

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-R-08-74-W
 :
 ALLEGHENY COUNTY :

PROPOSED ORDER OF DISMISSAL

On May 29, 2008, the Allegheny County Deputy Sheriffs' Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation under the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) seeking investigation of a question of representation and certification of a representative designated or selected for the purpose of collective bargaining by deputy sheriffs employed by Allegheny County (County) and the Sheriff of Allegheny County (Sheriff). On June 11, 2008, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on July 8, 2008. The hearing was held as scheduled. The hearing examiner afforded the parties a full opportunity to present evidence and to cross-examine witnesses. On August 29, 2008, the County filed a brief by deposit in the U.S. Mail. On September 2, 2008, the Association filed a brief by deposit in the U.S. Mail. The Sheriff did not file a brief.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. The Board has certified the Association under the Public Employee Relations Act (PERA) as the exclusive representative of a bargaining unit that includes deputy sheriffs employed by the County and the Sheriff. (Case Nos. PERA-R-3560 and 4401-W)
2. The primary duties of the deputy sheriffs are directly related to the operation of the courts in the County. They include providing security for the courts, serving process for the courts, executing warrants for the courts and transporting prisoners for the courts. (N.T. 26, 31, 36, 42-45, 50-51, 75, 82, 92-93, 113-134, 142-143, 148, 156-157)
3. The deputy sheriffs are required by the Sheriff to attend training provided by the Municipal Police Officers' Education and Training Commission (MPOETC), are identified by MPOETC as police officers, carry firearms outside the court house, are expected by the Sheriff to exercise their arrest powers, have made arrests for crimes committed in their presence, have shared intelligence and participated on task forces with the County's District Attorney, the Drug Enforcement Administration and the Federal Bureau of Investigation and have backed up and substituted for municipal police officers. (N.T. 21-22, 24, 26-29, 32-38, 46-49, 82-83, 90, 100, 102, 107-110, 114, 149, 151-153; Association Exhibits 1-2).

DISCUSSION

The Association has petitioned to represent deputy sheriffs as police officers under Act 111. The Association is currently certified as their exclusive representative under the PERA. See finding of fact 1. According to the Association, because our Legislature has amended the Pennsylvania Crimes Code and the Municipal Police Education and Training Law to classify deputy sheriffs as police officers and because they exercise police powers, the Board must find them to be police officers under Act 111.

The Association cites Hartshorn v. County of Allegheny, 460 Pa. 560, 333 A.2d 914 (1975), in support of its contention. In that case, the court held that the County's detectives were police officers under Act 111 because our Legislature classified them as police officers under the Second Class County Code.

The Association also presented evidence that the Sheriff requires the deputy sheriffs to attend training as police officers (N.T. 21-22, 46-49), that they carry identification identifying themselves as police officers (N.T. 22; Association Exhibit

1), that they carry firearms (N.T. 24), that the Sheriff expects them to exercise their arrest powers (N.T. 35-37, 107-109, 149, 151-153), that they have made arrests for crimes committed in their presence (N.T. 26, 29-30, 102-104, 109-110; Association Exhibit 2), that they have shared intelligence and participated on task forces with the County's District Attorney, the Drug Enforcement Administration and the Federal Bureau of Investigation (N.T. 27-29, 38, 114) and that they have backed up and substituted for municipal police officers (N.T. 32-35, 100, 165).

The County contends that the deputy sheriffs are not police officers under Act 111 because their primary duties are directly related to the operation of the courts in the County. The County cites Venneri v. County of Allegheny, 316 A.2d 120 (Pa. Cmwlth. 1974) (Venneri II), and Allegheny County Deputy Sheriff's Association v. Commonwealth of Pennsylvania, PLRB, 504 A.2d 437 (Pa. Cmwlth. 1986), in support of its contention.

In Venneri II, the court held that the deputy sheriffs were public employes under the PERA, not police officers under Act 111. As the court explained, even though they exercised police powers, they did not effectively act as police because their primary duties were directly related to the operation of the courts in the County. In the words of the court:

"The record discloses that prior to the present sheriff's tenure of office, the operation of the sheriff's office was almost entirely related to court activities. The present sheriff has changed the scope of direction and operation of his office so as to include broader police work. There are 102 deputy sheriffs in Allegheny County. The office is regimented in the traditional military-police method of command. The deputy sheriffs wear uniforms, carry sidearms, and are required to attend police training courses. Under the present sheriff's direction, the deputy sheriffs are even involved in plain-clothes investigatory work whereby they have made hundreds of arrests for burglary, blackmail, extortion, gambling, and narcotics criminal violations. By private contract, the deputy sheriffs provide protection for the operators and riders of the County's public authority transportation system. There can be no doubt that all of this evidence points to present activities by deputy sheriffs which are within the realm of authority and power of policemen.

Nonetheless, the record also discloses that the deputy sheriffs' primary duties are directly related to the operation of the courts in Allegheny County. Deputy sheriffs are daily assigned duties in all of the divisions of the Common Pleas Court. Many of their duties may be considered dangerous. They escort prisoners, keep order, protect judges, serve notice on litigants, provide security in the courthouse, carry out orders and warrants issued by judges, enforce injunctions and perform 'other duties as may be assigned by the court.'

316 A.2d at 124 (emphasis in original). As the court further explained, they were not legislatively authorized to act as police because "[e]ven a cursory legislative review leaves no doubt that the bulk of legislation dealing with the sheriff pertains to court related activities." Id. at 126 (footnote omitted). In addition, the court wrote that "the existing sheriff's views and intentions cannot control the law with respect to whether his deputies are in fact policemen." Id. at 127.

In Allegheny County Deputy Sheriff's Association, the court found no change in the facts or the law to warrant a departure from its holding in Venneri II. As to the facts, the court explained as follows:

"The sheriff's office has continued to perform the same police-type functions. These include plainclothes investigatory work; patrol of the County's public transit system; replacing absent police officers to augment the police force; and providing security for V.I.P.'s in Allegheny County. However, the record also indicates that the deputy sheriffs have maintained their traditional status as an arm of the Allegheny County judicial system, implementing various court-related processes.

Since Venneri II the only other duties have involved the institution of public safety programs, undercover work with a drug enforcement task force connected with the Federal Drug Enforcement Administration for approximately four years and undercover work with a

related homicide investigative unit. We hold that these new responsibilities are not sufficient in either quality or quantity to justify a conclusion that the deputy sheriffs' status rises to the level of police under Act 111."

504 A.2d at 439 (footnotes omitted). As to the law, the court explained as follows:

"We reject the Association's alternative argument that the legislature has in the interim granted general police powers to deputy sheriffs. In particular, it notes Section 10(a) of the Second Class County Code (Code), which provides that a deputy sheriff can be 'reduced in rank, suspended, furloughed or discharged . . . [for] conduct unbecoming a police officer' (Emphasis added.) It is well-settled that '[w]hen vesting a group with police powers and duties, the Legislature does so with specificity.' Commonwealth v. Pennsylvania Labor Relations Board, 64 Pa. Commonwealth Ct. 525, 441 A.2d 470, 475 (1982); aff'd in part, rev'd in part, Commonwealth v. Pennsylvania Labor Relations Board, 502 Pa. 7, 463 A.2d 409 (1983). The deputy sheriffs are not specifically vested with police powers and Section 10(a) does not provide this authority. Sections 7 and 14 of the Code merely reaffirm the role of deputy sheriffs as court-related officers who may be called upon for limited police support. Moreover, the deletion of the last sentence in Section 2(b) of House Bill No. 101, which stated that 'all reference to the police force shall be deemed to include the force of deputy sheriffs,' clearly indicates that the legislature chose to distinguish deputy sheriffs from policemen."

Id. at 439-440 (footnotes omitted).

The Sheriff agrees that the deputy sheriffs are police officers (N.T. 108) but has taken no position on their status under Act 111 (N.T. 5).

In Cambria County Deputy Sheriffs Association v. PLRB, 799 A.2d 957 (Pa. Cmwlth. 2002), the court reiterated the test for deciding who is a police officer under Act 111, as follows:

"Although not specifically set forth in earlier cases involving the issue of who is or is not a police officer within Act 111, the PLRB and the courts apply a two-part test that requires the particular employees (1) be legislatively authorized to act as police, and (2) effectively act as police."

Id. at 961.

The deputy sheriffs do not meet either part of the test. Accordingly, the petition must be dismissed.

As noted above, the court held in Venneri II and Allegheny County Deputy Sheriff's Association that the deputy sheriffs were not legislatively authorized to act as police. Thus, as to the first part of the test, unless the amendments to the Pennsylvania Crimes Code and to the Municipal Police Training and Education Law referenced by the Association dictate otherwise, the same result as in Venneri II and Allegheny County Deputy Sheriff's Association must obtain.

Under the amendment to the Pennsylvania Crimes Code, a "police officer" is now defined as including

"deputy sheriffs of a county of the second class who have successfully completed the requirements under the act of June 18, 1974 (P.L. 359, No. 120), referred to as the Municipal Police Education and Training Law,"

18 Pa.C.S.A. § 103. Under the amendment to the Municipal Police Education and Training Law, a "police department" is now defined as including "the sheriff's office in a county of the second class" and a "police officer" is defined as including "[a] deputy sheriff of a second class county." 53 Pa.C.S.A. § 2162.

According to the Association, the amendments to the Pennsylvania Crimes Code and to the Municipal Police Education and Training Law show that our Legislature vested the deputy sheriffs with general police powers as it did with the detectives in Hartshorn. A close review of the amendments do not show that to be the case, however. In the case of

the detectives in Hartshorn, our Legislature authorized them under the Second Class County Code to be "general police officers" with "all powers now conferred on constables by existing laws of the Commonwealth, so far as they relate to crimes and criminal procedure[.]" 16 P.S. § 4440(b). By contrast, the amendments to the Pennsylvania Crimes Code and to the Municipal Police Education and Training Law are noticeably silent as to any powers the Legislature may have thereby conferred on the deputy sheriffs. Moreover, as noted above, in Allegheny County Deputy Sheriff's Association, the court rejected an argument by the Association that a similar amendment to the Second Class County Code vested the deputy sheriffs with general police powers.

Thus, the amendments to the Pennsylvania Crimes Code and to the Municipal Police Education and Training Law provide no basis for finding the deputy sheriffs to be police officers under Act 111. The same result as in Venneri II and Allegheny County Deputy Sheriff's Association therefore obtains. See also Cambria County Deputy Sheriffs Association, supra (despite their arrest powers under common law, deputy sheriffs were not police officers under Act 111 because they were not legislatively authorized to act as police officers); County of Lebanon v. PLRB, 873 A.2d 859 (Pa. Cmwlth. 2005)(despite referencing fire fighting training for hazmat employes, the Hazardous Material Planning and Response Act provided no basis for finding that they were legislatively authorized to act as fire fighters under Act 111).

As noted above, the court held in Venneri II and Allegheny County Deputy Sheriff's Association that the deputy sheriffs did not act effectively as police because, even though they exercised police powers, their primary duties were directly related to the operation of the courts in the County. Thus, as to the second part of the test, unless the facts have changed, the same result as in Venneri II and Allegheny County Deputy Sheriff's Association must obtain.

As set forth in finding of fact 2, the record shows that the primary duties of the deputy sheriffs continue to be directly related to the operation of the courts in the County. Thus, even though the record also shows that they continue to exercise police powers, see finding of fact 3, there is no basis for finding that they effectively act as police. The same result as in Venneri II and Allegheny County Deputy Sheriff's Association therefore obtains.

CONCLUSIONS

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

1. The deputy sheriffs are not police officers under Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in pari materia with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the petition is dismissed.

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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED and MAILED from Harrisburg, Pennsylvania, this seventeenth day of September 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner