

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-R-07-456-W
: :
WESTMORELAND COUNTY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On October 25, 2007, the Westmoreland County Court Related Employees Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a rival petition for representation pursuant to the Public Employee Relations Act (PERA) alleging that thirty per cent or more of the non-professional, court-appointed (hereinafter court-appointed) employees of Westmoreland County (County) wish to be exclusively represented by the Association. The Service Employees International Union, Local 668 (SEIU) is the incumbent union currently certified as the exclusive bargaining representative of these employees. (Case No. PERA-R-2040-W). On November 2, 2007, the Secretary of the Board issued an Order and Notice of Hearing (ONH) directing that a hearing be held on Tuesday, December 4, 2007. The hearing examiner thereafter continued the hearing at the request of the Association without objection from SEIU and scheduled the hearing for Wednesday, December 12, 2007. The hearing was in fact held on December 12, 2007. Both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On December 18, 2007, the notes of testimony from the hearing were filed with the Board. On January 4, 2008, the Association filed a post-hearing brief. On January 9, 2008, SEIU filed its post-hearing brief. The County has not filed a post-hearing 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. On January 2, 1973, the Board certified SEIU as the exclusive collective bargaining representative of all court-related employees at Case No. PERA-R-2040-W. The Board subsequently amended that certification at Case No. PERA-U-92-649-W to separate the court-related and court-appointed employees into two bargaining units. In its Final Order of Certification, issued on January 2, 1973, the Board concluded that the County was a public employer within the meaning of Section 301(1) of PERA. The County's status as a public employer has not been challenged herein. (Case No. PERA-R-2040-W).

2. SEIU is an employee organization within the meaning of Section 301(3) of PERA. (Case No. PERA-R-2040-W; Case No. PERA-U-92-649-W).

3. The unit appropriate for collective bargaining is a subdivision of the employer unit comprised as follows:

All full-time and regular part-time nonprofessional employees who are directly involved with and necessary to the functioning of the courts and who are hired, fired, and directed by the courts including but not limited to employees in the following departments or offices: Common Pleas Court Staff, Delinquent Cost, Domestic Relations, Magistrates, Juvenile Probation Office, Law Library, Parole Office; and excluding irregular part-time employees, management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act. (N.T. 5-6).

(Case No. PERA-R-2040-W; Case No. PERA-U-92-649-W).

4. The collective bargaining agreement between the County and SEIU expired on December 31, 2005. (N.T. 24; Board Exhibit 1; Joint Exhibit 3, p.1).

5. On September 19, 2006, the Board issued a Submission of Arbitration Panel for County and SEIU to select a neutral arbitrator and submit their disputed bargaining issues for both units to an interest arbitration panel. The interest arbitration hearings before the interest arbitration panel were held on the following dates in 2007: May 22nd and 23rd, and July 2nd 3rd and 11th. The parties also stipulated and agreed that executive sessions among the panel members were held on the following dates in 2007: August 9th and 15th and September 19th. (N.T. 8-9; Joint Exhibit 1).

6. On October 23, 2007, Deputy Sheriff Steven Felder initiated contact with Eric Stoltenberg, Esquire via telephone. Thereafter, on the same date, Deputies Steven Felder, Eric St. Clair, Louie Martino and Sheriff's Department employe Tracey Dawson held an in-person meeting with Attorney Stoltenberg to discuss changing union representation for both the court-related and the court-appointed bargaining units. As a result of that meeting, Deputy Felder contacted Jackie Lucchetti, a secretary in District Justice James Albert's office and an SEIU steward for the court-appointed unit, as well as employes in seven row offices to determine their interest in forming an association and severing their relationship with SEIU. (N.T. 16-18, 22-25, 29-30, 34).

7. Jackie Lucchetti made calls to other district justice offices in the County. She contacted employes in Adult Probation, the District Attorney's Office and the Domestic Relations Office. Ms. Lucchetti also participated in organizing employes to support the Association to further economic matters and grievances on behalf of employes. (N.T. 36-37).

8. Deputy Felder and other employes collected \$20.00 per employe in both the court-related and court-appointed units who supported the rival Association and distributed showing-of-interest forms. Some employes paid the twenty-dollar representation fee with checks made payable to Jackie Lucchetti and Deputy Felder individually. On behalf of supporting employes, Deputy Felder opened a bank account for the purpose of paying Attorney Stoltenberg's retainer for the legal representation of the Association. Payments from this account require both signatures of Jackie Lucchetti and Tracey Dawson. (N.T. 18-19, 26-28).

9. On behalf of the employes in the court-related and court-appointed bargaining units, Deputy Felder retained Attorney Stoltenberg utilizing the funds collected from the employes. The Association's attorney selected the name for the new rival union for both bargaining units as the "Westmoreland County Court-Related Employees Association." The showing-of-interest cards presented to and signed by the supporting employes had the name of the Association printed on it. On October 25, 2007, Attorney Stoltenberg, in the name of the Association, filed the rival representation petition in Case No. PERA-R-07-455-W on behalf of the court-related employes, and he filed the rival representation petition in Case No. PERA-R-07-456-W on behalf of the court-appointed employes. The Association does not have bylaws or elected officers at this time. (N.T. 16-29, 34; Board Exhibits 1 & 2).

10. At the time of the filing of the rival petition, Deputy Felder and other employes were uncertain when a final and binding interest arbitration award would be executed, and they decided not to wait any longer to change representatives due to the long time since contract expiration. (N.T. 32).

11. The showing of interest cards filed with the Board in support of the representation petition establish a thirty percent or more showing of interest in support of the Association resulting in the Board issuing the November 2, 2007, ONH. (Board Exhibit 3).

12. Attorney Stoltenberg was also present at the December 12, 2007 hearing in this case as the advocate/representative on behalf of the Association. (N.T. 2-50).

13. On November 7, 2007, the neutral arbitrator of the interest arbitration panel, Howard Grossinger, signed a proposed interest arbitration award. On November 9, 2007, the partial arbitration panel members signed the proposed interest arbitration award, which is not recognized as a valid interest award by the Association. All signatures were placed on the proposed interest award after the Board issued the November 2, 2007, ONH. (N.T. 8-9; Joint Exhibit 3).

DISCUSSION

The incumbent union, SEIU, challenges the rival representation petition filed by the Association and advances the following two theories: (1) the Association does not qualify as an employe organization as required by PERA and (2) there should be a contract bar precluding the Association's representation petition due to the fact that SEIU and the County were awaiting a proposed decision from neutral interest arbitrator Grossinger.

As an initial matter, neither the County nor SEIU has raised any issues concerning the community of interest of the unit employes or the description of the existing unit. The Board has held that when a rival union, such as the Association here, petitions to represent a bargaining unit of employes already defined by a previous certification of the incumbent union, the description of the existing bargaining unit is presumed appropriate. Midwestern Intermediate Unit IV v. PLRB, 16 PPER ¶ 16109 (Court of Common Pleas of Butler County, 1985)(stating that "absent showing of changed circumstances with regard to the duties performed by the employes at issue it has been the PLRB's consistent policy upon petition by a rival union claim of representation to observe the appropriateness of units previously certified by the PLRB")(citation omitted). There has been no showing of changed circumstances on this record. Therefore, the description of the court-appointed bargaining unit remains as described by the Board in Finding of Fact No. 3 and in Case No. PERA-U-92-649-W.

Employe Organization

Section 301(3) of PERA defines the term "employe organization" in the following manner:

"Employe organization" means an organization of any kind, or any agency or employe representation committee or plan in which membership includes public employes, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment, or conditions of work but shall not include any organization which practices discrimination in membership because of race, color, creed, national origin or political affiliation.

43 P.S. § 1101.301(3). In PLRB v. Independent Union of Professional, Technical and General Service Employees, 13 PPER ¶ 13253 (Final Order, 1982), the Board opined that "the Act does not require any specific organizational structure as long as the 'employe organization' exists for the purpose of representing employes in matters relating to their employment." Id. at 481 (citing In the Matter of the Employes of the Court of Common Pleas 26th Judicial District (Columbia & Montour Counties), 7 PPER 36, (Order and Notice of Election, 1976)). The Board, in Independent Union, further reiterated what is now a longstanding rule that public employes who perform the following have formed an employe organization within the meaning of Section 301(3) of PERA: distributed and collected authorization, membership or showing-of-interest cards; filed a representation petition with the Board; and have an individual acting on behalf of employes to further their interests in collective bargaining. Id. Also, the retention of an attorney by a group of employes is another factor weighing in favor of concluding that the employes have formed an employe organization within the meaning of PERA. Independent Union, 13 PPER at 481. In Midwestern Intermediate Unit IV, the Court of Common Pleas of Butler County adopted the Board's interpretation of PERA and noted that "the uncontroverted evidence that the Federation had solicited authorization cards, had petitioned for an election, and was represented at the hearing by counsel is sufficient evidence for this court to conclude that the Federation is an employe organization." Id. at 284.

The liberal definition of "employe organization" contained in PERA as explained in Board case law makes clear that an employe organization exists anytime a group of employes comes together for the purpose of advancing their collective bargaining rights and interests under PERA. Section 101 of PERA provides that one of the best ways to serve the public policy of PERA, i.e., to promote harmonious relationships between public employers and their employes, is by "granting to public employes the right to organize and choose freely their representatives." 43 P.S. § 1101.101 (emphasis added). An "employe organization" is an organization of "any kind" and may consist merely of a "plan." 43 P.S. § 1101.301(3). PERA, therefore, contemplates a very simple, informal and

expedient process to enable employees, perhaps without any labor law experience or training, to effectuate their common goal of choosing, forming or creating representative organizations to advance their collective bargaining rights under PERA. When employees agree to have their employment interests advanced as a collective, they have indeed "organized" and the chosen representative or "plan" taking steps to further those interests is an "employee organization."

The uncontradicted, credible testimony of Deputy Felders and Jackie Lucchetti establishes that the Association exceeds the minimal criteria necessary to qualify as an employee organization under Section 301(3) of PERA. Deputy Felder and three other employees, on October 23, 2007, met with Attorney Stoltenberg to provide legal representation for the Association on behalf of the court-related and court-appointed employees. As a result of that meeting, Deputy Felder contacted Jackie Lucchetti, a secretary in District Justice James Albert's office and an SEIU steward for the court-appointed unit, as well as employees in seven row offices to determine their interest in forming an association and severing their relationship with SEIU.

Deputy Felder organized the collection of twenty dollars each from supportive employees, in both the court-related and the court-appointed units, to finance the Association's endeavors to obtain legal representation for the employees. On behalf of supporting employees, Deputy Felder opened a separate bank account for the purpose of paying Attorney Stoltenberg's retainer for the legal representation of the Association. Payments from this account require the signatures of both Jackie Lucchetti and Tracey Dawson. Deputy Felder and others distributed and then collected showing-of-interest cards, which were signed by thirty percent or more of the employees in each of both bargaining units. Jackie Lucchetti also made calls to other district justice offices in the County. She contacted employees in Adult Probation, the District Attorney's Office and the Domestic Relations Office. Ms. Lucchetti participated in organizing employees to support the Association to further economic matters and grievances on behalf of employees.

The Association's attorney selected the name for the new "employee organization" as the "Westmoreland County Court-Related Employees Association." The name of the Association was printed on the showing-of-interest cards presented to and signed by the supporting employees. Attorney Stoltenberg filed the rival representation petitions in Case No's. PERA-R-07-455-W and PERA-R-07-456-W in the name of the Association, which, in turn, was acting on behalf of the court-related and court-appointed employees. Attorney Stoltenberg was also present at the hearing in this case on December 12, 2007, and acted as the retained advocate/representative on behalf of the Association. The numerous organized and organizing activities of the Association advancing employee rights under PERA with the advice from retained counsel clearly establish that the Association is an "employee organization."

The fact that the Association lacks elected officials, by-laws and probably a constitution does not prevent the Association from meeting the definition of employee organization under PERA. Columbia and Montour, *supra*. Indeed that argument has already been expressly rejected by the Board, *id.*, and represents the type of formalities and barriers that impede, rather than advance, the exercise of the employees' right under PERA to freely choose their representatives. PERA does not require an "employee organization" to have a well-funded corporate structure with numerous full-time employees of its own working in independently owned buildings with office equipment. The Association, therefore, has met its burden of establishing that it is an employee organization within the meaning of Section 301(3) of PERA.

Contract Bar

SEIU argues that, for bargaining units of employees entitled to interest arbitration under Section 805 of PERA, rival representation petitions filed after contract expiration should be barred when the incumbent union and the public employer have completed interest arbitration hearings and executive sessions and are awaiting a proposed interest arbitration award from the neutral arbitrator. SEIU believes that a contract bar should prevent the Association from proceeding to an election because the Association's rival representation petition was filed at a point in the interest arbitration process when the parties had satisfied their bargaining obligations and completed their involvement in the

bargaining process. SEIU believes that there was nothing left to do by and between the parties because, by operation of a statutory procedure, the parties are no longer involved in the process of bargaining terms and conditions of employment. SEIU further contends that the fact that the question of representation in this case arose after the interest arbitration panel completed its executive sessions and could no longer affect the result distinguishes this case from existing precedent. SEIU claims that that prior precedent is inapplicable "where, as here, the Representation Petition is not filed until the entire statutory interest arbitration process is completed, whereby neither the Employer nor the incumbent union can operate any longer to skew the process in their favor." (Brief at 7).

Section 605 of PERA mandates that there shall be a contract bar precluding the Board from acting on representation petitions as follows:

Section 605. Representation elections shall be conducted by secret ballot at such times and places selected by the [B]oard subject to the following:

(7)(ii) Petitions for elections may be filed with the [B]oard no sooner than ninety days nor later than sixty days before the expiration date of any collective bargaining agreement or after the expiration date until such time as a new written agreement has been entered into. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

43 P.S. § 1101.605(7)(ii). Accordingly, the Board may not entertain a representation petition during the life of a collective bargaining agreement unless it is filed during the thirty-day window period 90-60 days prior to contract expiration. Richland School District v. PLRB, 454 A.2d 649 (Pa. Cmwlth. 1983); Greater Johnstown School District, 9 PPER ¶ 9258 (Nisi Order of Certification, 1978). The Board also may not entertain representation petitions after contract expiration if a new agreement "has been entered into." 43 P.S. § 1101.605(7)(ii) (emphasis added). The Board has held that the statutory requirement that new agreements be "entered into" requires proof that there is a written contract, containing provisions regarding substantial terms and conditions of employment, that has been signed by the public employer and the certified representative of the employees. In the Matter of the Employees of Upper Moreland/Hatboro Sewer Auth., 21 PPER ¶ 21172 (Order Directing Submission of Eligibility List, 1990); Elizabeth Forward School District, 10 PPER ¶ 10156 (Order and Notice of Election, 1979); Marion Center Area School District, 15 PPER ¶ 15097 (Order Directing Submission of Eligibility List, 1984). Indeed, SEIU has conceded as much. (SEIU Brief at 4). The bright-line requirement that a written agreement be fully signed and executed is demonstrated by cases wherein the Board expressly refused to find a contract bar where the employer and the exclusive representative of its employees had ratified, but not signed, a successor collective bargaining agreement prior to the filing of a petition for representation by a rival employe organization, even where the employer has implemented the terms of the new accord. In the Matter of the Employees of Steel Valley Area Technical Sch. Joint Bd., 7 PPER 231-232 (Order and Notice of Pre-hearing Conference, 1976); Holtz v. SEIU, Local 585, 17 PPER ¶ 17015 (Proposed Decision and Order, 1985).

In both PLRB v. City of Philadelphia, 15 PPER ¶ 15068 (Final Order, 1984) and In the Matter of the Employees of Delaware County, 13 PPER ¶ 13014 (Final Order, 1981), the Board makes very clear that, for purposes of barring a rival representation petition, there is no distinction between interest awards and mutually negotiated contracts. In City of Philadelphia, supra, the Board opined as follows:

We see no distinction between the 'shall' contained in Section 805 and those contained in Sections 801-803 which also mandate that the employer enter into collective bargaining with the certified bargaining representative and reduce that agreement to writing under pain of unfair labor practice. The same underlying policy, i.e., protection of the employees' right to choose a bargaining representative as mandated in Article IV, applies to the interest arbitration process under Section 805. Just as the Board had provided an exception to the mandate for collective bargaining in the case that a question of representation exists, so the Board will apply this exception to interest arbitration under PERA as well.

City of Philadelphia, 15 PPER at 157. Once the Board issues an order and notice of hearing on a rival representation petition, a question of representation arises. Id. at 156; PLRB v. Pennsylvania Liquor Control Board (LCB), 10 PPER ¶ 10031 (Nisi Decision and Order, 1979); AFSCME, Council 83 v. PLRB (Huntingdon), 553 A.2d 1030 (Pa. Cmwlth. 1989). Once a question of representation has arisen, an employer must discontinue collective bargaining activities with the incumbent. Huntingdon, supra; City of Philadelphia, supra; LCB, 10 PPER at 47. An employer and an incumbent union engage in unfair practices when either one continues to engage in bargaining activities with one another after a question of representation has arisen. Huntingdon, supra, LCB, supra.

The Commonwealth Court, in Huntingdon, rejected the argument that SEIU advances here. In Huntingdon, "AFSCME argue[d] that because the unit employees are statutorily prohibited from striking, the incumbent union and unit employees should be given the protection of mandatory interest arbitration once an impasse is reached in the collective bargaining process, regardless of whether a representation petition has been filed by a rival union." Huntingdon, 553 A.2d at 1032. "AFSCME also contends that the Board erroneously relied upon cases in which representation petitions were filed before an incumbent union and public employer reached a bargaining impasse." Id. at 1032. Although SEIU focuses herein on the fact that the parties were not just beyond impasse but much closer to completing the interest arbitration process, SEIU is merely offering another false distinction as did AFSCME in Huntingdon. SEIU has not provided a supporting explanation for why its proposed distinction supports a different conclusion or rationale than those of Delaware County and City of Philadelphia or the Court's rejection of AFSCME's position in Huntingdon. In those cases, the Board focused on the fact that the interest award was issued after a question of representation existed, which is the case here and which is required by PERA. PERA absolutely requires that the interest award be "entered into" and not merely pending. City of Philadelphia, supra; Steel Valley, supra. The fact is that the requirement that there be a properly executed and signed agreement/award by the employer and the certified bargaining representative or their respective partial arbitrators prior to the filing of the rival representation petition is a necessary statutory mandate and not a Board policy. The Board simply does not have the authority to countermand the express dictates of PERA and conclude otherwise.

The Huntingdon Court further adopted the rationale of the Board in that case and held that an employer breaches its obligation of neutrality by continuing to bargain with the incumbent. Huntingdon, 553 A.2d at 1032. The Board's rationale is to promote employees' freedom of choice by ensuring employer neutrality. Id. The Court reiterated the Board's position and stated that "[t]o permit continued bargaining between the public employer and one of two rival unions . . . might well be interpreted by the employees as indicating employer approval of one organization over another thereby according prestige to and encouraging membership in that employe organization." Id. at 1032 (citations omitted). Even though the question of representation in Huntingdon was raised before executive sessions were concluded, the Board's decision focused very simply on the issuance of the award after a question of representation arose, as required by PERA. The fact that executive sessions were concluded here does not affect or amend the statutory requirement that a signed contract/award is necessary to raise the contract bar to a representation petition. Indeed, the conclusion of executive sessions while awaiting a proposed interest award is far less "complete," in terms of the bargaining process, than where a written agreement is ratified by the parties and the employer has already implemented the terms and conditions of the newly ratified agreement prior to the filing of a rival petition. Yet the Board rejected that a contract bar precludes the rival petition in that case because the contract was not signed by all the necessary parties, i.e., the certified incumbent union and the employer. Steel Valley, supra. In this context, it is worth repeating that the Board has determined that "[t]he same underlying policy, i.e., protection of the employees' right to choose a bargaining representative as mandated in Article IV, applies to the interest arbitration process under Section 805." City of Philadelphia, 15 PPER at 157.

Moreover, in Richland School District v. PLRB, 454 A.2d 649 (Pa. Cmwlth. 1983), the Commonwealth Court held that an employer commits an unfair practice when it refuses to negotiate with the newly certified rival and it attempts to honor the contract entered into before the rival's certification. It defies logic to conclude on the one hand that

an employer must ignore an interest award issued after a question of representation has arisen under Richland, and must negotiate anew with the newly certified rival, yet on the other hand to conclude that a contract bar should exist prior to the issuance of the interest award. In other words, the Board cannot disobey the Commonwealth Court's holding in Richland and conclude that there is a contract bar in this case when Richland, and PERA, contemplates that there cannot be such a bar. Other than its bald assertion to the contrary, SEIU offers no persuasive explanation as to why the Board's rationale in Huntingdon, supra, PLRB v. Chartiers-Houston School District, 14 PPER 14056 (Final Order, 1983), and LCB, supra, is any less applicable after impasse, hearings and executive sessions in the Section 805 interest arbitration process than it is before those activities. The rival union's success is no less negatively affected and the employees' free will is no less compromised by the favoritism and support perceived by the employees to be shown by the employer when the employer continues to engage in bargaining activities with the incumbent by signing onto the proposed interest award in this case.

SEIU has erroneously characterized its interest arbitration process as having been "concluded." (Brief at 6). In this regard, SIEU overlooks the fact that significant bargaining activities remain following interest arbitration executive sessions. Such bargaining activities and obligations include reviewing and signing the proposed award and perhaps rejecting the proposed award, requiring more negotiations and executive sessions if both partials reject the proposed award. The validity of the interest award depends on the signatures and acceptance from at least one of the partial arbitrators. If the proposed award is not accepted, then the employees' contract is delayed indefinitely while the parties resume negotiations and/or executive sessions with the neutral. Moreover, the County could agree to accept a proposed award it would otherwise be inclined to reject to favor the incumbent. Accepting or rejecting a proposed interest award is significant bargaining activity, and an employer and an incumbent could collude to ensure that the rival is marginalized. Those signatures constitute bargaining activity. The interest arbitration process and the parties bargaining obligations to each other were far from "concluded" in this case. Accordingly, the assertion that "neither the Employer nor the incumbent union can operate any longer to skew the process in their favor," (SEIU Brief at 7), and the assertion that "[o]n October 25, 2007, there was no further opportunity for the Employer to interact favorably toward the incumbent union and/or against the Association," (SEIU Brief at 11), are incorrect. Contrary to SEIU's argument, therefore, further opportunity exists to interact or even "skew" the results once a rival petition is filed and a question of representation arises anytime prior to the proposed interest award. Arguably, SEIU engaged in unfair practices in violation of Huntingdon and Chartiers-Houston by signing the proposed award. The contract bar is a shield to protect employers and incumbents from the constant threat of interference with orderly relations while trying to further employe's interests. Upper Moreland, supra; In the Matter of the Employees of City of McKeesport, 31 PPER 31088 (Order Directing Submission of Eligibility List, 2000). SEIU, however, is using the contract bar as a sword to prevent the employees' lawful attempt at changing representatives after almost two years without a contract.

SEIU maintains that "[t]he Association had ample opportunity to seek alternative representation for several years as far back as during the statutory window period prior to the expiration of the previous contract, on December 31, 2005," (Brief at 10)(emphasis added), and that the employees "had ample opportunity during the extensive and drawn out negotiation process, which began with a first bargaining session on August 18, 2005 and included 11 subsequent bargaining sessions, the last of which was held on August 24, 2006." (SEIU Brief at 10). By arguing that the employees had "ample opportunity" SEIU seems to be claiming that a rival and its supporting employees should be estopped from filing a representation petition "several years" after the window period. (SEIU Brief at 10-11).

SEIU's argument in this vein ignores the fact that the extensive time spent without reaching results with the County is what often motivates and causes the forming and choosing of rival employe organizations and the filing of new rival petitions for representation. That is precisely why the statute requires the Board entertains such rival petitions right up until the last required signature is on the interest award or the contract. Indeed, SEIU's position is clothed in legal argument when it is merely seeking equity for having invested time, effort and no doubt money in having engaged in

the arbitration process of hearings and executive sessions. Simply put, knowing that the law is not on its side, SEIU's position seems to be that it is unfair that a rival could challenge its representation after bargaining and arbitrating for two years but prior to an accepted, signed and thereby binding award. However, the Board is without jurisdiction to dispense equity or contradict the mandates of PERA's contract bar requirements. Had SEIU followed the mandatory timelines in the statute, there would have been an interest award long before November 2, 2007, when the Board issued the ONH.

Also, contrary to SEIU's policy argument, PERA does not treat interest arbitration employees under 805 with any special privileges for contract bar purposes simply because they do not have the right to strike in exchange for interest arbitration. Steel Valley, supra. The trade off of interest arbitration in exchange for the right to strike is unrelated to employees' special right to change representatives. The mandatory timelines in the statute for interest arbitration are designed to expedite results where the employees do not have an economic weapon to influence employers. The legislative policy to provide stability in the work place among essential employees is unrelated to the right of personnel to change bargaining representatives during periods of no contract. Indeed, SEIU did not adhere to the mandatory timelines in this case waiting almost a year to invoke the interest arbitration procedure under Section 805.

SEIU's argument is also undermined when reviewing the contract bar principle in interest arbitration as it relates to the 30-day window period 60-90 days before contract expiration. Indeed, under the statute, the parties could have an interest award before or during the window period. PERA expressly provides that the employees have an absolute right to change representatives during this time period even if there is an award or new contract. Therefore, the General Assembly has already concluded that there is nothing sacrosanct about the interest arbitration procedure, for purposes of barring rival petitions, no matter how much of that process the parties have successfully completed. In this regard, the Board has recognized the following:

[C]onflicts of timing are inherent in the PERA where rival and incumbent unions compete for employes' support. Section 801 of the PERA, which establishes a timetable for bargaining, is at odds with Section 605(7)(ii) of the PERA which establishes the time for filing a representation petition where a contract is in effect. These provisions are at odds with one another because bargaining between an employer and an incumbent union must begin at least 171 days before the budget submission date, but a rival's representation petition is not to be filed more than 90 days before the contract expires. That leaves a substantial period of time within which an employer arguably is to bargain with the incumbent union but before a rival union can file its representation petition.

LCB, 10 PPER at 47. Accordingly, the General Assembly already contemplated and dismissed SEIU's position here, that rival petitions should be barred when employers and incumbents nearly finish the interest arbitration process. SEIU has failed to explain why the statutory requirement, that all of the interest arbitrating efforts made prior to contract expiration be halted (and perhaps eventually nullified) for properly supported rival petitions filed during the window period, should be treated differently than the same statutory requirement that those extensive efforts also be halted (or perhaps eventually nullified) almost two years beyond contract expiration. Accordingly there simply is no statutory distinction, significance or sanctity to having completed executive sessions and awaiting a proposed interest award, when similarly situated parties are equally unprotected during the window period. The statute provides protection from rival petitions to incumbent unions and employers post-contract expiration only when there is a signed, properly executed contract or award, nothing less.

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 is a public employer within the meaning of section 301(1) of PERA.

2. The Westmoreland County Court Related Employees Association is an employe organization within the meaning of Section 301(3) of PERA.

3. SEIU is an employe organization within the meaning of Section 301(3) of PERA.

4. The Board has jurisdiction over the parties.

5. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time nonprofessional employes who are directly involved with and necessary to the functioning of the courts and who are hired, fired, and directed by the courts including but not limited to employes in the following departments or offices: Common Pleas Court Staff, Delinquent Cost, Domestic Relations, Magistrates, Juvenile Probation Office, Law Library, Parole Office; and excluding irregular part-time employes, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

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 County shall within ten days of the date hereof submit to the Board and the other parties an alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-second day of January, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner