

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PF-R-07-160-W
: :
ALLEGHENY COUNTY :

FINAL ORDER

On January 31, 2008, the Allegheny County Deputy Sheriffs' Association (Association) filed timely¹ exceptions to the January 11, 2008 decision of the Secretary of the Pennsylvania Labor Relations Board (Board) declining to direct a hearing on a Petition for Amendment of Certification filed by the Association. In its petition, the Association seeks to represent a bargaining unit of deputy sheriffs employed by Allegheny County (Employer) as policemen under Act 111 of 1968, as read in pari materia with the Pennsylvania Labor Relations Act (PLRA). The Association currently represents the deputy sheriffs under the Public Employee Relations Act (PERA) pursuant to a Nisi Order of Certification issued on April 3, 1975 at Case Nos. PERA-R-3560-W and PERA-R-4401-W.

In the decision dismissing the Association's petition, the Board Secretary noted that by letter dated December 24, 2007, the Board requested that the Association amend its petition² to provide certain information. However, rather than simply amending its petition as requested, the Association filed a Petition for Amendment of Certification. In dismissing the Petition for Amendment of Certification, the Secretary reasoned that: 1) the Association failed to provide the names, addresses and telephone numbers of the parties involved; 2) the Association failed to include a description of the unit deemed to be appropriate; and 3) the Board has already determined, in a case involving the Association and this very bargaining unit, that where a request is made to certify a bargaining unit under Act 111 that is currently certified under PERA, a petition for representation, not a petition for amendment of certification, must be filed. See In the Matter of the Employees of Allegheny County, 33 PPER ¶ 33175 (Final Order, 2002). The Secretary further stated that, upon the filing of a proper petition for representation, the case may proceed to a hearing, if necessary, and an election for the purpose of determining whether fifty (50) percent or more of the police employees in a unit found to be appropriate by the Board desire to be represented by the Association for the purpose of collective bargaining under Act 111.

In its exceptions, the Association contends that it is not requesting an election, but only the amendment of its current certification under PERA to reflect the fact that the deputy sheriffs are "policemen" within the meaning of Act 111 and are represented by the Association. However, as noted by the Secretary, the Board has already addressed and rejected the Association's argument that an employe organization may create a bargaining obligation for an employer under Act 111 by filing a petition to amend an existing certification under PERA. Allegheny County, supra. In Allegheny County, the Board relied on Commonwealth of Pennsylvania (Office of Attorney General), 33 PPER ¶ 33026 (Final Order, 2001), where the Board likewise rejected a request by an employe organization certified under PERA to merely amend its certification to obtain bargaining rights under

¹ Although the Board received the Association's exceptions on February 4, 2008, a United States Postal Form 3817 Certificate of Mailing, dated January 31, 2008, was received under separate cover. Section 95.98(a)(1) of the Board's regulations provides, in relevant part, that "[e]xceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions." 34 Pa. Code § 95.98(a)(1).

² The Association's original filing, which was not filed on the Board's pre-printed forms, was styled as a "Petition for Certification" and included a showing of interest among the employes in the petitioned-for unit.

Act 111. In Office of Attorney General, the Board held that the proper procedure to secure Act 111 bargaining rights is "by filing an appropriate representation petition under Act 111." 33 PPER at 57, citing Commonwealth of Pennsylvania (Capital Police), 10 PPER ¶ 10101 (Order and Notice of Pre-Election Conference, 1979), affirmed in relevant part sub nom. Commonwealth of Pennsylvania v. PLRB and FOP, 502 Pa. 7, 463 A.2d 409 (1983). Therefore, in order to gain bargaining rights under Act 111, the Association must file a representation petition under Act 111. Because this case involves the same parties and the same issue that was decided contrary to the Association's position in Allegheny County, the Association is barred by the doctrine of res judicata from re-litigating this same issue. Wilkes v. Phoenix Home Life Mutual Insurance Co., 587 Pa. 590, 902 A.2d 366 (2006).

The Association also raises several other issues in its exceptions that have been previously rejected by the Board. First, the Association argues that the Board Secretary did not have the authority to dismiss its petition. Rather, the Association argues that, pursuant to 34 Pa. Code § 95.81(b), the only type of action the Secretary may peremptorily dismiss is a charge of unfair practices. However, in Chester Township, 21 PPER ¶ 21090 (Final Order, 1990), affirmed sub nom. Charley v. PLRB, 583 A.2d 65 (Pa. Cmwlth. 1990), the Board dismissed a similar argument, stating as follows:

[t]he Petitioner contends that the Board's Rules and Regulations give the Secretary no authority to refuse to direct a hearing. Consistent with Section 7 of the PLRA, **section 95.81(b) of the Board's Rules and Regulations grants the Secretary the authority to issue orders directing and fixing time and place of initial hearings and, with the authority to direct hearings, comes the authority to decline where appropriate. The Secretary's authority to decline to direct a hearing in Board cases has been recognized by the appellate courts of the Commonwealth.** See Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978); Avery v. PLRB, 97 Pa. Commonwealth Ct. 160, 509 A.2d 888 (1986); Delaware County Lodge No. 27, FOP v. PLRB, 75 Pa. Commonwealth Ct. 192, 461 A.2d 1337 (1983). The suggestion that the Board, through its Secretary, lacks authority to initially dismiss petitions which are as a matter of law inappropriate is absurd. Petitions are frequently time barred, contract barred, inadequately supported, filed for an inappropriate unit or, as in this case, filed when outstanding unfair practices have not been remedied. In such circumstances where necessary elements to the timely filing of a representation matter are absent, it is the duty of the Secretary to dismiss a representation or decertification petition.

Id., 21 PPER at 228 (emphasis added). Because the Secretary has the authority to decline to direct a hearing in representation proceedings, the Board rejects the Association's exceptions in this regard.

The Association also argues that it is not requesting an election, but only a clarification as to the applicability of Act 111 to this bargaining unit and that it seeks this information in preparation for its next round of bargaining with the Employer. In Aliquippa School District, 13 PPER ¶ 13033 (Final Order, 1982), the employer similarly sought an advisory opinion regarding the scope of the duty to bargain. The Board rejected the employer's request and noted that the employer failed to cite any authority indicating that the Board had jurisdiction to render advisory opinions. Similarly, in this case, the Board declines to direct a hearing on the issue of whether the bargaining unit employees are policemen for the purposes of Act 111 in the absence of a properly filed petition for representation.

The Association also argues that the Secretary's decision is inconsistent with Commonwealth v. FOP, 525 Pa. 40, 575 A.2d 94 (1990), which allegedly stands for the proposition that, upon a 50% showing of interest, the duty to bargain under Act 111 is automatic. First, it is important to note that both the Board and the Commonwealth Court have rejected this exact argument. Jefferson-Penn Police Department v. Jefferson-Penn Police Commission, 19 PPER ¶ 19158 (Final Order, 1988); Roof Garden Lodge No. 98, FOP v. PLRB, 685 A.2d 658 (Pa. Cmwlth. 1996). Furthermore, it is clear, as explained by the Commonwealth Court in Roof Garden Lodge No. 98, FOP, supra, that in the FOP case, the Supreme Court simply noted that whereas PERA requires Board certification of employe

representatives, Act 111 does not. Thus, a labor organization under Act 111 need not obtain Board certification to secure bargaining rights under the Act, but may secure such rights through voluntary recognition by the employer. The FOP case cited by the Association has no applicability here, however, because the Association does not claim that it was voluntarily recognized by the County for purposes of bargaining under Act 111.

The Association further argues that the Secretary's decision is inconsistent with Allegheny County Deputy Sheriffs' Association v. PLRB, 504 A.2d 437 (Pa. Cmwlth. 1986), in which "there was no need for a certification or decertification election or 'showing of interest'". (exceptions at 2). Contrary to the Association's contention, a showing of interest was filed by the Association in that case. Further, the reason there was no election was that the Board dismissed the Association's petition for representation after determining that the Association failed to establish at a hearing that the employees at issue were policemen for purposes of Act 111. The Board directed a hearing in that case because the Association filed a petition for representation seeking to represent the employees under Act 111. Had the Board concluded that the employees were policemen under Act 111, the Board would have directed an election. However, the Association failed to carry its burden and the petition for representation was dismissed. Clearly, this case does not support the Association's position that the Secretary erred in declining to direct a hearing.

The Association finally argues that its failure to specify an appropriate bargaining unit was not a proper basis for the Secretary to decline to direct a hearing because "[t]he bargaining unit, which has existed in un-changed composition since 1972, remains the same, nor has there been any request to change the bargaining unit." (Exceptions at 2). However, it should be noted there is a difference between units organized under PERA and those organized under Act 111. For example, PERA excludes supervisors from rank-and-file bargaining units, whereas Act 111 contains no such exclusion. Only those employees who meet the criteria for managerial employees set forth in FOP, Star Lodge, No. 20 v. PLRB (Star Lodge), 522 A.2d 697 (Pa. Cmwlth. 1987), affirmed, 522 Pa. 149, 560 A.2d 145 (1989), are excluded from Act 111 units. See Pennsylvania State Troopers Association v. Pennsylvania State Police, 30 PPER ¶ 30132 (PDO, 1999). As such, the Secretary was correct to require the Association to state its position regarding which employees should be included in a unit organized under Act 111.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Association and make the Secretary's decision declining to direct a hearing on the Petition final.

In view of the foregoing and in order to effectuate the policies of Act 111 of 1968 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Association are hereby dismissed and the Secretary's decision declining to direct a hearing on the Petition be and the same 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 eighteenth day of March, 2008. 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.