

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: PERA-U-09-79-E
: (PERA-R-11,593-C)
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS :

FINAL ORDER

The Correctional Institution Vocational Educational Association, PSEA/NEA (CIVEA) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on June 8, 2010, challenging a Proposed Order of Dismissal (POD) issued on May 19, 2010. In the POD, the Hearing Examiner rejected CIVEA's petition to clarify its bargaining unit of professional employes of the Commonwealth of Pennsylvania, Department of Corrections (Commonwealth) to include the positions of corrections barber manager, corrections barber instructor and corrections cosmetology instructor. The Commonwealth filed a brief in response to the exceptions on June 25, 2010.

The Hearing Examiner's findings of fact are summarized as follows. The Commonwealth operates correctional institutions throughout Pennsylvania. At those institutions, the Commonwealth employs corrections officers and other employes who are in a unit of prison guards certified by the Board at Case Nos. PERA-R-12-C and PERA-R-13-C. The prison guard unit is currently represented by the Pennsylvania State Corrections Officers Association (PSCOA). CIVEA is the exclusive representative of a bargaining unit comprised of non-supervisory, professional educational personnel employed in the Commonwealth's correctional institutions pursuant to a certification issued at Case No. PERA-r-11-593-C. CIVEA's unit is not a prison guard unit.

The positions at issue in this case (corrections barber manager, corrections barber instructor and corrections cosmetology instructor) have been included within the prison guard bargaining unit since the creation of that unit in 1971. At that time, no one raised a question about whether the employes belonged in a separate professional prison guard unit.

All employees of the Department of Corrections, including the positions in question and the members of CIVEA's professional bargaining unit, attend the Department's Training Academy immediately after being employed. The length of training depends upon the classification of the trainee. Trainees will spend 2, 3, 4, or 5 weeks at the Training Academy, depending upon their job classification and the extent to which they are responsible for inmate security. Corrections Officers receive the most training - 5 weeks. The positions in question, which are classified as Non-Correctional Officer Staff, get 4 weeks of training. "Contact Staff," which includes members of CIVEA's professional bargaining unit, get three weeks of training at the Academy. "Non-Contact Staff" (secretaries and others who do not have direct inmate contact) receive two weeks of training at the Academy.

The positions in question receive the same training that CIVEA's professional employes receive during their first 3 weeks of Academy instruction. During their fourth week of training, the Non-CO Staff (which includes the positions in question), also receive training to familiarize them with the handgun and shotgun. Although they are not required to qualify with the shotgun, they are required to shoot it in case they are called as a first responder. The barber instructors and cosmetology instructors also train in use of the riot baton and smaller baton and chemical munitions. The chemical munitions training includes exposure to tear gas and actual use of the launcher and gas mask. They also receive additional training in supervising inmates, accountability and key control and training in the application of restraints, such as handcuffs and shackles. Barber instructors and cosmetology instructors also receive training in searches during lockdowns as part of the fourth week of training. After the Academy, the barber instructors, barber managers and cosmetology instructors receive block training at their institution throughout the year to review some of the above subjects that were covered in the fourth week of basic training.

All employees of the Department of Corrections receive an annual "block training" within their institution of one week or 40 hours. Of the 40 hours, the training received by the professional bargaining unit is the same as the training received by the positions in question for approximately 32 hours. The positions in question receive some additional training in firearms, baton and chemical response of approximately 6 to 8 hours annually.

Michael DeRiggi is a barber instructor at the State Correctional Institution (SCI) at Mercer. SCI Mercer does not have a barber school for inmates, but instead has a barbershop where inmates, who are licensed barbers, spend most of their time cutting the hair of other inmates and also learn how to run or manage a barber shop. DiRiggi has worked at SCI Mercer for less than two years. As a barber instructor at SCI Mercer, DeRiggi is responsible for the security of the inmates assigned to his barbershop, which takes up a lot of his time. DeRiggi pat searches inmates when they arrive at the barbershop and before they leave. On an average day, DeRiggi's barbershop provides haircuts for 60 to 100 inmates and DeRiggi himself performs some of the haircuts on a random basis. DiRiggi is also responsible for ten inmate barbers and two inmate janitors. When inmates enter the barbershop, DeRiggi is responsible for ensuring that their passes are correct and that they are where they are supposed to be. DiRiggi wears a protective vest, as do all members of the prison guard bargaining unit. DiRiggi is responsible for stopping at the control center to get sharp instruments for the barbershop. He then carries these items through the institution to the barbershop, which he accesses by way of various gates unlocked with his assigned set of keys. The sharp instruments are kept on a shadow board in the barbershop and are inventoried by DeRiggi three times a day. Whenever SCI Mercer has a lockdown, DeRiggi performs cell searches, which includes searching an inmate's cell for weapons, drugs and contraband. DiRiggi also does pat searches and performs strip searches of inmates during lockdowns.

Frank Giorno is a barber instructor at SCI Waymart, which has a barber school. Giorno provides instruction to inmate barbers in cutting the hair of other inmates and assists them in working towards passing the State exam to become a licensed barber. Giorno's barber shop performs approximately 230 inmate haircuts per week. Before the start and at the end of each work day, Giorno carries a "sharps" box containing scissors, razors, and screwdrivers needed for the barber shop from the control center to the barber shop using his keys. Giorno wears a protective vest and pat searches his inmate barbers when they come to and leave work. Giorno is required to randomly pat search inmates receiving haircuts prior to leaving the shop, and he escorts his twelve inmate barbers from the classroom to the barbershop. Giorno is also responsible for two inmate janitors. Whenever Waymart has a lockdown, Giorno performs cell searches along with corrections officers and other prison guard unit members, including maintenance or trades instructors. These searches include flipping mattresses in an effort to uncover contraband and weapons.

Shonny Miller is a cosmetology instructor at SCI Muncy. Prior to becoming a cosmetology instructor, Miller spent five years as a corrections officer. Currently Miller has 11 inmate cosmetologists working in her shop. Each day, Miller calls down inmates to receive haircuts or hairstyles. Her inmate workers provide such services to 24 to 30 inmates per day. Miller is responsible for maintaining custody, security and discipline for all inmates in her shop and for maintaining an inventory of the chemicals used therein. Miller searches inmates coming into and leaving her shop. She conducts random pat searches of inmates and also uses a wand metal detector. During lockdowns, Miller is given a set of handcuffs and she searches cells and sometimes conducts strip searches of inmates. Cell searches entail handcuffing the inmates and guarding them outside the cell door while corrections officers search the cell; sometimes Miller is the one who searches the cell. Miller wears a protective vest and is qualified on the pistol and shotgun.

Edward Petrovich is a barber instructor at SCI Coal Township, which has a barber school for inmates. Petrovich calls the housing units and requests that inmates be sent to the barbershop, whereupon he checks passes and is accountable for the inmates. As with DeRiggi and Giorno, Petrovich is responsible for securing "sharps" from the control center and is responsible for all tools and instruments in his shop. Petrovich pat searches inmates coming into and leaving his shop and uses a wand metal detector. Petrovich searches cells and conducts strip searches of inmates, with the use of handcuffs, when Coal Township has a lockdown. Petrovich is also an immediate responder in the event of an emergency, which could entail being part of the first line of containment of an incident such as a riot formation. Petrovich is trained in using a baton and is qualified with the shotgun. Petrovich is

responsible for the security of the inmates in his shop and there are handcuffs assigned thereto. If Petrovich is off sick, a corrections officer fills in for him.

In the POD, the Hearing Examiner determined that the positions of barber instructor, barber manager and cosmetology instructor were "guards at prisons" within the meaning of Section 604(3) of PERA. Having made this determination, the Hearing Examiner found it unnecessary to make a determination as to whether these positions qualified as "professional employes" under Section 301(7) of PERA.¹ Accordingly, the Hearing Examiner dismissed the Association's Petition for Unit Clarification that sought to include these positions in its admittedly non-prison guard unit.

In its exceptions, the CIVEA argues that the Hearing Examiner erred by failing to make a determination as to whether these employes are "professional". Specifically, CIVEA argues that the determination of whether a position is a prison guard or a professional employe should be based on the primary function of that position and that, when the primary duties are professional and the guard duties are ancillary to performing professional duties, the position should be considered professional for purposes of determining proper bargaining unit placement. CIVEA contends that the primary function of the employes in these positions is to perform professional duties, not guard duties, and therefore they should be placed in the non-guard professional bargaining unit that CIVEA represents.

Section 604(3) of PERA provides as follows:

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 hospitals, employes directly involved with and necessary to the functioning of the courts of this Commonwealth, or any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the 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) (emphasis added).

As correctly noted by the Hearing Examiner, the Board's previous decision in Fayette County, 14 PPER ¶ 14159 (Final Order 1983) controls the result in this case. In that case, the Board found that the frequency of guard duties was not controlling in determining whether maintenance employes were guards:

The second issue, that of frequency, was discussed in a prison situation with regard to a matron-records officer. In Employes of Cumberland County (Cumberland), 12 PPER 12198 (1981), aff'd 13 PPER 13035 (1982), the Hearing Examiner stated:

The matron/records officer's primary function is totally unrelated to the security of the prison. She must nevertheless be found to be a prison guard because she is utilized on occasion in that fashion. As noted above, simply because the bulk of her time is spent performing clerical tasks does not mean that she cannot be found to be a prison guard. Since the County uses her as a prison guard, she must be included in the unit.

12 PPER at 309. We believe it appropriate to place the maintenance man within the guard unit as well because of his occasional guard duties.

¹ Section 301(7) provides that: "Professional employe" means 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; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

Our decision to place the maintenance man in a guard unit is consistent with our previous decisions which had included other types of employees within the guard unit, if it was determined that these other employees actually performed guard functions. Employees of Huntingdon County Prison, 11 PPER 11124 (1980), aff'd 12 PPER 12156 (1981), Employees of Delaware County Prison, 4 PPER 45 (1974). It is also analogous with National Labor Relations Board decisions such as Walterboro Manufacturing Corp. and International Ladies Garment Workers Union, A.F.L., 106 NLRB 1383, No. 241, 33 LRRM 1028 (1953), in which it was determined that maintenance men who also served as watchmen were guards because the nature of their duties, not the frequency of the duties, was controlling. In that particular case, seventy-five (75) percent of the working time of the employees was spent in a maintenance function and twenty-five (25) percent of the time was spent as a guard.

Id. at 341.

Thus, even if we were to accept as true CIVEA's argument that the primary duties of these employees is related to carrying out professional duties rather than prison guard duties, that would not change the fact that these employees are also prison guards. Because they are prison guards, the question as to whether they are also professional is irrelevant for purposes of resolving CIVEA's request to include these positions in CIVEA's non-prison guard unit. As prison guards, they are prohibited from being included in a bargaining unit such as CIVEA's that contains non-prison guard employees. CIVEA's argument that primary function should control prison guard unit placement ignores the fact that where the extent to which certain duties are performed is to be taken into account, PERA specifically provides for the Board to do so. Section 604(5) of PERA provides just such a consideration for determination of supervisory status. But where the question is whether an employee is a management level employee under PERA, the extent to which management level duties are performed is not determinative. See Employees of Carlynton School District v. Carlynton School District, 377 A.2d 1033 (Pa. Cmwlth. 1977) (any performance of management duties results in a conclusion of management level status). Like management level duties, any regular performance of prison guard duties results in the conclusion that the employee is a prison guard. Here, CIVEA does not dispute the fact that these positions perform prison guard duties. Therefore, the Hearing Examiner correctly concluded that it would be improper to clarify the non-prison guard professional unit to include positions that are prison guards, regardless of their alleged professional status.

Finally, with regard CIVEA's argument that the Hearing Examiner erred by failing to make certain findings of fact, the Hearing Examiner is not required to make findings summarizing all of the evidence presented. Rather, the Hearing Examiner need only make those findings that are necessary to resolve the issues presented and are relevant to the decision. Page's Department Store v. Velardi, 464 Pa. 276, 287, 346 A.2d 556, 561 (1975) ("When the fact finder in an administrative proceeding is required to set forth his findings in an adjudication, that adjudication must include all findings necessary to resolve the issues raised by the evidence and which are relevant to a decision."). The findings proposed by CIVEA, which mainly deal with whether these positions should be classified as professional, are not necessary or relevant to the decision herein, and would not change the result. Accordingly, the Hearing Examiner did not err by failing to make these findings.

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 CIVEA are hereby dismissed, and the May 19, 2010 Proposed Order of Dismissal be and hereby is made absolute and final.

SEALED, DATED and MAILED 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 seventeenth day of August, 2010. 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.