

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 : Case No. PERA-R-10-34-E
CENTRE COUNTY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On January 8, 2010, SEIU, Local 668/PSSU (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation pursuant to the Public Employee Relations Act (PERA) alleging that thirty per cent or more of the nonprofessional employees who are directly involved with and necessary to the functioning of the Courts (but not appointed by the Court) wish to be exclusively represented by the Union. On February 3, 2010, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on Thursday, March 4, 2010. I continued the hearing to March 19, 2010. The hearing was held on that date in State College, Pennsylvania, and both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On March 26, 2010, the notes of testimony from the hearing were filed with the Board. The Union and the County timely filed post-hearing briefs.

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 County of Centre (County) is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).
3. The signed authorization cards filed by the Union with the petition establish a thirty per cent or more showing of interest for exclusive representation by the Union among the employes in the petitioned-for bargaining unit.
4. Within the Office of the Sheriff are employes, hired and directed by the Sheriff, whose uniform includes white shirts. These employes are designated by the County as security officers. (N.T. 9-12, 81-83, 86, 92-95, 107, 113-114; Joint Exhibit 1).
5. Within the Office of the Sheriff are employes, hired and directed by the Sheriff, whose uniform includes black shirts. These employes are designated by the County as deputy sheriffs I or II. Deputy sheriffs at level two have received a Pennsylvania Deputy Sheriff Certification. There is no difference in the job duties between a deputy sheriff level one and a deputy sheriff level two. (N.T. 12, 38, 45; Joint Exhibits 2 & 3).
6. Sheriff Denny Nau does not distinguish between white-shirted security deputies and black-shirted deputies. Both wear a sheriff's badges, carry firearms and wear the same sheriff's office patches. White-shirted deputies possess the same law enforcement authority as black-shirted deputies. (N.T. 18, 20-22, 42, 86-87, 89).
7. The parties stipulated and agreed that, excluding the employes wearing white shirts, the employes in the proposed court-related unit share an identifiable community of interest, including the employes classified by the County as deputy sheriffs level one and deputy sheriffs level two. (N.T. 6-7).
8. The white-shirted deputies are assigned to the courthouse, the courthouse annex and the Willowbank Building. The Willowbank Building is the County administration building. At these locations, the white-shirted deputies provide entrance security where they screen and scan people and personal belongings entering the buildings. They ensure

that no weapons or contraband are brought into the buildings. They also patrol the interior and exterior of these buildings. (N.T. 9-12, 24-25, 68, 70, 90, 97, 122-123, 140; Joint Exhibit 1).

9. The white-shirted deputies regularly provide courtroom security. Depending on the Sheriff's desires and manpower deficits, black-shirted deputies may also provide courtroom security. On occasion, white-shirted deputies serve warrants, transport prisoners and mental patients. (N.T. 9-12, 14-18, 24, 28-29, 34, 46-47, 50-52, 83-84, 99; Joint Exhibit 1; Union Exhibit 1).

10. White-shirted deputies respond to panic alarms at the courthouse, courthouse annex and the Willowbank Building. Panic buttons are installed in all major courthouse offices such as judges' chambers and the office of the prothonotary. (N.T. 26-27, 70, 142).

11. Black-shirted deputies predominantly transport prisoners and mental patients; conduct Sheriff's sales; serve writs of possession, eviction notices and bench warrants; and perform traffic and law enforcement duties. On occasion, black-shirted deputies provide courthouse security. (N.T. 12-13, 44, 66; Joint Exhibits 2 & 3).

12. Black-shirted deputies also respond to panic alarms but white-shirted deputies arrive first because they are already present in the building providing security. (N.T. 32, 85-86).

13. Some of the white-shirted deputies possess a Pennsylvania Deputy Sheriff Certification. White-shirted deputies provide courtroom security during court proceedings. They escort prisoners into courtrooms and remain there for the duration of the proceedings. (N.T. 33-35).

14. There are four black-shirted deputy sheriffs assigned to work at the airport; they are responsible for securing the terminal area. They rotate every other week to the Sheriff's Office, during which time they provide security at the courthouse and transport prisoners and mental patients as well as serve warrants. (N.T. 34-39, 42, 80; Joint Exhibit 2).

15. There are judicial functions at the Willowbank Building such as the offices of the Register of Wills, Children and Youth, Domestic Relations and Mental Health/Mental Retardation. White-shirted deputies have provided hearing room security at the Willowbank Building. (98, 108-109).

16. The Board of Commissioners of Centre County intends to utilize the white-shirted deputy sheriffs to protect persons and property at the courthouse, courthouse annex and the Willowbank Building during labor unrest, as may be necessary. (127, 134-135).

DISCUSSION

The County challenges the inclusion of the white-shirted security deputy sheriffs in the petitioned-for bargaining unit of court-related employees on two grounds: (1) they are guards within the meaning of Section 604(3) of PERA and must be excluded from units of other County employees; and (2) they are not court-related employees. I agree with the County that they are guards and are properly excluded from the proposed court-related unit. Therefore, I need not address the County's second argument, and I do not herein determine whether they are court-related.

Section 604 of PERA provides, in relevant part, as follows:

The [B]oard shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the [B]oard shall:

. . . .

(3) Not permit . . . any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect safety of persons on the employer's premises to be included in any unit with other public employes, each may form separate homogenous employe organizations with the proviso that organizations of the latter designated employe group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

43 P.S. § 1101.604(3).

In Butler County Deputy Sheriff's Unit v. PLRB, 911 A.2d 218 (Pa. Cmwlth. 2006), the Commonwealth Court reiterated the rationale for the guard exclusion under Section 604(3) stating that the exclusion "is an employer protection to ensure that during labor unrest, the employer would have guards to enforce its rules for the protection of property and safety of persons, without being confronted with a division of loyalty between the employer and dissatisfied fellow union members." Id. at 224 (citing Erie County Area Vocational-Technical School v. PLRB, 417 A.2d 796 (1980)). Based on this rationale, the Butler Court held that, when an employer seeks to exclude a group of employes as a unit of guards, "the employer need only show a mere possibility that the employees would be used as guards to protect the employer's property during labor unrest." Id. (emphasis original).

In this case, the County met its burden of establishing that there is at least a "mere possibility" that the white-shirted deputy sheriffs would be utilized to protect county property and persons during labor unrest involving County employes, as required by Butler, supra. The Sheriff's Office assigns white-shirted deputies to the courthouse, the courthouse annex and the Willowbank Building where they provide security by screening, scanning and searching people and their belongings as the people enter the buildings, by ensuring that no weapons or contraband are brought into the buildings and by patrolling inside and outside the buildings. The white-shirted deputies are also the first responders to panic alarms at these buildings. In addition to already being in the position to provide protective services, the Board of Commissioners of Centre County expressly intends to utilize the white-shirted deputies to protect County property and any persons thereon during labor unrest. Although deputy sheriffs performing general security functions would not, alone, establish guard status under Section 604(3), where a union petitions for the guard exclusion, Butler County, supra; Franklin County Deputy Sheriff's Ass'n v. PLRB, 885 A.2d 613 (Pa. Cmwlth. 2005), these security functions coupled with the express intent of the Centre County Board of Commissioners to specifically utilize the white-shirted deputies to protect property and persons during County employe labor unrest satisfies the **mere-possibility** standard applicable in this case. Accordingly, the white-shirted deputies must be excluded from the proposed bargaining unit of employes.

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 Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The employes in the proposed bargaining, including the black-shirted deputy sheriffs, share an identifiable community of interest.
5. The white-shirted deputy sheriffs (classified as security officers by the County) are guards within the meaning of Section 604(3) of the Public Employe Relations Act and are thereby properly excluded from the petitioned-for bargaining unit of nonprofessional, court-related employes.

6. 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, but not hired, fired, and directed by the courts, including but not limited to employes in the following: District Attorney's Office, Public Defender's Office, Prothonotary's Office/Clerk of Courts' Office, Register of Wills Office and the Sheriff's Office in the following employment classifications: legal secretary 1, legal secretary 2, paralegal, victim witness advocate, early outreach/juvenile offender witness advocate, department clerk 1, department clerk 2, investigator, deputy sheriff 1, deputy sheriff 2 and excluding as guards white-shirted deputy sheriffs, management level employes, supervisors, first level supervisors, confidential employes.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the County shall, within ten (10) 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 nineteenth day of April, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner