

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 the County of Bucks (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 with the Union 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. On October 4, 2007, 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 granted the County's Motion and dismissed the Union's charge. Bucks County Security Guards Ass'n v. Bucks County, 38 PPER 146 (Proposed Decision and Order, 2007) (PDO-1).

The Union filed timely exceptions that were granted by the Board. On December 18, 2007, the Board issued an Order Directing Remand to the Hearing Examiner for Further Proceedings. In the Board's remand order, it directed that a hearing be held to admit and find facts to determine whether the County engaged in unfair labor practices for refusing to proceed to interest arbitration with the bargaining unit of security guards and, therefore, determine whether the bargaining unit of security guards is entitled to interest arbitration. Pursuant to the remand order and after a continuance, a hearing was held on May 29, 2008. During the hearing on that date, both parties in interest were afforded a full opportunity to present testimonial and documentary evidence and cross-examine witnesses. The Board received the parties' timely filed post-hearing briefs on July 23, 2008.

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. (October 4, 2007, N.T. 6: Remand Order).¹
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (October 4, 2007, N.T. 6; Remand Order).
3. In November 2005, the Union requested bargaining. On February 15, 2007, the Union contacted the Bureau of Mediation. On March 5, 2007, the Union submitted a request for interest arbitration to the County's attorney. By letter dated May 20, 2007, the County's attorney refused to participate in interest arbitration with the Union. (N.T. 10-13; Union's Association Exhibits 2 & 3).

¹ "N.T." standing alone shall refer to the notes of testimony from the May 29, 2008 hearing. The notes of testimony from the October 4, 2007 hearing shall expressly include that date immediately preceding the abbreviation "N.T."

4. The security guards in the bargaining unit work at several locations throughout the County including the main administration/courthouse building, the domestic courts building, children and youth services, Neshaminy Manor and other County facilities. The Court does not supervise, direct or control the security guards. The County's Director of Emergency Services and, more immediately, the Director of Security supervise, direct and control the security guards. (N.T. 14, 54-55, 69, 100, 117-120, 129, 144).

5. In the domestic courts building, there are three courtrooms and judges' chambers on the third floor. The conference officers, who handle support matters, are located on the second floor. The masters' offices are in the basement of the domestic courts building. Judges hold formal hearings in the courtrooms in the domestic courts building, and divorce masters hold hearings concerning equitable distribution and child custody matters. (N.T. 14-16, 19-20).

6. The domestic court building is a limited access building, i.e., there is only one entrance/exit for the general public. People entering the building walk through the main door and get on line. Screeners are County employees who operate the screening equipment. They are not members of the bargaining unit of security guards. The guards search and monitor the contents of the bin as well as briefcases and other carried belongings. People are required to empty their pockets into a bin. Each individual walks through a metal detector. The security guards ensure that the entrants are not carrying anything that has not been inspected. Security guards have authority over screeners at inspection stations and control the screening process. Guards make detention and investigation decisions. (N.T. 15, 60-61, 75-76, 93).

7. The security guards have intervened and stopped disorderly conduct and fights that have occurred in the domestic courts building. When the panic alarm is triggered, security guards respond to the origin of the alarm including courtrooms. (N.T. 16, 90-91, 136).

8. Security guards provide protection and security against irate participants in masters' hearings and intervene to arrest or calm litigants one-to-three times per week. Wednesdays are protection-from-abuse days at the domestic courts building. An extra security guard is posted in the building to secure against the heightened level of emotion and anger among the participants in those proceedings. Almost every week there is an incident between the parties in the waiting area on protection-from-abuse days. The parties have hit, spit and yelled at one another. (N.T. 18-19, 23, 28).

9. Security guards respond to medical emergencies with medical gear and oxygen three-to-four times per month within the courtrooms where judges are conducting hearings. Although security guards have responded to specific incidents inside the courtrooms, they are responsible for security outside, not inside, the courtrooms. Neither the judges nor the supervisors of the security guards assign guards inside courtrooms. Security guards also assist deputy sheriffs in ceasing disorderly individuals. (N.T. 20-22, 66-67, 85, 139).

10. Inside the courtrooms, the judges rely on deputy sheriffs to provide courtroom security. The Sheriff and his deputies provide security for the Court. Deputy sheriffs respond to emergencies inside the courtrooms. When serious criminal matters and defendants are in court, the judges will contact the Sheriff's Office to provide additional courtroom security. The security guards do not provide courtroom security. When there was a bomb threat at the main administration/courthouse building, the deputy sheriffs were assigned to search the courtrooms, not the security guards. (N.T. 20, 40, 66-68, 100-102, 121, 123, 143-144).

11. Security Guard Howe is required to stay past the end of his nine-to-five shift until the last judge is out of the building. This occurs approximately twice per week. Security guards have escorted victims and jurors to their cars. (N.T. 23-24, 83).

12. Security guards protect County facilities and persons and property on County property or in County facilities. Security guards protect and assist anyone on County property, regardless of whether they are a judge, a County Commissioner, a County employee, a litigant or visitor. Security guards have provided support to deputy sheriffs in confronting and controlling disorderly persons. (N.T. 25, 28, 36-37, 120, 135, 138, 143).

13. The main administration/courthouse building contains the Court, the offices of the Commissioners and the independently elected row offices. At the main administration/courthouse building, there are two stations to inspect persons and property entering the building. Security guards secure unauthorized weapons detected during the screening process. Security guards and screeners were not posted at the entrance to the main administration/courthouse building or the domestic courts building to conduct searches of persons and their property until 2004. (N.T. 72, 99, 104, 137, 144).

14. Judges, Commissioners and County employes have panic buttons. The panic alarm signal is emitted in the security guard office. Security guards respond to the origin of the panic alarm signals. Security guards patrol all floors of the main administration/courthouse building. (N.T. 80-82, 90-91, 126, 128).

15. The County's refusal to provide general security, as provided by the security guards, would not result in an inability of the Court to perform its business function. (N.T. 105).

DISCUSSION

In its December 18, 2007 remand order, the Board directed that a remand was appropriate for the following reasons:

for the purpose of holding a hearing, making additional findings of fact and issuing a new proposed decision and order. At the hearing, the [Union] shall be permitted to present evidence regarding its contention that the security guards perform court security such that they are directly involved with and necessary to the functioning of the courts and entitled to interest arbitration under Section 805 of PERA.

(December 18, 2007, Order Directing Remand to the Hearing Examiner for Further Proceedings at 2)(emphasis added). The emphasized language of the Board's remand order expressly concludes that certain security duties are directly involved with and necessary to the functioning of the courts and that, if the Union establishes that the security guards perform those duties, they are entitled to interest arbitration. The question, therefore, becomes whether the type, nature and breadth of the duties performed by the security guards in the County of Bucks are "such that they are directly involved with and necessary to the functioning of the courts." (Remand Order at 2). I answer this question in the negative.

Section 203 of the County Code provides that all "corporate power of each county shall be vested in [the] board of county commissioners." 16 P.S. § 203. Section 202 further provides that the corporate power of the commissioners specifically includes the authority to purchase and manage real and personal property. 16 P.S. § 202(3). The Board of Commissioners of the County of Bucks, therefore, and not the Court, is responsible for maintaining, managing, holding, administering and protecting County property under Section 202 of the County Code. The record demonstrates that, pursuant to this statutory authority granted to the Board of Commissioners, the County's Director of Emergency Services and, more immediately, the Director of Security supervise, direct and control the security guards. Under their direction, the security guards protect County property and all persons on County property at several County facilities and locations, whether they are litigants, employes, visitors, jurors, judges, Commissioners or row officials. The Court does not supervise, direct or control the security guards. Therefore, general security for County buildings and property, including buildings which contain courtrooms, is not a Court function.

Inside the courtrooms, where security is necessary to the administration of justice, the judges rely on deputy sheriffs to provide courtroom security. The Sheriff and his deputies provide security for the Court. Deputy sheriffs also respond to emergencies inside the courtrooms. When serious criminal matters and defendants are in court, the judges will contact the Sheriff's Office to provide additional courtroom security. The security guards do not provide courtroom security. When there was a bomb threat at the main administration/courthouse building, the deputy sheriffs were assigned

to search the courtrooms, not the security guards. Accordingly, the security guards, as employees of the County and not the Court, are directly involved with and necessary to the ability of the Board of Commissioners to fulfill its statutory duty to maintain and protect property and persons on that property. However, they are not directly involved with and necessary to the functioning of the Court, which relies on deputy sheriffs for courtroom security necessary for the administration of justice.

The security guards perform general inspection and patrol duties in and around County buildings and property. They provide perimeter security at entrances to County buildings that contain offices for County row officials, Commissioners, administrators and employees as well as courtrooms and judges' chambers. These general security duties to protect patrons, visitors, employees and elected officials on County property are not necessary to the core function of the business enterprise of the Bucks County Court of Common Pleas any more the same perimeter and patrol security is essential to other business enterprises that involves the congregation of people and provide security. The County's refusal to provide general security, as provided by the security guards, would not result in an inability of the Court to perform its business function.

Security Guard Howe is required to stay past the end of his nine-to-five shift until the last judge is out of the building, which occurs approximately twice per week. Security guards have also escorted victims and jurors to their cars.² However, these duties are directly related to the responsibility of security guards to protect all persons on County property as agents and on behalf of the County and its Board of Commissioners. These duties are not directly involved with and necessary to the functioning of the Court. Whether or not County management, in this case, the Director of Security or the Director of Emergency Services, determines that it is in the best interest of the County to make security available for judges until they leave at the end of the day or to make it available for jurors and victims, does not mean that such security is necessary to the functioning of the judicial business operation of the Court. Only the managerial determination of the President Judge and his associate judges are authorized to determine the services, procedures, personnel, duties or security that are necessary to the functioning of the Court, not County Management on behalf of the Board of Commissioners. In this case, the Court, i.e., the President Judge, has not directed that the security guards provide these services on behalf of the Court. Rather the County, as their employer, has directed that the security guards perform the duties of escorting victims and jurors and of working past their normal shift until the last judge leaves the building.

The record shows that the security guards indeed perform very important duties and provide a very important service of security and medical assistant for the County. The analysis of this order is not meant to diminish in any way the important protections provided by and the significant dangers confronted by Security Guards Howe, Wolper and their fellow security guards. Clearly, the visitors, elected officials and employees on County property and in County buildings are more secure with their presence and protection. In this regard, the record shows that the security guards have intervened and stopped disorderly conduct and fights that have occurred in the domestic courts building. When an alarm is triggered, security guards respond to the originating location of the alarm including courtrooms. Security guards respond to medical emergencies with medical gear and oxygen three-to-four times per month within the courtrooms where judges are conducting hearings. Security guards provide protection and security against irate participants in masters' hearings and intervene to arrest or calm litigants one-to-three times per week. Wednesdays are protection-from-abuse days at the domestic court building. An extra security guard is posted in the building to secure against the heightened level of emotion and anger among the participants in those proceedings. Almost every week there is an incident between the parties in the waiting area on protection-from-abuse days. The parties have hit, spit and yelled at one another. However, the security and medical assistance services provided by the security guards are simply not directly involved with and necessary to the core judicial functions and the business operations of the Court. The security guards are duty bound to protect all persons and property in County buildings at the direction of the Director of Emergency Services and the Director of

² Security Guard Howe also testified that judges have requested escort to their cars, but that testimony is inadmissible hearsay.

Security for the County, not the Courts. The Courts may be a beneficiary of the security services provided by the County with its security guard force, but such security is not necessary to the business of the Court.

Also, the County of Bucks was one of the original Pennsylvania counties created by William Penn in November 1682.³ The County Court existed since the colonial era with the Sheriff's deputies, not security guards.⁴ The security guards in the County are relatively recent in the County's three-hundred-plus year history. The County began providing ingress inspection and security with the security guards as recently as 2004. The security guards serve at the pleasure of the Commissioners, not the Court, and serve only as long as the Board of Commissioners desire to be in the professional security business and/or provide security services on County property. It has always been possible to attack elected County officials, employes and citizens within the County buildings prior to the employment of security guards in Bucks County or 2004, when the perimeter security was established. Yet, the Court effectively conducted judicial business without such security because it is not and was not directly involved with and necessary to the Court's judicial function. The security guards, therefore, are not and have not been necessary to the functioning of the Court for the past three-hundred years during which time the Court effectively fulfilled its judicial business operation with deputy sheriffs and without security guards providing general and perimeter security.

In its post-hearing brief, the Union argues that "the Board has certified security guards as court-related. Northampton County, PERA-R-04-[103]-E (Nisi Order of Certification, 4/19/05)." (Union's Post-hearing brief at 5-6). However, the "security guards" in that case were deputy sheriffs who were already court-related as a matter of law and were seeking to form a separate guard unit. The employes' status as deputy sheriffs in Northampton County, not their status as guards, governed the determination that they were court-related. Accordingly, the Northampton case is inapposite.

There is a distinct difference between the deputy sheriffs and the security guards. The deputy sheriffs are directly involved with and necessary to the functioning of the courts for two reasons. As stated in PDO-1:

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.

(PDO-1 at). Therefore, the deputy sheriffs have many court-related duties in addition to security that are essential to the business of the courts and the ability of the courts to effectuate court processes and orders. Moreover, the deputy sheriffs have a distinct and unique type of security detail that separates them from the security guards in this case. The deputy sheriffs directly serve the Court through the Office of the Sheriff. For this reason, the Board has consistently held for many years that deputy sheriffs are court-related. In the Matter of the Employes of Lehigh County, 11 PPER 11028 (Order and Notice of Pre-Election Conference and Order of Dismissal, 1980); In the Matter of the Employes of Berks County, 27 PPER 27110 (Final Order, 1996) (stating that the Judicial Code defines employes of the sheriff's office as court-related personnel).

The deputy sheriffs, not the security guards, transport prisoners and maintain security and control over prisoners, at the direction of the Court, so those prisoners can participate in Court ordered processes in courtrooms under the control of the Court, not the County Board of Commissioners. This unique type of security detail is a necessary part of the business of the court without which the court could not effectively administer justice and effectuate its processes in criminal cases.

³ 117 The Pennsylvania Manual, 6-17 (Commonwealth of Pennsylvania, Department of General Services, 2005).

⁴ Venneri v. County of Allegheny, 316 A.2d 120 (Pa. Cmwlth. 1974) (stating that the office of the sheriff pre-dates the Magna Carta and that the power of the office has been eroded by the judges and court it serves).

The Union also argues that the Board has identified employees as court-related even though those employees work in departments outside the row offices and other offices typically included in court-related units. In support of this argument, the Union cites Lehigh County, supra, wherein the Board concluded that data processing employees were court-related employees because they were "responsible for setting up the machinery to select juries for each term of trial court ten (10) times each year, send notices to citizens who have been selected for jury duty and provide the domestic relations collections department with computer printouts which are used to determine who is delinquent on their court ordered support payments." Lehigh County, 11 PPER at 53. In Lehigh County, the Board opined that it "believe[s] that all employees hired, fired and directed by the Court are by definition directly involved with and necessary to the functioning of the Court within the meaning of Section 604(3) of the Act [PERA]." Id. at 54. The Lehigh Board further held that "the employees in the Juvenile Detention Home and data processing are court-related." Id. It is unclear from the Order in Lehigh County whether the data processing employees or the juvenile detention home employees were hired, fired or directed by the Court. That fact alone would explain their inclusion in a court-related or court-appointed unit. In this case, the record shows that the security guards are hired, fired and directed by the County, i.e., the arm of County government controlled by the Board of Commissioners, and not the Court.

Assuming for purposes of the Union's argument, however, that the data processing and detention home employees were hired, fired and directed by another branch of county government as is the case here with the security guards, those employees, unlike the security guards here, were directly involved with and necessary to the core functions of the business of the court. The work of the data processing employees was essential to the Court's ability to identify and notify jurors (a sine qua non of court business) and the court's ability to identify delinquent court-ordered support payments. Indeed, the Lehigh County Board concluded that, where other employees' duties were not necessary to the court's core business processes, those employees were to be included in a county residual unit rather than a court-related unit. In that case, the Board determined that the maintenance, mailroom and purchasing employees provided support services that were "too remotely connected with the Court," Id. at 54, even though the Court was a direct beneficiary of those services. Similarly, the security guards in this case are employed by the County, not the Court. They provide security for County buildings and property, which are duties that are too remotely related to the core functions of the Court and its essential processes. The fact that the Court relies upon the deputy sheriffs to provide the type of security necessary to the functions and processes of the Court highlights the attenuated relationship between the security guards and the Court. Certainly, the guards have the same relationship to the Court as they do to all other County departments and officials, except the Board of Commissioners, which they directly serve.

The Union further argues that the Board has looked to the Judicial Code⁵ for guidance in determining whether employees are court-related citing the Board's decision in the case of In the Matter of the Employees of Berks County, 27 PPER 27110 (Final Order, 1996). As correctly emphasized by the Union in its brief, the Berks County Board relied on Section 102 of the Judicial Code to determine that employees of the Coroner's Office are court-related employees. This Section provides as follows:

"System." The Unified Judicial System.

"System and related personnel." Personnel of the System and related staff. The term includes district attorneys, public defenders, sheriffs and other officers servicing process or enforcing orders, registers of wills, prothonotaries, clerks of courts, clerks of the orphans' court division, coroners, jury commissioners, probation officials, and their personnel of all the foregoing.

42 Pa. C.S. § 102. The Union further emphasizes that Section 102 defines the term "Related Staff" as follows: All individuals employed at public expense who serve the unified judicial system, but the term does not include personnel of the system." 42 Pa. C.S. § 102. The Union contends that the evidence of record establishes that "[t]he

⁵ Act of July 9, 1976, P.L. 586, No. 142, as amended, 42 Pa. C.S. §§ 101 et seq.

security guards are employed at the public expense and serve the courts." (Union's Post-hearing Brief at 6-7). Although the Union has identified and applied the proper standards, its application of the facts to the law is incorrect. Under this analysis, the security guards, to be court related, must be both (1) employed at the public expense and (2) serve the courts. Although not explicit, a similar analysis produced the consistent results in Lehigh County where the Board concluded that the data processing employees were court related because they served the court.

Here, while the security guards are indeed employed at the public expense, the record does not establish that they serve the Court. The security guards serve the Board of County Commissioners to protect County buildings, County property and the elected officials, visitors and employees in County buildings. The judges of the Court in the County of Bucks are mere beneficiaries of this service as are other elected officials, visitors, litigants and employees. The services in question are not directly involved with and necessary to the functioning of the Court any more than they are directly involved with and necessary to the functioning of the Coroner's Office.

Also, the Union has not established facts necessary to support the requisite elements of a discrimination claim under Section 1201(a)(3). Accordingly, the County has not engaged in unfair practices under Section 1201(a)(1), (3) or (5) for refusing to proceed to interest arbitration under Section 805 of PERA with the bargaining unit of security guards because the guards are not directly involved with and necessary to the functioning of the Court in the County of Bucks.

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

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, 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, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner