

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LACKAWANNA COUNTY DEPUTY SHERIFFS :
ASSOCIATION AND CHESTER CIPILEWSKI :
 :
 v. : Case No. PERA-C-10-199-E
 :
 :
 LACKAWANNA COUNTY :
 JOHN SZYMANSKI :

PROPOSED DECISION AND ORDER

On June 18, 2010, the Lackawanna County Deputy Sheriff's Association (Association) and Chester Cipilewski (Deputy Sheriff Cipilewski) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Sheriff of Lackawanna County, John Szymanski (Sheriff), and the County of Lackawanna (County) violated sections 1201(a)(1), (3) and (5) of the Public Employee Relations Act (PERA) by refusing to reinstate Deputy Sheriff Cipilewski pursuant to an unconditional offer of reinstatement made by the Sheriff and the County in a March 18, 2010, letter and as set forth in an agreement to reinstate Deputy Sheriff Cipilewski entered into by the County at a March 25, 2010, hearing on a related charge (Case No. PERA-C-09-331-E).

On June 18, 2010, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on November 2, 2010, if conciliation did not resolve the charge by then.

On July 16, 2010, the Sheriff filed a motion to dismiss complaints pursuant to section 1620 of the county code. According to the Sheriff,

"because Respondent retains the exclusive statutory right to hire, supervise and discharge employees under Section 1620 of the County Code, and because Respondent did not voluntarily abrogate that right through the collective bargaining process, the Board is without the authority to compel Respondent to reinstate Deputy Sheriff Cipilewski as demanded by Complainants."

Motion to dismiss complaints at ¶ 15. The Sheriff would have the Board dismiss the instant complaint as well as the complaint in Case No. PERA-C-09-331-E accordingly.

On July 20, 2010, the hearing examiner gave the Association, Deputy Sheriff Cipilewski and the County 30 days to respond to the motion. The hearing examiner also gave all parties 30 days to file briefs.

On August 17, 2010, the Sheriff filed a brief by deposit in the U.S. Mail. On August 18, 2010, the Association and Deputy Sheriff Cipilewski filed a response and a brief by deposit in the U.S. Mail. On August 19, 2010, the County filed a response and a brief by deposit in the U.S. Mail.

The motion to dismiss the complaint in the instant case must be granted, albeit not for the reasons advanced by the Sheriff.¹

Contrary to the Sheriff's contention, the Board has jurisdiction to decide if he committed unfair practices by refusing to reinstate Deputy Sheriff Cipilewski. See Berks County, 36 PPER 36 (Final Order 2005) (the Board had jurisdiction to decide if a row officer committed unfair practices under the PERA when he discharged employes in his office).

The motion to dismiss the complaint in the instant case nevertheless must be granted because the charge does not state a cause of action against either the County or the Sheriff.

In Blair County, 32 PPER ¶ 32049 (Final Order 2001), the Board found that a charge alleging that a county committed unfair practices when a row officer discharged one of his employes did not state a cause of action. As the Board explained, under section 1620

¹ This decision and order only addresses the motion to dismiss the complaint in the instant case. The motion to dismiss the complaint in Case No. PERA-C-09-331-E will be addressed separately.

of the County Code, the row officer had the exclusive authority to hire and fire employes in his office, so the county was not liable for any unfair practices the row officer may have committed.

The instant charge similarly implicates the hiring and firing rights of the Sheriff under section 1620 of the County Code. Thus, the charge does not state a cause of action against the County no matter what the County offered in the March 18, 2010, letter or agreed to at the March 25, 2010, hearing in Case No. PERA-C-09-331-E.

The remaining inquiry, then, is whether or not the charge states a cause of action against the Sheriff.

Notably, the Association and Deputy Sheriff Cipilewski allege that in the March 18, 2010, letter the County and the Sheriff

"by their counsel, Alexia Kita Blake, made an unconditional offer of reinstatement to Deputy Sheriff Cipilewski as follows:

'On behalf of Lackawanna County, I hereby extend an unconditional offer of reinstatement to Chester Cipilewski to return to his former position as Deputy Sheriff, on the same shift and with the same job responsibilities, compensation, and benefits as he enjoyed during his employment with Lackawanna County prior to his termination on July 28, 2009. Lackawanna County is prepared to reinstate him immediately. Mr. Cipilewski is free to continue to pursue any and all legal claims against the County regarding his termination, and he is not required to sign a release or give up any of his legal rights as a condition of reinstatement. Moreover, while we do not admit any liability in connection with his termination, we have been and remain committed to insuring that Mr. Cipilewski will not be subject to any retaliation if he returns to work. We are willing and available to discuss any questions or concerns which Mr. Cipilewski may have regarding his return to work."

Specification of charges.

A close review of the March 18, 2010, letter does not show that Ms. Blake made an unconditional offer of reinstatement to Deputy Sheriff Cipilewski on behalf of the Sheriff, however. To the contrary, it shows that Ms. Blake made the offer "[o]n behalf of Lackawanna County." Thus, the letter provides no basis for finding that the Sheriff committed unfair practices by refusing to reinstate Deputy Sheriff Cipilewski pursuant to the unconditional offer of reinstatement. The charge, therefore, does not state a cause of action against the Sheriff either.

The Association and Deputy Sheriff Cipilewski would have the Board find otherwise because Ms. Blake represented both the County and the Sheriff when she sent the March 18, 2010, letter. By their own pleading, however, the fact remains that she only made the offer "[o]n behalf of Lackawanna County."

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this first day of September 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner