; Luzerne County, 31 PPER ¶ 31061 (Final Order, 2000), affirmed, No. 648 CD 2000 (Pa. Cmwlth 2000) (unreported opinion), appeal denied, 565 Pa. 562, 771 A.2d 1289 (2000); Westmoreland County, 33 PPER ¶ 33191 (Final Order, 2002), affirmed, 853 A.2d 431 (Pa. Cmwlth. 2004) (unreported opinion), appeal denied, 852 Pa. 720, 872 A.2d 1201 (2005). Accordingly, even though not necessary to the disposition of the issue in this case, remoteness in time is a factor to be considered in the determination of guard status under PERA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Association and affirm the Proposed Order of Dismissal issued by the Hearing 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 by the Erie County Deputy Sheriffs' Association be and the same are hereby dismissed, and 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, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of August, 2007. 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.