

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-13-175-E
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: :
CITY OF PHILADELPHIA :

ORDER DIRECTING REMAND TO HEARING EXAMINER FOR FURTHER PROCEEDINGS

The City of Philadelphia (City) filed timely¹ exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on September 11, 2014, challenging a Proposed Order of Unit Clarification (POUC) issued on August 21, 2014. In the POUC, the Board's Hearing Examiner granted the Petition for Unit Clarification filed by the American Federation of State, County and Municipal Employees, Local 159 (Local 159) and concluded that Security Officers working in the Philadelphia Juvenile Justice Services Center (Center) are "guards at prisons" within the meaning of Section 604(3) of the Public Employe Relations Act (PERA). Therefore, the Hearing Examiner held that Security Officers should be classified as prison guards for purposes of collective bargaining. Local 159 filed a timely Response to the City's exceptions on October 2, 2014.

The Hearing Examiner's Findings of Fact are summarized as follows. AFSCME District Council 33 (District Council 33) is the exclusive bargaining representative of all employes in Local 159 by virtue of a 1961 Ordinance of the City of Philadelphia that was grandfathered into PERA in Section 2003 of that statute. Local 159 is an affiliated local of District Council 33. Local 159 has two chapters: Local 159A consists of support services employes and Local 159B consists of employes classified as prison guards within the meaning of Section 604(3) of PERA. Local 159B includes approximately 1,860 correctional officers at the Philadelphia Prison System and 120 Youth Detention Counselors at the Center.

The City's Department of Human Services operates the Center, a juvenile detention facility, which is located at 91 North 48th Street in Philadelphia. Before being relocated to its present address, the Center was located at 3232 Henry Avenue in Philadelphia from 2009 to 2013. At that time, the Center was known as the Youth Study Center. The Center's residents consist of juveniles who have been adjudicated as delinquent or are awaiting adjudication for delinquency. The Center houses the residents in a secure facility where all doors are locked and the juveniles are monitored 24 hours a day.

The Center employs approximately 120 Youth Detention Counselors who perform the primary function of supervising the juveniles assigned to the Center. In addition, the Center employs approximately 15 Security Officers whose civil service titles are Security Officer 1, Security Officer 2 (Sergeant), and Security Officer 3 (Lieutenant). The Security Officers are responsible for maintaining security in the building lobby, performing hourly interior checks, hourly surveys of the facility perimeter, monitoring the flow of traffic in and out of the building lobby and the back admissions gate, performing the sign-in and search procedure for those entering the building, and occasionally transporting staff to and from court. The Security Officers also supervise residents when they come to court or are in the lobby area.

¹ The City's exceptions were due on or before September 10, 2014. The City did not include a United States Postal Form 3817 Certificate of Mailing with its exceptions and the United Parcel Service overnight envelope did not contain a date as to when the exceptions were mailed to the Board. However, the City's exceptions are timely because it is readily apparent that the exceptions were placed in the mail on or before September 10, 2014 in order for the Board to receive them on September 11, 2014. **See Teamsters Local #764 v. Lycoming County**, 37 PPER 14 (Order, 2006) (the Board will accept a filing of exceptions as timely when the Board receives the exceptions one day after the expiration of the 20-day period for filing of exceptions where it is readily apparent that the exceptions were placed with the United States Postal Service or private courier at least one day earlier) (citing **Miller v. Unemployment Compensation Board of Review**, 505 Pa. 8, 476 A.2d 364 (1984)).

The Security Officers have had situations where they had to restrain juveniles because of their volatile nature or impede them if they try to escape. At the previous facility, the Security Officers also assisted the Youth Detention Counselors in escorting the residents to and from the family visiting area. The Security Officers are responsible for conducting perimeter searches and interior checks to physically look for the residents. The Security Officers check on the residents in the housing area, gymnasium, the school area, the social worker area, the administrative offices and the food area. While doing so, they maintain radio contact with their shift manager. The Security Officers have been in situations where residents have escaped and the Security Officers searched for the residents in conjunction with the police on the immediate grounds and areas surrounding the prior facility.

The City requires the Security Officers to wear the same uniforms as the City's sheriffs and police officers and issues them badges and handcuffs. The Security Officers have the authority to restrain a resident at the discretion of their immediate supervisor. The Security Officers carry handcuffs which are used to restrain or detain any volatile or unruly resident, citizen or other person who violates the code of conduct in the facility. Occasionally, juveniles come to the Center to turn themselves in or are escorted by a parent or guardian who is turning them in. At that point, the Security Officers perform an electric wand search for contraband and may subject the juveniles to an x-ray machine and/or personal body cavity search.

The functions of the Security Officers at the Center, including monitoring the flow in and out of the buildings and grounds, as well as residents coming back and forth from court, are performed by the correctional officers at the Philadelphia Prison facility. The correctional officers monitor every aspect at the Prison including the lobby and internal areas.

The Hearing Examiner determined in the POUC that the Security Officers are "guards at prisons" within the meaning of Section 604(3) of PERA because their duties such as, **inter alia**, conducting perimeter and interior checks of the facility to search for residents, impeding residents if they try to escape, physically searching for escaped residents and using handcuffs to restrain volatile and unruly residents, demonstrate that the Security Officers are responsible for the security of the residents at the Center. Further, the Hearing Examiner concluded that the Security Officers share an identifiable community of interest with the correctional officers and Youth Detention Counselors, both of which are also "guards at prisons" within the meaning of Section 604(3) of PERA. Accordingly, the Hearing Examiner granted Local 159's Petition for Unit Clarification.

In its exceptions, the City challenges Findings of Fact 12, 13, 18 and 19. The City argues that the Youth Detention Counselors, and not the Security Officers, are responsible for the supervision of residents who attend court and are in the lobby area. The City further argues that the Security Officers are not legally authorized to restrain residents because they do not receive the necessary training to do so, citing to 55 Pa. Code § 3800.205(a) (requiring persons who administer restrictive procedures on juveniles to complete training in such procedures). The City additionally asserts that Local 159 failed to provide sufficient evidence to support the finding that a recent Security Officer recruit received crisis management training.

A review of the record shows that there is substantial evidence to support the finding that Security Officers are authorized, at the discretion of their supervisors, to restrain or detain any volatile or unruly resident and that the Security Officers have, in fact, physically restrained or impeded juveniles in the lobby area due to their volatile nature or when they tried to escape. The City's failure to properly train the Security Officers in restrictive procedures does not obviate the fact that the Security Officers have restrained juveniles and impeded them from trying to escape. Further, the City's assertion that all the juveniles in the lobby area are not residents is meritless in that uncontested Finding of Fact 8 indicates that some of the Center's residents are awaiting adjudication, thereby necessitating the residents to pass through the lobby area in order to attend court. Therefore, the Security Officers' authority to restrain or detain residents supports the notion that the Security Officers are responsible for the

supervision of residents when they attend court and are in the lobby area. Thus, the City's exceptions to Findings of Fact 12, 13 and 18 are dismissed.

Concerning Finding of Fact 19, the record indicates that the City objected to Lorenzo Penn's statement that a recent Security Officer recruit had been trained in crisis management techniques as inadmissible hearsay, which was sustained by the Hearing Examiner. As such, the City's exception to Finding of Fact 19 is sustained and that finding is vacated. However, the Board's vacation of this finding does not change the result in this matter.

The City further alleges that the Hearing Examiner erred in concluding that the Security Officers are "guards at prisons" because they do not perform any guard duties. 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). Although the term "guards at prisons" is not defined in PERA, the Board has consistently interpreted the term to include any employe that is responsible for the security of inmates at a prison. **Lancaster County v. PLRB**, ___ Pa. ___, 94 A.3d 979 (2014) (maintenance mechanics); **Department of Corrections**, 41 PPER 100 (Final Order, 2010) (instructors); **Westmoreland County**, 32 PPER ¶ 32133 (Proposed Order of Dismissal, 2001) (corrections counselors and treatment supervisors); **Commonwealth of Pennsylvania, Department of Corrections**, 19 PPER ¶ 19025 (Proposed Order of Unit Clarification, 1987) (food service instructors, equipment operators, tradesmen instructors, and factory foremen), **Luzerne County**, 15 PPER ¶ 15155 (Proposed Order of Unit Clarification, 1984) (residential aides); **Fayette County**, 14 PPER ¶ 14159 (Final Order, 1983) (maintenance workers); **Cumberland County**, 13 PPER ¶ 13035 (Final Order, 1982) (records clerk); **Huntingdon County**, 12 PPER ¶ 12156 (Final Order, 1981) (cooks). It is the nature of an employe's duties that is controlling, and not the frequency thereof. **Lancaster County, supra; Fayette County, supra.**

The Center is a juvenile detention facility which houses residents consisting of juveniles who have been adjudicated and found to be delinquent and those awaiting adjudication. The residents are monitored 24 hours a day in a secure facility where all doors are locked. The Security Officers are responsible for maintaining security of the facility and they perform hourly interior and perimeter checks in which they physically look for the residents. The Security Officers check on the residents in the housing area, gymnasium, the school area, the social worker area, the administrative offices and the food area. These responsibilities alone qualify the Security Officers to be prison guards.

Further, the Security Officers are authorized, at the discretion of their supervisor, to restrain residents. They use handcuffs to detain or restrain any volatile or unruly residents. Indeed, the Security Officers have, in fact, restrained or impeded juveniles due to their volatile nature or when they tried to escape. The Security Officers also have searched for escaped residents in conjunction with the police.

The present case is similar to the facts in **Dauphin County**, 34 PPER 99 (Final Order, 2003), in which the Board determined that youth program specialist aides, youth program specialists and maintenance employees working at the County's youth detention center were prison guards because they were responsible for ensuring adjudicated juvenile residents did not leave the facility, they restrained the residents from escaping and they pursued any residents that had escaped. Because these positions were responsible for the care, custody and control of the residents, the Board rejected the employer's contention that they were not prison guards within the meaning of Section 604(3) of PERA.

The City asserts that the Board requires a position to perform two or more guard functions in order to qualify as a prison guard under Section 604(3) of PERA. However, the Board has not required the performance of a minimum number of guard duties in order to qualify as a prison guard. Rather, the Board has consistently held that employees will be deemed to be prison guards if they perform any security functions. **See Lancaster County**, 30 PPER ¶ 30058 (Order Directing Submission of Eligibility List, 1999) (youth care workers and security officers at the county juvenile detention facility responsible for preventing juvenile residents from escaping were prison guards); **Luzerne County, supra** (residential aides responsible to watch for escaping inmates were prison guards). Further, the record demonstrates that the Security Officers perform more than one prison guard function. Because the Security Officers are responsible for the security of the residents, the Hearing Examiner properly concluded that the Security Officers are prison guards under Section 604(3) of PERA.

The City further alleges that Local 159 failed to present any evidence that the Security Officers have an identifiable community of interest with the correctional officers and Youth Detention Counselors. The Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, areas of work, working conditions, interchange of employees, supervision, grievance procedures, bargaining history, and employees' desires when determining whether employees share an identifiable community of interest. **FOP, Conference of Pennsylvania Liquor Control Board Lodges v. PLRB**, 557 Pa. 586, 735 A.2d 96 (1999); **West Perry School District v. PLRB**, 752 A.2d 461 (Pa. Cmwlth. 2000), **appeal denied**, 568 Pa. 675, 795 A.2d 984 (2000). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours and working conditions or other factors. **Id.**

Local 159 provided sufficient evidence to establish that, as a result of their job duties, the Security Officers are prison guards under Section 604(3) of PERA, which in turn demonstrates that there is an identifiable community of interest between the Security Officers and the other prison guard employees. **See Riverview Intermediate Unit #6**, 37 PPER 106 (Final Order, 2006) (the same factors that support professional status also support the conclusion that employees in proposed professional bargaining unit share an identifiable community of interest); **Temple University Health System**, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010) (same). Further, the Hearing Examiner also noted that the Security Officers work for the same employer as the correctional officers and Youth Detention Counselors, that the Security Officers and correctional officers both maintain security and monitor the interior and lobby areas of their respective facilities, and that the Security Officers physically work at the same location as the Youth Detention Counselors. Therefore, the Board finds that the Hearing Examiner properly concluded that the Security Officers have an identifiable community of interest with the other prison guard employees.

The City finally alleges that the Board recognized in **AFSCME District Council 33 v. City of Philadelphia**, 39 PPER 128 (Final Order, 2008), that District Council 33 "has the 'final say' with regard to all collective bargaining matters for its employees" and that the Board lacks authority to reorganize the bargaining unit without District Council 33 being a party to the Petition for Unit Clarification. In that case, the Board explained that PERA reserves the right of District Council 33 to select Local 159 as its agent for purposes of collective bargaining. However, the Board also noted that the decisions of District Council 33 regarding collective bargaining for its members prevail in the event that they differ with those of Local 159.

The record in this case is silent regarding the authority granted by District Council 33 to Local 159 to file the instant Petition for Unit Clarification. However, there is no indication that District Council 33 objects to Local 159's Petition. Further, the City in its brief generally recognizes the authority given to Local 159 by District Council 33 to bargain on behalf of the prison guard and non-prison guard employees who work in the Center and the Philadelphia Prison System, including the Security Officers at issue here. Therefore, if Local 159 is authorized to file the Petition for Unit Clarification, the Security Officers should be classified as prison guards under Section 604(3) of PERA.

In its post-hearing brief, the City generally states that District Council 33 is the only recognized bargaining representative for the City's employees and that the Board is not authorized to assign employees between locals within the bargaining unit. The City did not directly argue at the hearing (N.T. 10-12) or in its post-hearing brief that the Petition for Unit Clarification should be dismissed because Local 159 did not have the authority to file the instant Petition. Therefore, the Hearing Examiner did not address this issue in the POUC. Accordingly, the Board finds it necessary to remand this matter to the Hearing Examiner for the limited purpose of determining whether Local 159 was authorized to file the Petition for Unit Clarification. However, this remand is not an opportunity to relitigate the issue of whether the Security Officers are "guards at prisons" within the meaning of Section 604(3) of PERA, but merely to ascertain whether District Council 33 disagrees with Local 159's decision to file the instant Petition for Unit Clarification.

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board determines that a remand is necessary for further proceedings and for such additional findings of fact and conclusions of law as warranted. Therefore, the Board shall sustain the exceptions, in part, dismiss the exceptions, in part, vacate Finding of Fact 19, and remand this matter to the Hearing Examiner for further proceedings consistent with the above discussion.

ORDER

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 to the Proposed Order of Unit Clarification be and the same are hereby sustained, in part, dismissed, in part, that Finding of Fact 19 is vacated and the matter is remanded to the Hearing Examiner for further proceedings consistent with this Order.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this twenty-first day of January, 2015. 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.