

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-U-09-247-E
: (PERA-R-5626-E)
PHILADELPHIA COUNTY COURT OF COMMON :
PLEAS :

PROPOSED ORDER OF DISMISSAL

A Petition for Unit Clarification was filed with the Pennsylvania Labor Relations Board (Board) on July 2, 2009, by AFSCME District Council 47, Local 810 (AFSCME), seeking to accrete the positions of Pretrial Warrant Investigator Trainee, Pretrial Warrant Investigators I and II (collectively, warrant investigators) into an existing unit of professional, court-appointed, court-related employees working for the Philadelphia County Court of Common Pleas (Court). This bargaining unit was previously certified by the Board under Case No. PERA-R-5626-E.

On July 28, 2009, the Secretary of the Board issued an order and notice of hearing, wherein a hearing was set for August 5, 2009, Philadelphia, Pennsylvania. After rescheduling because of granted continuance requests, the hearing was scheduled for and held on January 25, 2010, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Each party filed a post-hearing brief.

The 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. The Court is a public employer.
2. AFSCME is an employe organization.
3. The forty-seven warrant investigators are hired and employed by the Court and are the enforcement arm of the Pretrial Services Probation and Parole Unit. They are sworn law enforcement officers who carry a badge, and are trained and licensed to carry firearms. Their duties include conducting investigations, and locating and apprehending absconders from the Adult Probation and Parole Department. They also locate and apprehend fugitives for the common Pleas, Municipal, Family and traffic Courts of Philadelphia County. Monitoring house arrests, including utilizing electronic monitoring equipment are also within their duties. (N.T. 12-13, 37-38, 44-45, 38-40, 54-55, 70, 76; Union Exhibits 1, 4; Court Exhibits 1, 2; 43 Pa. C.S. § 99130.
4. Warrant investigators spend most of their time in the field, but their duties include testifying in court, interviewing subjects, and determining what additional warrants may be necessary to further an investigation. They determine which investigations they will pursue on a daily basis, the methods to use in those investigations, and the appropriateness of property searches. (N.T. 18, 23-33, 43, 45-48, 59, 65, 67-68, 83-85).
5. The educational requirement for warrant investigators is a high school degree, but each warrant investigator must successfully complete the training program developed and required by the Court. This training includes some constitutional law, criminal law and laws pertaining to arrest; preparation for in-court testifying; report organization and writing; training in law enforcement data bases; elementary Spanish; warrant execution; and development of personal skills necessary to diffuse conflict. This course required 660 hours of initial training, 160 hours of field training and 70 hours of physical fitness training. (N.T. 16-18, 49, 64, 82-84; Court Exhibits 1, 2; AFSCME Exhibit 1).

DISCUSSION

AFSCME seeks to accrete the three warrant investigator positions into a previously certified unit of professional, court-appointed, court-related employees. Because AFSCME has not shown these positions to be professional in nature, the petition is dismissed. A review of what establishes a position as professional is a helpful place to start the analysis.

PERA defines the term "professional employe" as any employe whose work

- (i) is predominantly intellectual and varied in character;
- (ii) requires consistent exercise of discretion and judgment;
- (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent;
- (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

43 P.S. § 1101.301(7). All four parts of the test must be met to acquire professional status under PERA. Beaver County Community College, 26 PPER ¶ 26201 (Final Order, 1995).

I need not decide whether the warrant investigators meet the other three criteria in § 301(7) of PERA, because they do not meet the educational requirements of § 301(7)(iii). A review of Board law on this portion of the test shows why.

The Board has stated that, "although it is clear that some level of education in an institution of higher learning is required, the Board and the courts have sanctioned a level of education at an institution of higher learning below the bachelor's degree level." In the Matter of the Employes of Lackawanna Career Technology Center, 33 PPER ¶ 33201 at 471 (Final Order, 2002). Accordingly, "an associates degree *could* satisfy the educational requirements[,]" in § 301(7)(iii). Id. (emphasis in original).

The bugbear for AFSCME is that the warrant investigators are only required to hold a high school diploma. Albeit, they do attend a training course specifically designed to address the special and varied circumstances they might encounter in the field, but that simply does not meet the requirements of § 301(7)(iii). That conclusion is based upon the holding of In the Matter of the Employes of Butler County, 10 PPER ¶ 10057 (Order and Notice of Pre-Election Conference, 1979). In Butler County, computer programmers who were required to have a degree from an accredited programming school in order to be hired were found by the Board not to be professional employes because they didn't meet the criteria set forth in § 301(7)(iii).

The Board has looked at investigator positions strikingly similar to the warrant investigators, and found them not to be professional, In the Matter of the Employes of Cambria County, 14 PPER ¶ 14062 (Proposed Order of Unit Clarification, 1983).

In Cambria County, the union petitioned to have, *inter alia*, the positions of domestic relations chief investigator and domestic relations investigator accreted into the professional unit certified by the Board. The duties of those two positions bear a striking resemblance to the warrant investigators' duties here. Yet, in Cambria County, Hearing Examiner Wallace found those positions not to be professional, *inter alia*, because the employer required but a high school diploma.

In Cambria County, the domestic relations investigators: "conduct on-the-scene investigations to verify information about persons owing support and to locate the whereabouts of such persons who fail to appear at court hearings." 14 PPER at 140.

Moreover, those investigators were

required to possess some knowledge of the principles, methods and techniques of investigation involving verification of information, be skilled in

eliciting information from various sources in order to locate persons involved in delinquent or criminal behavior and be able to establish and maintain effective working relationships with disturbed and/or maladjusted individuals, public agency personnel, associates and the general public.

Id.

Albeit, it is clear that warrant investigators' work is significantly more dangerous than is the Cambria County domestic relations investigators' work. However, additional adrenaline is not a factor in establishing professional status. The men and women who serve as warrant investigators perform dangerous and important work. The fact that their job requirements do not make them professional under PERA, in no way diminishes the danger they face, or the importance of the work they do. The Board has recognized that "an employe may possess technical expertise of one sort or another and/or be creative and imaginative in how they carry out their job duties but still not be a professional employe within the meaning of Section 301(7) of [PERA]." Cambria County, 14 PPER at 140.

Also, the fact that some warrant investigators possess college degrees is of no moment. The Board has ruled that the serendipitous holding of a college degree, when not necessary for the position, does not transform that position into a professional one. In the Matter of the Employes of Erie Metropolitan Transit Authority, 13 PPER ¶ 13295 (Proposed Order of Unit Clarification, 1982); Cambria County, *supra*.

Because the warrant investigators do not meet the educational expectation set forth in § 301(7)(iii) of PERA, they do not share a sufficient, identifiable community of interest to be accreted into the professional, court-appointed, court-related bargaining unit.

CONCLUSIONS

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

1. The Court is an employer within the meaning of Section 301(1) of PERA.
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.

4. The positions of Pretrial Warrant Investigator Trainee and Pretrial Warrant Investigators I and II are not professional within the meaning of Section 301(7) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the Petition for Unit Clarification is dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this seventh day of July, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner