

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 : PERA-R-10-207-E  
LANCASTER COUNTY :

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On June 10, 2010, the American Federation of State County and Municipal Employees Council 13, (Petitioner or Union) filed a petition for representation with the Pennsylvania Labor Relations Board (Board) alleging that thirty per cent or more of the full-time and regular part-time security and detention employees of the Lancaster County Youth Intervention Center (YIC) of Lancaster County (County or Respondent) wished to be represented by the Union and that the Union desired to be certified as their representative.

The Union seeks to accrete detention and security officer employees at the Youth Intervention Center to its existing unit pursuant to the Board's Westmoreland Intermediate Unit procedures.

On June 17, 2010, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on July 12, 2010, in Harrisburg, Pennsylvania.

The hearing was rescheduled to July 27, 2010. The hearing was held on the rescheduled date, at which time the hearing examiner afforded all parties a full opportunity to present evidence and cross-examine witnesses. The parties submitted post-hearing briefs on September 3, 2010.

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

**FINDINGS OF FACT**

1. Lancaster County is a public employer within the meaning of Section 301(1) of the Public Employee Relations Act (PERA).
2. The American Federation of State, County and Municipal Employees (AFSCME) is an employee organization under Section 301(3) of PERA.
3. The union is the exclusive certified bargaining unit of prison guard employees at the County Prison pursuant to the certification issued by the Board at Case No. PERA-R-5662-C (N.T. 5, Board Exhibit 1)
4. The County operates a juvenile detention facility in the city of Lancaster known as the Youth Intervention Center (YIC). (N.T. 146)
5. The building was constructed and occupied in 2002, and includes facilities for employes of the Lancaster County Children and Youth Agency. The YIC is organized into four housing units. (N.T. 16)
6. Each unit is divided into an "A" and a "B" side. (N.T. 16)
7. Each "A" and "B" subdivision contains 12 resident rooms. (N.T. 16)
8. Unit 1A is a temporary unit for residents who have misbehaved. Unit 1B is an Orientation Unit for new residents. Unit 5A is for female residents. Unit 6 is a shelter unit which is for dependent and delinquent children who are assigned to that unit by a court. The remaining units house residents who have maintained good behavior and good grades. (N.T. 17-19)
9. The YIC was created pursuant to the Juvenile Act and it is licensed by the Pennsylvania Department of Public Welfare (DPW) (N.T. 14, 67, 150)
10. The YIC operates under the DPW's regulations governing Child Residential and Day Treatment Facilities. (N.T. 150)

11. The stated goal of YIC is to "set up a positive environment for [children]," and to provide staff "to interact with them in a positive nature ... and provide [a] positive role model for them." (N.T. 202)
12. Children are referred to YIC by the court of common pleas. (N.T. 150)
13. The court determines whether a juvenile should be sent to the detention or shelter units at YIC. (N.T. 153)
14. The detention units at YIC house residents who have committed acts which, if the child were an adult, would be deemed a crime. (N.T. 50)
15. A child who is placed in the detention area is referred by the Office of Juvenile Probation and Parole once the child has been adjudicated as having committed a delinquent act. (N.T. 149)
16. The shelter unit is mainly for dependent children, although children who have been adjudicated also live on the shelter side. (N.T. 50, 157)
17. Dependent children are referred to YIC from the Lancaster County Children and Youth agency, as well as the Office of Juvenile Probation and Parole. (N.T. 150,157)
18. YIC is operated pursuant to the Juvenile Act and regulations promulgated by the Pennsylvania Department of Public Welfare. (N.T. 150)
19. The YIC has a detention program and a shelter program. The facility is organized into four housing units. One of the four units houses up to 24 residents in the shelter program. The remaining three units house up to 48 residents in the detention program. (N.T. 16, 148-149)
20. Residents are ordered to be confined at the YIC by the court system. (N.T. 150)
21. There are 52 Youth Care Workers and three Security Officers on the detention side of the YIC, and 27 Youth Care Workers on the shelter side. (N.T. 59, 258)
22. The detention program is for individuals between 10 and 21 years of age who have been charged with or committed a "delinquent act," that is, an act that would be a crime if committed by an adult. Most detention residents are between the ages of 15 and 19. (N.T. 44-45, 50, 149, 157)
23. Under state law, they are referred to as "delinquent" after they have been determined to have committed delinquent act. See 42 Pa. C.S. § 6302. (N.T. 150-151)
24. Residents on the shelter side are dependent youths (i.e. those who have been removed from foster care or an abusive home, etc. See 42 Pa. C.S. § 6302 for definition of dependent child) or delinquent youths whom a court has ordered to be detained on the shelter side of the YIC rather than the detention side. About two-thirds of the residents in the shelter unit are dependent; the remainder are delinquent. (N.T. 157-158)
25. Residents on the detention side may have no contact with shelter residents. The YIC building is designed to ensure, through magnetic locking systems, that there is no interchange between detention and shelter residents. (N.T. 49-50, 178-179)
26. In order to enter any part of the YIC, one must be granted access by a Security Officer or Youth Care Worker working in Central Control. (N.T. 14-15)
27. The YIC has a secure sally port for intake or transport of residents. (N.T. 39-40).
28. On the detention side of the YIC, there are locked doors throughout the interior of the facility. In order to get from one part of the facility to another, a person working in Central Control must open the door. (N.T. 15-16).
29. Youth Care Workers also carry keys to certain parts of the detention facility. (N.T. 49, 75-76, 178)
30. Youth Care Workers and Security Officers are responsible to ensure that the detention side doors are locked when not in use. (N.T. 36-37, 187, 191, 206)

31. The YIC uses video surveillance technology throughout the building, inside and out (except for showers and resident rooms). (N.T. 184, 207)
32. Detention residents are locked in their rooms each day from 2:30 to 3:30 pm for the staff shift change, and overnight. (N.T. 28, 29, 177-178)
33. Whenever detention residents are locked in their rooms, Youth Care Workers conduct "watch tours," checking on the residents every 13 to 15 minutes to make sure they are present, safe and secured in their rooms. (N.T. 32-34)
34. When a resident is at risk or suicidal, he or she may be placed on "intensive watch" or "constant watch." In that event, Youth Care Workers check the resident's room every five minutes. (N.T. 34-35)
35. The shelter is a "staff secure environment"; there are no locked doors securing the residents. (N.T. 178, 183)
36. The majority of shelter residents are "dependent" youths who, unlike those in the detention program, have not been charged with any offense under the Crimes Code. They are housed at the YIC because they have been removed from foster care or an abusive home, and have nowhere else to go. (N.T. 50, 157-158).
37. Two-thirds of 24 shelter residents at the YIC are dependent children. (N.T. 157-158)
38. Neither shelter nor detention residents may leave the facility unescorted. (N.T. 209)
39. Delinquent residents are not allowed outside the facility at all, except for medical appointments, court dates and the like. (N.T. 45, 198-199)
40. When detention residents leave the facility for medical appointments or hospitalization, they are handcuffed, shackled, and escorted by two Youth Care Workers. (N.T. 37-38, 71, 174)
41. When a detention resident is admitted to the hospital, he or she is guarded by a Youth Care Worker throughout the hospital stay. (N.T. 38-39)
42. When a detention resident attends a court proceeding, he or she is escorted from the County Sheriff's Office. (N.T. 39)
43. Dependent residents in the shelter program are taken off-site for programming on occasion. (N.T. 169, 198-199)
44. When a shelter resident is transported to court, a shelter employe accompanies the resident. (N.T. 169)
45. Detention residents wear County-issued uniform clothing. Shelter residents wear their own personal clothing. (N.T. 32, 193)
46. At any given time, there also are some juveniles incarcerated at the County Prison. While there, the juveniles are under the care, custody and control of the Correctional Officers and are considered inmates. (N.T. 105-106, 122, 151-153, 241-243)
47. They are treated as adults, except that they are often segregated for housing, for their own protection. (N.T. 241-243)
48. Youth Care Workers and Security Officers work three shifts-7:00 a.m. to 3:00 p.m., 3:00 to 11:00 p.m., or 11:00 p.m. to 7:00 a.m. (N.T. 14, 199)
49. Youth Care Workers are responsible to make sure that YIC residents stay inside the facility, and do not escape when they are transported outside the facility. (N.T. 191, 196-197).
50. They escort residents throughout the facility, and are responsible for monitoring all of the residents to whom they are assigned throughout the shift. They must never leave residents unattended, and may not leave their assigned position until relieved by another Youth Care Worker. (N.T. 20-23, 25-28, 63, 94)

51. Throughout their shift, Youth Care Workers carry a walkie-talkie type two way radio with them for communication among staff at the YIC. In the event of an escape attempt, a "code green" is transmitted on all the walkie-talkies, and all available staff are to respond. (N.T. 207-210)

52. On occasion, Youth Care Workers have been physically assaulted by residents. (N.T. 57-58)

53. When a detention program resident becomes uncooperative or belligerent, it is the Youth Care Worker's responsibility to step in and take control of the situation. (N.T. 20-24).

54. Youth Care Workers in the detention program are expected to control resident outbursts, starting with non-physical means of de-escalating the situation and increasing the level of intervention up to and including physical restraint with handcuffs applied by supervising staff, where necessary. (N.T. 24-25, 27, 71-72, 169, 172-173).

55. The same is true for shelter residents who act out, except that for shelter residents, no handcuffs may be used. (N.T. 173-174)

56. Youth Care Workers document incidents of resident misconduct using misconduct reports and document unusual incidents using unusual incident reports. They also maintain a shift log, documenting the whereabouts and activities of all residents to whom they are assigned throughout the shift. (N.T. 25-26, 27-28, 34)

57. Youth Care Workers also are responsible to ensure that residents do not have possession of any contraband. To that end, Youth Care Workers perform pat searches of residents repeatedly throughout the day, and conduct exhaustive cell searches every evening before the resident is locked in his or her room for the night. They also conduct strip searches of residents on occasion. (N.T. 29-32, 41-43, 191)

58. When a detention or shelter resident has a visitor, Youth Care Workers are responsible to supervise the visitation process. They process visitors through a metal detector, use a metal wand to search them, and ensure that the visitor brings nothing with him or her to the visit. The visitor and resident may exchange a hug at the beginning and end of the visit, but may have no other physical contact whatsoever during the visit, in order to avoid the possibility of passing contraband. (N.T. 45-47, 189-191)

59. Youth Care Workers in the shelter program ensure that residents get to their programming on time and participate in the program, perform up to YIC's expectations, use proper hygiene, interact pleasantly with one another and with visitors, volunteers and staff. Additionally, Youth Care Workers in the shelter program are to be role models and a person for residents to talk to. (N.T. 164-165)

60. Youth Care Workers do not engage in any formal counseling of residents; there is a contracted counselor who performs that function. Youth Care Workers sometimes conduct activities with residents but are not required to. (N.T. 50-51, 75, 78, 182)

61. Generally, Youth Care Workers on the detention side do not work on the shelter side, and shelter side Youth Care Workers do not work on the detention side. The main exception is that when a resident must be restrained, a Youth Care Worker from the shelter side may assist on the detention side. (N.T. 49)

62. Security Officers work in Central Control, controlling the electronically locked doors throughout the YIC, and monitoring the video cameras and intercoms. Whenever the detention residents are locked in their rooms, Security Officers communicate to Youth Care Workers a reminder every 3 to 15 minutes to conduct their watch tours. Youth Care Workers from either the detention or shelter programs also serve as Security Officers on occasion. (N.T. 33, 40, 48-49, 164, 166-167, 185-186, 199).

63. Youth Care Workers on both the detention and shelter sides of the YIC are trained in, among other things, first aid, CPR, safety crisis management, de-escalation techniques, fire safety, building security, proper attire, effective report writing, how to properly apply handcuffs and shackles, and other topics related to operation of the YIC, and the paperwork that the Youth Care Workers maintain. Their training lasts for

approximately a month, including two weeks of "shadowing" another staff member. (N.T. 51-53, 66-72, 168-171)

64. The parties stipulated that the eleven individuals employed at the YIC holding the position of Supervisor are supervisors within the meaning of Section 301(6) of PERA and are therefore not eligible for inclusion in the unit. (N.T. 134-135)

65. The parties stipulated that the YIC's Case Manager, Business Administrator, Director, Program Coordinator, Security Coordinator, Shelter Director and Training Coordinator are management level employees within the meaning of Section 301(16) of PERA and are therefore not eligible for inclusion in the unit. (N.T. 134-135)

66. The parties stipulated that the YIC's Clerical Specialist and Clerical Specialist III are not "guards at prisons" within the meaning of Section 604 of PERA and therefore are therefore not eligible for inclusion in the unit. (N.T. 134-135)

#### DISCUSSION

AFSCME currently represents prison guard employees at the County Prison pursuant to certification issued by the Board at Case No. PERA-R-5662-C. AFSCME now petitions to accrete into its existing prison guard unit employees 52 Youth Care Workers and three Security Officers working in the Youth Intervention Center (YIC) detention program pursuant to the Board's Westmoreland Intermediate Unit procedures.

In Westmoreland Intermediate Unit, 12 PPER ¶ 12347 (Order and Notice of Election, 1981), the Board authorized elections to determine whether currently unrepresented employees desired to be represented by an existing bargaining representative which currently represents other employees of the employer with whom the petitioned-for employees share a community of interest. By this procedure the unrepresented employees are polled to determine whether they desire to be represented by the representative of the other employees of the employer. If a majority of such unrepresented employees vote for that representative the employees will be accreted to the larger unit. If a majority of the unrepresented employees do not wish to be represented by the Petitioner as evidenced in the election, the Board shall dismiss the present petition and not disturb the previously certified unit.

Under Section 604 of PERA, the Board must determine the appropriateness of a bargaining unit, taking into consideration both the fact that "public employees must have an identifiable community of interest" as well as "the effects of overfragmentation." 43 P.S. 1101.604(1). Additionally, the Board is bound by PERA's requirement that "guards at prisons" may not "be included in any unit with other public employees." 43 P.S. 1101.604(3)

The County contests the appropriateness of the petitioned-for unit on three grounds.

The first ground is the County's assertion that the YIC is not a "prison", and therefore the petitioned-for employees are not "guards at prisons" within the meaning of Section 604(3) of PERA.

PERA itself does not define the term "prison." However, the Board has interpreted this term to include a county youth detention center under circumstances such as those presented in this case. In Dauphin County, 34 PPER 99 (Final Order, 2003), the employer raised the same arguments that had been raised here, that the employees were not "guards at prisons" because the purposes of the Juvenile Act, which governs the facility in which the employees work, prohibits the detention of juveniles in any facility with adults, in jails or in facilities used primarily to execute the sentences of adult criminals. The Board acknowledged that the legislature has as a policy matter decided "to treat children in the juvenile justice system differently than adults in the criminal justice system..." Id. at 310. However, the Board expressly rejected the argument that these distinctions control the determination as to the bargaining unit placement of employees working in these two types of facilities. Id. at 310-311. The Board reasoned as follows:

PERA was enacted to promote orderly and constructive relationships between public employers and their employees through the grant of collective bargaining rights, including the right to strike, while insuring that essential personnel such

as prison guards remain on the job to protect the public. 43 P.S. § 1101.101, 1101.1001. In return for not being granted the strike rights bestowed upon other public employes, guards at prisons and other essential personnel have the right to binding interest arbitration to resolve collective bargaining impasses with their employers. 43 P.S. § 1101.805. The examiner in Lancaster County found that the legislative objective in enacting PERA would not be effectuated by construing "guards at prisons" narrowly to exclude guards at juvenile detention facilities, leaving no one to guard the juveniles in the event of a strike, but would be effectuated by construing the relevant statutory language more broadly to include guards at both adult and juvenile detention facilities.

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We believe that Sections 604(3) and 805 of PERA were intended simply to identify certain categories of employes whose services are essential (court employes, mental hospital and prison guards) and should not engage in PERA sanctioned strikes. As noted by the hearing examiner, the obvious reason for banning strikes by those charged with securing confinement of individuals remanded by the courts is to prevent those employes from abandoning their posts in times of labor negotiations. Although we agree with the County that adult criminal and juvenile justice polices may differ in other respects, they do not differ as to the need for ensuring the effectiveness of adult sentences and juvenile dispositions and protection of society from those confined under adult and juvenile justice policies.

Id. at 311. In order to effectuate this statutory purpose, the Board found it appropriate to include juvenile detention workers in the same unit with correctional officers.

In the present case, the same result should apply. The Youth Care Workers should be deemed as "guards at prisons" and allowed to vote whether to be included in the existing unit of correctional officers.

The second ground for contesting the petition is the County's assertion that even if the petitioned-for employes are "guards at prisons" within the meaning of Section 604(3) they do not share an identifiable community of interest with the employes in the existing bargaining unit, and so cannot be included in the same unit with those employes.

Our Supreme Court has held that, in order to determine whether or not employes share an identifiable community of interest, the Board should consider factors such as "the type of work performed, educational and skills requirements, pay scales, hours and benefits, working conditions, interchange of employes, grievance procedures, and bargaining history." Fraternal Order of Police v. PLRB, 557 Pa. 586, 594, 735 A. 2d 96, 100 (1999). There need not be perfect uniformity in conditions of employment; an identifiable community of interest "can exist despite differences in wages, hours, working conditions or other factors." Id. Accord, Deputy Sheriffs Association of Berks County v. PLRB, 795 A.2d 1064 (Pa. Cmwlth. 2002); West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). See also Washington Twp. Municipal Authority v. PLRB, 569 A.2d 402, 404 (Pa. Cmwlth.), alloc. Denied 525 Pa. 652, 581 A.2d 577 (1990), citing Western Psychiatric Institute and Clinic v. PLRB, 330 A.2d 257, 260 (Pa. Cmwlth. 1974) ("identifiable community of interest can exist despite 'some differences in requirements of experience, skills and education.'")

Applying this standard, the Commonwealth Court in West Perry School District upheld the Board's finding of an identifiable community of interest among maintenance, custodial and cafeteria workers, where the record showed that the employes all performed blue collar duties, received similar pension and health benefits; received personal and sick days; were paid on an hourly basis; and desired to be represented in the same bargaining unit. 752 A.2d at 462-464. The employer argued that differences in job functions, work location, supervision, schedules, hours, compensation and benefits established lack of an identifiable community of interest. Id. at 463-464. The Commonwealth Court, however, viewed the community of interest factors more broadly, finding sufficient general similarities among the relevant factors to warrant inclusion of the workers in a single bargaining unit. Id. at 464.

In this case, although wages, hours and working conditions are not precisely identical, there are numerous similarities between employees in the existing bargaining unit and those working at the YIC. For example, the duties of both groups of employees involve securing individuals who are involuntarily confined in their respective facilities, making sure that the individuals confined there comply with the facility's rules and do not escape. Both Correctional Officers and Youth Care Workers complete paperwork to document their security functions. Both groups handle situations involving unruly or uncooperative individuals by using de-escalation techniques and physical restraint. Both groups control contraband in the institution through searches of residents or inmates as well as housing units, and through supervision of the visitation process. Both secure their respective facilities by staffing control centers. Correctional Officers and Youth Care workers escort and guard their charges when they must be transported outside the facility.

These similarities in duties arguably are sufficient in and of themselves to establish an identifiable community of interest between the groups at issue here. See Huntingdon County Prison, 12 PPER 12156 at 244. But there are numerous similarities beyond job function among these workers. Both groups are paid on an hourly basis, work a regular eight-hour shift in a three-shift, 24/ operation, with premium pay for those working less desirable shifts. Both wear County-dictated uniforms. They have similar, albeit not identical, training requirements, of similar duration. Both groups participate in the County pension plan, and receive paid sick, personal and vacation leave, as well as similar employer-provided health insurance benefits in the form of a Capitol Blue Cross PPO. Both groups have access to a grievance procedure with similar structure. Neither group has any particular physical fitness requirements.

The County's third ground for contesting the petition is that if the Youth Care Workers and Security officers in the detention program are properly included in the bargaining unit, then the Youth Care Workers in the shelter program should be included as well. The County asserts that there are no material differences between the youth care workers and shelter employees. The written job descriptions for both shelter and detention youth care workers state that they "are responsible for the direct daily care and supervision of the youth detained in the facility. This position is expected to exert a positive influence over the detained youth through daily interaction."

The County also points out that at times, the detention and shelter youth care workers actually work in the same location performing the same duties. The YIC's shelter program is in the same building as the detention program, although in a different wing.

Some detention and shelter youth care workers work shifts together in Central Control, a single room with two computer monitors from which the security of the facility is controlled. Also, in emergencies, youth care workers from the shelters side may assist detention side in physical restraint.

However, the testimony of record shows there are distinctions between shelter and detention sides of the YIC to support a finding that the shelter is not a "prison" within the meaning of PERA in the same way the detention side is. Unlike the detention units, there are no locked doors in the shelter units. In the words of YIC's Director Drew Fredericks, "[i]t cannot be a secure environment."

Similarly, the residents detained in the shelter unit differ from those confined in the detention units. The majority of shelter residents are "dependent" youths, who, unlike those in the detention program, have not been charged with or adjudicated to have committed any offense listed in the Crimes Code, and have not been sentenced to the facility as a result of any such determination. Instead, they are housed at the YIC because they have been removed from foster care or an abusive home, and have nowhere else to go. In this respect, the YIC is distinguishable from the Schaffner Youth Center at issue in Dauphin County. In that case, the Board included shelter staff in the prison bargaining unit because "the overwhelming majority" of shelter residents were adjudicated delinquents. 34 PPER 99 at 312. However, in the present matter, just the opposite ratio is the case, where two-thirds of shelter residents at the YIC are dependent children detained there for their own protection.

In light of this evidence, it would be inappropriate to include the shelter employes with the detention unit employes eligible to vote to be included in the prison guard unit.

**CONCLUSIONS**

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

1. That Lancaster County is a public employer under Section 301 (1) of PERA.
2. That the American Federation of State County and Municipal Employes Council 13, is an employe organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. That the detention and security officer employes of the Youth Intervention Center share an identifiable community of interest with the employes in the unit of prison guards which AFSCME currently represents.
5. That the detention and security officer employes of the Youth Intervention Center are prison guards within the meaning of Section 604(3) of PERA.
6. The eleven individuals employed at the YIC holding the position of Supervisor are supervisors within the meaning of Section 301(6) of PERA and are therefore not eligible for inclusion in the unit.
7. That the YIC's Case Manager, Business Administrator, Director, Program Coordinator, Security Coordinator, Shelter Director and Training Coordinator are management level employes within the meaning of Section 301(16) of PERA and are therefore not eligible for inclusion in the unit.
8. That the YIC's Clerical Specialist and Clerical Specialist III are not "guards at prisons" within the meaning of Section 604 of PERA and therefore are not eligible for inclusion in the unit.

**ORDER**

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

**HEREBY ORDERS AND DIRECTS**

that the County shall submit to the Board within ten days of the date hereof an alphabetized list of the names and addresses of all full-time and regular part-time detention employes and security officer employes at the Youth Intervention Center.

**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 twentieth day of October, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner