COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF

.

: Case No. PERA-U-09-465-E : (PERA-R-5662-C)

,

LANCASTER COUNTY

AMENDED PROPOSED ORDER OF UNIT CLARIFICATION1

On November 20, 2009, AFSCME, District Council 89 (Petitioner or Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Public Employe Relations Act (PERA) seeking to include the positions of maintenance mechanic I and maintenance mechanic II in the unit of prison guards employed by Lancaster County (Respondent or County)

On December 9, 2009, the Secretary of the Board issued an order and notice of hearing establishing a pre-hearing conference to resolve the matters in dispute and establishing a hearing date of March 4, 2010 in Harrisburg, if necessary.

The hearing was necessary and was held as scheduled, at which time, all parties in interest were afforded an opportunity to present testimony, introduce evidence and cross-examine witnesses.

Both parties filed post-hearing briefs.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

- 1. That Lancaster County is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA).
- 2. That AFSCME, District Council 89, is an employe organization within the meaning of Section 301(3) of PERA.
- 3. That in 1975, the Board, at PERA-R-5662-C, certified the Union as the exclusive representative of a unit described as

"In a subdivision of the employer unit comprised of prison security guards including Senior Guards, Special Guards, the Transportation, Maintenance and Supply employes, and Matrons; and excluding management level employes, supervisors, first level supervisors, and confidential employes as defined in the Act PERA,

(Board Exhibit 1, PERA-R-5662-C)

- 4. That the county employs one individual, Jean Kraft, in the position of maintenance mechanic I and six individuals in the position of maintenance mechanic II: Jay Lenhart; Mike Klugh; Barry Brown; Tom Dissinger; Andy Kotrick and Tommy Ambrose.
- 5. That since 1975, the Union and the County have been parties to several collective bargaining agreements. Despite the language in the PLRB certification including maintenance employes, the parties have never negotiated over wages, hours and terms and conditions of employment for the maintenance mechanics I or maintenance mechanics II. (N.T. 6, 108, Joint Exhibit 4)

¹ This Amended Proposed Order is issued to correct errors in the original on pages 1,3,4 and 7.

- 6. That Jean Kraft has held the position of maintenance mechanic I since late $2005.\ (N.T.\ 11)$
- 7. That Ms. Kraft is responsible for buildings and grounds, lawn care, vehicle maintenance, drainage maintenance, inside custodial work, trash removal, snow removal, moving furniture and spring and fall "purges." (N.T. 11-12)
 - 8. That Ms. Kraft does these duties with the assistance of prison inmates. (N.T. 11-12)
- 9. That Ms. Kraft's job description for maintenance mechanic I states an essential function of the position is to "...2. Supervise inmates assigned to assist." (N.T. 104, 105, Joint Exhibit 1)
- 10. That Ms. Kraft's supervision of inmates typically does not take her onto a cell block or a pod. $(N.T.\ 36,\ 40,\ 43)$
- 11. Ms. Kraft supervises the prison inmates without the assistance of corrections officers. The average number of inmates on a work crew is about five. (N.T. 12-13)
 - 12. That the inmates that she supervises are all eligible for work release. (N.T.13)
- 13. That the work release inmates assigned to Ms. Kraft are chosen by Jack Sauders, the Work Release Administrator. (N.T. 24)
- 14. That if the inmates under Ms. Kraft's control begin a fight, she is responsible for making a radio call for assistance, also known as a "code." (N.T. 32)
- 15. That Ms. Kraft is also responsible for calling a "code" on her radio if an inmate in her custody flees. (N.T. 43)
- 16. That depending on the job they are assigned to do, the inmates Ms. Kraft supervises often have access to tools such as screwdrivers, hammers, lawn equipment and hedge trimmers (N.T. 20-21)
- 17. That Ms. Kraft is responsible for accounting for all the tools the inmates use. $(N.T.\ 21)$
 - 18. That Ms. Kraft is required to follow the prison's security procedures. (N.T. 14)
- 19. That Ms. Kraft is responsible for writing up inmates for disciplinary reasons. $(N.T.\ 14)$
- 20. That Jay Lenhart is one of the five maintenance mechanic IIs employed by the county prison $(N.T.\ 45)$
- 21. That Mr. Lenhart is responsible for various maintenance work, including plumbing, heating, electrical work and equipment repair. (N.T. 45, Joint Exhibit 2)
- 22. That the job description for maintenance mechanic II states that an essential function of the position is to "...5. Supervise inmates assigned to assist in maintenance." (N.T. 105, Joint Exhibit 2)
- 23. That among the duties of the inmates supervised by Mr. Lenhart are assisting him in digging cement to find a drain line, repairing lawn mowers and repairing cell doors within the pods. (N.T. 46)
- 24. That the inmates who help Mr. Lenhart come from the ranks of inmates eligible for work release. (N.T. 46)
- 25. That Mr. Lenhart is responsible for supervising inmates outside the prison "security perimeter," which means "outside the prison walls." (N.T. 47)

- 26. That Mr. Lenhart is responsible for supervising inmates who assist him with his duties. $(N.T.\ 45-47)$
- 27. That Thomas Dissinger is a maintenance mechanic II at the Lancaster County Prison. He has worked in the prison for 9 years. (N.T. 71)
- 28. That Mr. Dissinger testified that he does the same duties as Ms. Kraft. In addition, he is also responsible for work in welding, carpentry, plumbing and pest control. (N.T. 71, Joint Exhibit 2)
- 29. That Mr. Dissinger testified that he supervises inmates outside the security perimeter of the prison. This has included taking them to the training center or to the courthouse. (N.T. 72)
- 30. That this work with inmates includes taking them to lunch and seeing that they take their medications. (N.T. 72)
- 31. That Mr. Dissinger has had to write up an inmate for disciplinary reasons, including one inmate who spit at him. This resulted in the inmate receiving added jail time. (N.T. 73)
 - 32. That Mr. Dissinger has had to break up inmate fights. (N.T. 73)
- 33. That on one occasion, Mr. Dissinger had to assist a corrections officer close a door on an inmate who was escaping the pod. Mr. Dissinger held the sliding pod door on the inmate until relief arrived. (N.T. 73)
 - 34. That Mr. Dissinger has the authority to direct an inmate to lock up. (N.T. 73)
- 35. That when Mr. Dissinger is outside the prison walls with inmates, the corrections officers cannot see either him or the inmates he is supervising because of the line of sight from the prison watch tower. (N.T. 77)
- 36. That Mr. Dissinger is responsible for accounting for all of the tools that are used by the inmates. The inmates use tools such as screwdrivers, wrenches and hammers. (N.T. 77)
- 37. That Bill Jones is a correctional officer in the Lancaster County prison. He has been employed there for twenty years. (N.T. 119)
- 38. That if Jones was ever outside the perimeter of the prison with a group of inmates and an inmate ran away, Mr. Jones would stay with the group and call for supervisors and a back-up to come out for assistance. (N.T. 119)
- 39. That Deputy Warden Seibert testified on cross-examination that if the maintenance mechanic discovered an inmate was carrying contraband that they are responsible for writing up and reporting that inmate. (N.T. 138)
- 40. That there are certain areas in the prison where the maintenance mechanics walk with inmates without corrections officers being present. (N.T. 188)
- 41. That Seibert also testified that it would not be acceptable for the maintenance mechanic in charge of work release inmates to even to take a bathroom break if he had to leave them alone to do so. $(N.T.\ 201)$
- 42. That on November 18, 2009, the County Commissioners adopted a reorganization plan that, inter alia, placed overall management of all of the County's maintenance and custodial employes under one centralized Facilities Management department. This includes the maintenance mechanics I and II. The plan became effective on January 1, 2010. (N.T. 217-221, 224, County Exhibits 8 and 9)

- 43. That the supervisor of the maintenance mechanics I and II is Dan Kerner, the maintenance supervisor. That before the reorganization, Mr. Kerner was supervised by Warden Vincent Guarini. Following the reorganization, he is now supervised by Bob Devonshire, County Maintenance Superintendent. (N.T. 77, 134, 205, County Exhibit 9)
- 44. That in the reorganization, the maintenance mechanics continue to be supervised by Dan Kerner in the prison. They report daily to the prison. (N.T. 204-206)

DISCUSSION

The Union's petition for unit clarification seeks to include the positions of maintenance mechanic I and maintenance mechanic II in a unit of prison guards. The Union contends that the employes fall within the definition of prison guards under Section 604(3) of PERA and the cases interpreting that section.

The County opposes the petition, contending that since the parties have chosen to treat these maintenance employes as outside the unit that was certified 35 years ago, the Board should do the same. The County contends that the maintenance employes are merely support services personnel who should not be included in the existing unit of prison guards because they do not perform any role in the care, custody or control of the inmates or any of the security functions performed by the prison guards.

Section 604(3) of PERA states:

The board 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 board shall:

. . .

(3)Not permit guards at prisons and mental hospitalsto be included in any unit with other public employes,..."

43 P.S. 1101.604(3).

There is Board precedent to resolve the question of whether prison employes who are not correctional officers could be guards under PERA.

In <u>Fayette County</u>, 14 PPER ¶ 14159 (Final Order, 1983), the PLRB found a maintenance worker at a prison to be a guard even though his primary function was maintaining the prison and his secondary function was serving as a guard. The Board determined that his "occasional guard duties" were sufficient under PERA to classify the employe as a "guard" because it is "the nature of [his] duties, not the frequency of the duties" that is controlling. <u>Fayette County (citing Walterboro Manufacturing Corp. and Int'l Ladies Garment Workers Union, A.F.L.</u>, 106 NLRB 1383 (1953)). The Board noted in <u>Walterboro Manufacturing</u> that the NLRB found the employees at issue were guards even though 75% of their working time was spent on maintenance work and 25% on guard work.

In <u>Chester County</u>, 16 PPER ¶ 16178(Order Directing Submission of Eligibility List, 1985), the Board found prison counselors to be guards under PERA because they had daily contact with inmates, searched inmates, patrolled hallways and athletic yards, and assisted with visitation. Even though the counselors did not spend the majority of their time guarding inmates, they nevertheless were used by the prison as "another link in the chain of security." Id at 455.

Furthermore, in 1987, this Hearing Examiner added the positions of corrections food service instructor, corrections equipment operator, corrections tradesman instructor and corrections factory foreman to the H-1 unit of guards in the Pennsylvania state correctional institution bargaining unit of guards. PA Dep't of Corrections, 19 PPER ¶ 19025 (Proposed Order of Unit Clarification, 1987). I found that the petitioner in that case, AFSCME, proved that the employes in question, even though they were not correctional officers, performed functions related to the security of institution and the inmates and should be included in the unit of guards.

The County contends that the maintenance mechanics in the present case are not responsible for inmate security in the same manner and degree as were the employes in those cases. Furthermore, the County contends that that any the inmate supervision duties of the maintenance mechanics I and II possess are not at all similar to those of the corrections officers at the county prison.

It is worth noting the high level of trust and responsibility the County has placed in the maintenance mechanics to properly supervise the work release inmates. They often are the only supervision of inmates, and often exercise this supervision when corrections officers are not in the vicinity. Deputy Warden Seibert testified that the maintenance mechanics may not leave the inmates alone, even to take a bathroom break. The maintenance mechanics must account for all the tools the inmates use, some of which could easily become weapons in the hands of the wrong inmate.

Also, there have been occasions when maintenance mechanics have had to assist the correctional officers with inmate security, once helping a CO shut a pod door on a troublesome inmate. The maintenance mechanics have had to stop inmate fights.

The maintenance mechanics are "another link in the chain of security." <u>Chester County</u>, <u>supra</u>. The County has made a policy choice to classify certain inmates as work release prisoners, allowing these persons to begin a transition to life outside the walls of the prison. In this transition period, the maintenance mechanics play an essential role in the care, custody and control of this class of inmates.

Also, the County attempted to offer evidence of work duties of other county employes to show that as employes who supervise inmates, they could, under the Union's theory, also be included in the unit. However, I ruled that their duties were irrelevant as to the question of whether the employes at issue have responsibility for the care, custody and control of the inmates because their status was not being litigated.

The County also argues that its recent reorganization has shifted the maintenance mechanics to a chain of supervision by the general county maintenance department away from the prison. The County argues that this shift in the supervision removes the maintenance mechanics from the para-military chain of command in which the corrections are located. However, the reorganization and change in upper management does not change the essential fact of the maintenance mechanics having responsibility to report daily to the prison and to continue to be responsible for work release inmates.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

- 1. Lancaster County is a public employer within the meaning of section 301(1) of PERA.
- 2. AFSCME, District Council 89, is an employe organization within the meaning of Section 301(3) of PERA.
 - 3. The Board has jurisdiction over the parties.
- 4. The position of maintenance mechanic I is a guard within the meaning of Section 604(3) of PERA.
- 5. That the position of maintenance mechanic II is a guard within the meaning of Section 604(3) of PERA.

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 bargaining unit certified by the Board at Case Number PERA-R-5662-E is hereby amended to include the positions of maintenance mechanic I and maintenance mechanic II.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions to this order filed pursuant to 34 Pa. Code § 95.98 (a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-fifth day of June, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner