

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

FINAL ORDER

The Allegheny County Deputy Sheriffs' Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on October 6, 2008, challenging a Proposed Order of Dismissal (POD) issued on September 17, 2008.¹ In the POD, the Board's Hearing Examiner dismissed the Petition for Representation filed by the Association seeking to represent deputy sheriffs employed by Allegheny County (County) under Act 111 of 1968, as read in pari materia with the Pennsylvania Labor Relations Act (PLRA). The County filed a response to the Association's exceptions and a supporting brief on October 22, 2008. After a thorough review of the exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDINGS OF FACT

4. The County employs over 150 deputy sheriffs, including a chief deputy, two commanders, three lieutenants and ten sergeants. Most of the deputy sheriffs work on the daylight shift. (N.T. 112-113)
5. The primary duty of approximately 70 to 75 deputy sheriffs is to provide courtroom security for the County's common pleas judges and district magistrates. (N.T. 89, 117-123)
6. The primary responsibility of approximately 24 to 26 deputy sheriffs is to transport prisoners to court proceedings. (N.T. 130-133)
7. Seven deputy sheriffs are assigned to hospital duty. Pursuant to an order of the common pleas court, the deputy sheriffs watch prisoners who are taken to the hospital from the County jail, and must be with them at all times. (N.T. 116-117)
8. Approximately 12 deputy sheriffs serve writs and other process issued by the common pleas court during daylight hours. (N.T. 50-51, 127-129)
9. Two deputy sheriffs serve housing warrants on the evening shift at the request of the court of common pleas. (N.T. 129-130)
10. Approximately 16 deputy sheriffs work in the investigations unit of the Sheriff's office. They are assigned arrest warrants for persons who have failed to appear at court proceedings or have never been apprehended. Using addresses provided to the court, the deputy sheriffs attempt to locate these persons and take them into custody. (N.T. 25-26, 31)
11. Nearly all of the investigative work performed by the deputy sheriffs is directed at apprehending fugitives who are already subject to the jurisdiction of the courts. (N.T. 73-76)
12. At times, local and federal law enforcement agencies seek the assistance of the County deputy sheriffs because of their expertise in apprehending and arresting fugitives. (N.T. 33-34, 78-82)

¹ The Association also filed a request for oral argument. This request is denied because the positions of the parties are adequately addressed in the exceptions, response to exceptions and supporting briefs.

13. At the time of the hearing in this matter, approximately six to eight deputy sheriffs were assigned to task forces established by the County District Attorney, the Federal Bureau of Investigation, and the Drug Enforcement Agency. However, the deputy sheriffs are always subject to the direction of the Sheriff regarding the duties that they are to perform. (N.T. 28-29, 77-78, 111)

14. There are at least 117 police departments in Allegheny County, including the City of Pittsburgh police, the County police and local police departments. There are no communities in the County where the deputy sheriffs provide primary police protection. (N.T. 70-71, 137)

15. The City of Pittsburgh employs detectives to investigate crimes occurring within the City. Some local communities in Allegheny County also employ detectives. When smaller communities in the County seek outside assistance in investigating crimes, they primarily turn to the County detectives. The County District Attorney also employs detectives who investigate crimes. (N.T. 71-73, 138-139)

16. There are no areas of Allegheny County where the deputy sheriffs regularly perform patrol duties. (N.T. 87)

17. The vast majority of the arrests by deputy sheriffs are made pursuant to court-issued warrants. From July 2007 to July 2008, nearly ninety percent of their arrests were based on warrants issued by the court. (N.T. 97, 110; Association Exhibit 2).

DISCUSSION

The facts of this case are summarized as follows. The Board has certified the Association under the Public Employe Relations Act (PERA) as the exclusive representative of a bargaining unit of deputy sheriffs employed by the County and the County Sheriff.² The County employs over 150 deputy sheriffs, including a chief deputy, two commanders, three lieutenants and ten sergeants. Most of the deputy sheriffs work on the daylight shift. The primary duties of the deputy sheriffs are directly related to the operation of the Allegheny County Court of Common Pleas. Those duties include providing security for the court, serving process for the court, executing arrest warrants for the court and transporting prisoners for the court.

The primary duty of approximately 70 to 75 deputy sheriffs is to provide courtroom security for the County's common pleas judges and district magistrates. The primary responsibility of approximately 24 to 26 deputy sheriffs is to transport prisoners to court proceedings. Seven deputy sheriffs are assigned to hospital duty and watch prisoners taken to the hospital from the County jail pursuant to an order of the common pleas court. Approximately 12 deputy sheriffs serve writs or other process issued by the common pleas court during daylight hours, and two deputy sheriffs serve housing warrants on the evening shift at the court's request. Approximately 16 deputy sheriffs work in the investigation unit of the Sheriff's office and are assigned arrest warrants for fugitives who are subject to the jurisdiction of the court. Using addresses provided to the court, the deputy sheriffs attempt to locate these persons and take them into custody.

The City of Pittsburgh employs detectives to investigate crimes occurring within the City. Some local communities in Allegheny County also employ detectives. When smaller communities in the County seek outside assistance in investigating crimes, they primarily turn to the County detectives. The County District Attorney also employs detectives who investigate crimes. Nearly all of the investigative work performed by the deputy sheriffs is directed at apprehending fugitives who are already subject to the jurisdiction of the courts.

The Sheriff requires the deputy sheriffs to attend training provided by the Municipal Police Officers' Education and Training Commission (MPOETC). Upon completion of such training, the MPOETC issues certification cards that identify the deputy sheriffs as

² Because the deputy sheriffs are employes directly involved with and necessary to the functioning of the courts, they are entitled to interest arbitration under Section 805 of PERA.

police officers. The deputy sheriffs carry firearms outside the courthouse, are expected by the Sheriff to exercise their arrest powers, and have made arrests for crimes committed in their presence. However, the vast majority of the arrests by deputy sheriffs are made pursuant to court-issued warrants. Indeed, from July 2007 to July 2008, nearly ninety percent of their arrests were based on warrants issued by the court.

The deputy sheriffs have participated on task forces with the County's District Attorney, the Drug Enforcement Administration and the Federal Bureau of Investigation, and have shared intelligence with these law enforcement agencies concerning the criminal history of potential suspects who have previously been the subject of arrest warrants executed by the deputy sheriffs. Approximately six to eight deputy sheriffs were serving on task forces at the time of the hearing in this matter, but remained under the direction of the Sheriff regarding the duties they are to perform.

There are at least 117 police departments in Allegheny County, including the City of Pittsburgh police, the County police and local police departments. There are no communities in the County where the County deputy sheriffs provide primary police protection. Nor are there any areas of the County where the deputy sheriffs regularly perform patrol duties. Rather, the deputy sheriffs have only backed up, or substituted for, municipal police officers.

As discussed in the Hearing Examiner's POD, in deciding whether employees are police officers under Act 111, the Board and the courts apply a two-part test that requires that the particular employees (1) be legislatively authorized to act as police, and (2) in fact effectively act as police. Cambria County Deputy Sheriffs Association v. PLRB, 799 A.2d 957 (Pa. Cmwlth. 2002); Commonwealth v. PLRB (Park Rangers), 558 A.2d 581 (Pa. Cmwlth. 1989). The Hearing Examiner determined that the County's deputy sheriffs are not legislatively authorized to act as police, and do not effectively act as police because their primary duties are directly related to the operation of the Allegheny County Court of Common Pleas. Therefore, the Hearing Examiner concluded that the deputy sheriffs are not police officers under Act 111. In reaching this result, the Hearing Examiner relied on Venneri v. County of Allegheny, 316 A.2d 120 (Pa. Cmwlth. 1974) and Allegheny County Deputy Sheriffs' Association v. PLRB, 504 A.2d 437 (Pa. Cmwlth. 1986), appeal denied, No. 121 W.D. Allocatur Docket 1986 (Pa. September 26, 1986), in which the Commonwealth Court likewise held that the County's deputy sheriffs are not police officers for purposes of Act 111.

In its exceptions, the Association argues that the Hearing Examiner erred by failing to include and/or consider certain undisputed facts that allegedly demonstrate that the deputy sheriffs are police officers. The Association contends that the law and facts have changed substantially since issuance of Venneri and Allegheny County, in that the deputy sheriffs now primarily act as police and are legislatively authorized to do so. According to the Association, this legislative authorization is found in a 1995 amendment to the Crimes Code and in the Municipal Police Officers Education and Training Law (MPOETL) that was enacted in 1996.

We will first address the Association's claim that the deputy sheriffs are now legislatively authorized to act as police. By way of background, in Venneri, the Commonwealth Court held that the County's deputy sheriffs are not legislatively authorized to act as police officers, stating as follows:

The Second Class County Code (SCCC) . . . makes numerous references to the sheriff and his deputies . . . None of the provisions of SCCC give a general description of the sheriff's (or his deputies) duties. It is even more important to note that none of the references to his official duties found in SCCC pertain to general police work or criminal investigation.

The appellants point to Section 1210 of SCCC . . . as support for the contention that they are police officers. Section 1210 reads in part: "(a) No sheriff, deputy sheriff, detective or other county police officer whatsoever shall perform, directly or indirectly, any official services or official duties for any person, association or corporation" We do not believe that this section of the statute indicates a legislative intent to define deputy sheriffs as county police officers. When the Legislature has chosen to vest a given group

with policemen power and duties, it has done so with a fair degree of specificity. Section 1501 of SCCC . . . provides for a separate county police force and clothes said force with general police power and authority. Even more damaging to appellants' argument is the fact that the Legislature has permitted second class counties to appoint (through the district attorney) county detectives described by the Legislature as "general police officers" with general investigatory powers in criminal cases. While our search of the statutory law has revealed several acts which give the sheriff and his deputies specific powers, it has turned up more acts which specifically grant general police powers to policemen within a second class county and which do not make mention of the sheriff or his deputies. Even a cursory legislative review leaves no doubt that the bulk of legislation dealing with the sheriff pertains to court-related activities. We hasten to add that the foregoing is in no way meant to limit, or for that matter even delineate, the awesome powers of the sheriff. We are fully aware of the sheriff's function as a "peace officer." He is undoubtedly one of the most powerful peace officers in the state. Quite candidly, however, we are somewhat dismayed by our research disclosure that the Legislature has never chosen to enact legislation delineating the general powers, duties and responsibilities of the sheriff. Nonetheless, we must conclude that the appellants are not policemen within the intent of Act 111.

316 A.2d at 125-126 (citations and footnotes omitted).

In Allegheny County, supra, the Commonwealth Court again held that the County's deputy sheriffs are not legislatively authorized to act as police, stating 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, 532, 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 the 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.

504 A.2d at 439-440.³

Unlike the deputy sheriffs in Veneri and Allegheny County, the County's detectives were found to be Act 111 police officers in Hartshorn v. County of Allegheny, 460 Pa. 560, 333 A.2d 914 (1975) because the Second Class County Code specifically provided that "[s]aid detectives shall be general police officers and shall have all powers now conferred on constables by existing laws of this Commonwealth, so far as they relate to crime or criminal procedure" 16 P.S. § 4440(b). A similar result was reached concerning the capitol police in Commonwealth v. PLRB, 502 Pa. 7, 463 A.2d 409 (1983) (Capitol Police) because the Administrative Code, which sets forth the powers and duties of state agencies, departments and entities such as the capitol police, specifically provides that the capitol police "shall have the power, and their duty shall be . . . [t]o exercise the same powers as are now or may hereafter be exercised under authority of law or ordinance by the police of the cities of Harrisburg, Pittsburgh and Philadelphia, [and] municipalities in Dauphin County wherein State buildings are located" 71

³ The Court's opinion in Allegheny County, supra, indicates that House Bill No. 101 was an amendment to the Second Class County Code.

P.S. § 646. Likewise, in Park Rangers, supra, state park rangers were found to be police officers under Act 111 because the Administrative Code gave them the authorization "to have all the powers and prerogatives conferred by law upon members of the police force of the cities of the first class"

71 P.S. § 510-6(7)(b).

In arguing that the County's deputy sheriffs are now legislatively authorized to act as police, the Association relies on Section 103 of the Crimes Code, which was amended in 1995 to state as follows:

"POLICE OFFICER." The term shall include the sheriff of a county of the second class and 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. § 103.

The Association also relies on the 1996 MPOETL, which addresses mandatory police officer training, and defines "Police Department" and "Police Officer" as follows:

"POLICE DEPARTMENT." Any of the following:

(1) A public agency of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of the criminal or traffic laws. This paragraph includes the sheriff's office in a county of the second class.

* * *

"POLICE OFFICER." Any of the following:

* * *

(2) A deputy sheriff of a county of the second class.

53 Pa.C.S. § 2162.

Relevant to this matter is the decision of the Pennsylvania Supreme Court in Kopko v. Miller, 586 Pa. 170, 892 A.2d 766 (2006), which did not involve the County's deputy sheriffs and involved the different issue of whether deputy sheriffs from other counties were "investigative or law enforcement officers" for purposes of the Wiretapping Act, such that they were entitled to training under that act (a question that the Court answered in the negative). However, we note that the Supreme Court in that case seemed to construe the 1996 MPOETL as authorizing the County's deputy sheriffs to act as police upon meeting the training requirements for police officers. Even if Kopko indicates that the County's deputy sheriffs⁴ meet the first part of the two-part test under Act 111, the question remains whether they effectively act as police because the two-part test requires that both parts be satisfied. Narcotics Agents Regional Committee, FOP v. PLRB, 833 A.2d 314 (Pa. Cmwlth. 2003), appeal denied, 577 Pa. 729, 847 A.2d 1290 (2004); Delaware County Lodge No. 27, FOP v. PLRB, 690 A.2d 754 (Pa. Cmwlth. 1997), appeal denied, 548 Pa. 674, 698 A.2d 597 (1997).

As indicated above in the summary of the facts, the Hearing Examiner found that the deputy sheriffs perform certain duties ordinarily associated with police officers. Nevertheless, the Hearing Examiner found based on the substantial evidence of record that the deputy sheriffs' primary duties are directly related to the operation of the Allegheny County Court of Common Pleas (e.g., providing security for the court, serving process for the court, executing arrest warrants for the court and transporting prisoners

⁴ Kopko would not support an argument that deputy sheriffs employed by counties other than Allegheny County are legislatively authorized to act as police because the Supreme Court indicated that such deputy sheriffs do not have general police powers.

for the court). Thus, contrary to the Association's exceptions, the Hearing Examiner did include and consider the deputy sheriffs' performance of duties ordinarily associated with police officers, but found that the performance of such duties did not warrant a different result than the Commonwealth Court's binding precedent in Venneri and Allegheny County. Our review of the record confirms the Hearing Examiner's finding that the deputy sheriffs continue to primarily perform court-related duties, as further demonstrated by the additional findings of fact set forth above.

In both Venneri and Allegheny County, the Commonwealth Court recognized that the County's deputy sheriffs perform some police-type duties, but nevertheless concluded that they are not police officers for purposes of Act 111. In Venneri, the court stated:

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."

* * *

In carefully reading Act 111 and [PERA], the question which the lower court had to answer was whether deputy sheriffs, taking all of the facts into consideration, are "directly involved with and necessary to the courts of this Commonwealth," or more specifically the courts of Allegheny County as the facts pertain to this case. We conclude that there was sufficient substantial evidence to permit the court below to determine that the deputy sheriffs of Allegheny County are so directly involved with and necessary to the courts of Allegheny County, that they are not policemen within the intent of Act 111, but would appear to be "court-related" personnel within the intent of [PERA]. Although the duties described in portions of the record could be characterized as being the same as police duties, in reality those duties are incidental to the primary responsibilities of the sheriff. Clearly, the sheriff's primary responsibility is to the courts

316 A.2d at 124-127 (emphasis in original).

Similarly, in Allegheny County, the court stated as follows in reaffirming its conclusion in Venneri that the County deputy sheriffs are not police officers under Act 111:

We must determine whether any changes have occurred since our decision in [Venneri] which would alter our conclusion there that the deputy sheriffs are not policemen for purposes of Act 111. In [Venneri] we held that, although the deputy sheriffs' duties encompassed many activities normally performed by police, their *primary duties* were directly related to the operation of the Allegheny County courts. *Id.*

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.^[5]

Since [Venneri] the only other duties have involved the institution of public safety programs, undercover work with a drug task force connected with the Federal Drug Enforcement Administration for approximately four years and undercover work with a related homicide investigation 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 438-439 (emphasis in original; footnotes omitted).

In this case, the Hearing Examiner likewise found that "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." (PDO at 5). In challenging the Hearing Examiner's factual determination, the Association relies on the deputy sheriffs' performance of duties that were found to be insufficient to demonstrate that they were Act 111 police officers in Venneri and Allegheny County. Indeed, there is no indication in the record that the deputy sheriffs perform any additional police-type duties beyond those considered in Venneri and Allegheny County. Moreover, as in those cases, the record indicates that the deputy sheriffs continue to be primarily assigned to court-related duties such as serving process, providing courtroom security, transporting prisoners and executing arrest warrants. Thus, as in Venneri and Allegheny County, the Association has failed to prove that the County's deputy sheriffs effectively act as police. Because the Association did not satisfy the second prong of the two-part test for police officers under Act 111, the Hearing Examiner properly dismissed its petition for representation.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Association's exceptions and affirm the Proposed Order of Dismissal.

ORDER

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 September 17, 2008 Proposed Order of Dismissal be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of April, 2009. 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.

⁵ In describing the court-related duties of the deputy sheriffs, the court stated that they "continue to serve summons, writs and court orders, maintain peace in the courtroom, transfer prisoners, notify jurors and enforce bench warrants." 504 A.2d at 439 n.6.