

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
THE CITY OF PHILADELPHIA : Case No. PERA-U-08-414-E

**FINAL ORDER**

On October 24, 2008, the City of Philadelphia (City) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude Correctional Sergeants and Correctional Lieutenants from the bargaining unit represented by the American Federation of State, County and Municipal Employees, District Council 33 (DC 33), which is preserved by Section 2003 of the Public Employee Relations Act (PERA). The City contends in its Petition that the Correctional Sergeants and Correctional Lieutenants are supervisory employes and not entitled to interest arbitration as a means to resolve any collective bargaining impasse.

On November 12, 2008, the Secretary of the Board issued a letter declining to direct a hearing on the petition "because the Board does not have the authority to remove classifications such as Correctional Sergeant and Correctional Lieutenant from the coverage of the 1961 ordinance of the City of Philadelphia referred to in Section 2003 of [PERA]." On December 1, 2008, the City filed timely exceptions to the Secretary's letter arguing that the Secretary's determination was inconsistent with the Board's Final Order in American Federation of State County and Municipal Employees, District Council 33 and American Federation of State County and Municipal Employees, Local 159 v. City of Philadelphia, 39 PPER \_\_\_\_\_, Case No. PERA-C-07-489-E (Final Order, September 16, 2008)(City of Philadelphia). Following an extension of time granted by the Secretary, the City filed a brief in support of the exceptions on December 31, 2008.

A unit clarification, by its very nature, entails the removal from or inclusion of job classifications in the bargaining unit. As the Board noted in City of Philadelphia, pursuant to Section 2003 of PERA, the Commonwealth Court has held that the Board is without jurisdiction to remove employes from the bargaining unit established by the 1961 City Ordinance. Employes of the City of Philadelphia, Deputy Sheriffs I & II v. PLRB, 350 A.2d 923 (Pa. Cmwlth. 1976). Unlike the City's unit clarification petition presented here, the issue before the Board in City of Philadelphia was not the creation of a separate certified bargaining unit under Section 604 of PERA, or alteration of the bargaining unit represented by DC 33, but whether employes acknowledged as prison guards by the City are entitled to interest arbitration under Section 805 of PERA. In that case, the Board recognized, inter alia, that Section 805 of PERA, and the right to interest arbitration for prison guards, was to apply "notwithstanding any other provision of this act[.]" Therefore, City prison guards covered by the 1961 City Ordinance would be entitled to interest arbitration notwithstanding the Board's inability to create a separate bargaining unit under Section 604, or to alter the overall bargaining unit represented by DC 33 pursuant to the 1961 City Ordinance and preserved through Section 2003 of PERA.

It is notable that the City does not deny that the Correctional Sergeants and Lieutenants are prison guards within the meaning of PERA. However, the City also does not contend that the Correctional Sergeants and Lieutenants would have the right to strike to enforce their bargaining demands. Presumably the City's position is that the Correctional Sergeants and Lieutenants, still covered by the 1961 City Ordinance, are entitled to bargain, but are not entitled to strike because they are prison guards, and are also not entitled to resolve any impasse through the process, including interest arbitration, that is granted to prison guards with collective bargaining rights under Section 805 of PERA. In its exceptions, the City asserts that it is not requesting the removal of the Correctional Sergeants and Lieutenants from coverage of the 1961 City Ordinance, but only seeks to have the Board deny them the right to interest arbitration in the event of a collective bargaining impasse. The City requests this determination because it contends that Correctional Sergeants and Lieutenants are supervisory employes within the meaning of Section 301(6) of PERA, and as such should not have a right to arbitrate a collective bargaining impasse.

The Correctional Sergeants and Lieutenants, even if they are supervisory employes, enjoy full bargaining rights under the 1961 City Ordinance. Any application of PERA that

denies these employees those full bargaining rights would be inconsistent with the 1961 City Ordinance and Section 2003 of PERA. Interest arbitration is an extension of the collective bargaining rights that are afforded to all prison guards under PERA. Services Employees International Union, Local 668, PSSU v. Westmoreland County, 39 PPER 28 (Final Order, 2008) (citing Dunmore Police Association v. Dunmore Borough, 528 A.2d 299 (Pa. Cmwlth. 1987)). Thus, in accordance with the 1961 City Ordinance, the Correctional Sergeants and Lieutenants would, as prison guards, be entitled to the full extent of their bargaining rights including interest arbitration under Section 805 of PERA.

The Commonwealth Court has made clear that interest arbitration is the statutory trade-off for denying prison guards the right to strike. Snyder County Prison Board and County of Snyder v. Pennsylvania Labor Relations Board and Teamsters Local 764, 912 A.2d 356 (Pa. Cmwlth. 2006), *petition for allowance of appeal denied*, 593 Pa. 730, 928 A.2d 1292 (2007); American Federation of State County and Municipal Employees, District Council 83, AFL-CIO v. Pennsylvania Labor Relations Board, 553 A.2d 1030 (Pa. Cmwlth. 1989). A right to collective bargaining with no effective means to enforce legitimate bargaining demands, either through the right to strike or the right to proceed to interest arbitration, is an illusory right at best. Pennsylvania Labor Relations Board v. State College Area School District, 461 Pa. 494, 337 A.2d 262 at 266 (1975) (citing 1 Pa. C.S. §1922(1)) ("[i]t would be absurd to suggest that the legislature deliberately intended to [provide] an illusory right of collective bargaining"). The City's notion that these prison guard employees are entitled to engage in collective bargaining, but have no right to submit a bargaining impasse to interest arbitration and have no right to strike, is an absurd result that could not possibly have been intended by the General Assembly when it enacted Section 2003 of PERA. Philadelphia Fire Officers Association v. Pennsylvania Labor Relations Board, 470 Pa. 550, 369 A.2d 159 at 261-262(1977) (citing Statutory Construction Act, 1 Pa.C.S. §1922) ("the General Assembly, in enacting statutes, must be presumed not to intend results which are 'absurd, impossible of execution or unreasonable'").

Further, as the Board Secretary stressed in her letter declining to direct a hearing on the unit clarification petition, if the City wishes to deny Correctional Sergeants and Lieutenants the bargaining rights granted to them by the 1961 Ordinance, including interest arbitration, all the City need do is to amend the 1961 Ordinance to exclude them from coverage. Once removed from the confines of the 1961 Ordinance, the Correctional Sergeants and Lieutenants would only be able to petition the Board for certification as supervisory employees entitled to only meet and discuss rights under Section 704 of PERA, which do not include the right to collectively bargain, the right to strike, or the right to interest arbitration.

The Secretary's letter declining to direct a hearing on the City's unit clarification petition is not at odds with the Board's holding in City of Philadelphia and is not in error. Accordingly, after a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions to the Secretary's November 12, 2008 letter declining to direct a hearing on the unit clarification petition, and the Secretary's determination shall be made absolute and final.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by the City of Philadelphia are hereby dismissed, and the November 12, 2008 letter of the Secretary declining to direct a hearing on the unit clarification petition, 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 January, 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.