

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
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LOWER SWATARA TOWNSHIP :

Case No. PF-R-18-13-E

FINAL ORDER

Lower Swatara Township (Township) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on June 25, 2018, from a Nisi Order of Certification (NOC) issued on June 4, 2018.¹ The NOC certified Teamsters Local Union No. 776, affiliated with the International Brotherhood Of Teamsters (Teamsters), as the exclusive representative of "[a]ll full-time and regular part-time police officers including but not limited to detectives, sergeants, school resource officers and patrolmen; and excluding the Chief of Police and other managerial employees[,]” for purposes of collective bargaining under Act 111 of 1968, as read in *pari materia*, with the Pennsylvania Labor Relations Act (PLRA).² The Teamsters filed a response to the exceptions on July 13, 2018.

The Teamsters filed a Petition for Representation with the Board pursuant to the PLRA and Act 111 on January 30, 2018, seeking an investigation into a question of representation of all full-time and regular part-time police officers employed by the Township.³ On February 12, 2018, the Secretary of the Board issued an Order and Notice of Hearing (ONH).

Based on stipulations of fact before the Hearing Examiner, the Township argued that the petitioned-for police officers would function as security guards for the Township within the meaning of Section 604(3) of the Public Employee Relations Act (PERA), and therefore the police officers could not be represented by the Teamsters. Section 604 of PERA provides, in relevant part, as follows:

The [B]oard shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision

¹ Hopewell School District, 11 PPER ¶11241 (Order Denying Request for Review, 1980).

² Philadelphia Fire Officers Association v. PLRB, 470 Pa. 550, 369 A.2d 259 (1977).

³ The Teamsters alleged in the petition that the incumbent union, the Lower Swatara Township Police Civic Association, was in its fourth year of a collective bargaining agreement, see O’Hara Township, 9 PPER ¶9073 (Order Fixing Time and Place of Election, 1978), 10 PPER ¶ 10313 (Final Order, 1979), *aff’d*, 14 PPER ¶ 14107 (Court of Common Pleas, 1983), and that thirty per cent or more of the petitioned-for police officers wished to be exclusively represented by the Teamsters.

thereof. In determining the appropriateness of the unit, the [B]oard shall:

....

(3) Not permit . . . 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). The Teamsters represent employes of the Township who are not security guards.

Following the submission of post-hearing briefs, the Hearing Examiner issued an Order Directing Submission of Eligibility List (ODSEL) on April 26, 2018. In the ODSEL, the Hearing Examiner held that, based on the holdings in Union Township, 25 PPER ¶ 25198 (Final Order, 1994) and Commonwealth of Pennsylvania v. PLRB and FOP, 441 A.2d 470 (Pa. Cmwlth. 1982), *aff'd in relevant part*, 502 Pa. 7, 463 A.2d 409 (1983), police officers under Act 111 are not security guards under PERA, and thus may be represented by an employe organization that represents non-security guard employes. See 43 P.S. §1101.604(3).

On exceptions, the Township raises the same arguments presented to the Hearing Examiner that under Section 604(3) of PERA, the Teamsters cannot represent the police officers for purposes of Act 111, because the police officers function as security guards for the Township, and the Teamsters represent non-security guard employes of the Township. The Board has thoroughly reviewed the April 26, 2018 ODSEL and the analysis therein, and finds no error. The Finding of Facts of the Hearing Examiner are supported by substantial evidence, and the Board adopts the Hearing Examiner's discussion and reliance on Union Township and Commonwealth of Pennsylvania.⁴ The Hearing Examiner's Conclusions of Law on the issues are not in error. Hence, the Township's exceptions thereto are without merit.

After a thorough review of the exceptions and all matters of record, the Board herein adopts and incorporates the discussion and analysis of the Hearing Examiner set forth in the ODSEL. The Findings

⁴ See also, Temple University, 28 PPER ¶28153 (Pa. Cmwlth. Memorandum Opinion, 1997) ("as the [Fraternal Order of Police] represents police officers under Act 111, it is an organization that represents persons outside the security guard classification as defined within Section 604(3) of PERA"); Pennsylvania State University, 33 PPER ¶33012 (Final Order, 2001) (holding that union that represented police officers under Act 111, could not represent a unit of campus police certified under PERA as security guards); Commonwealth of Pennsylvania (Security Unit), 3 PPER 57 (Final Order, 1973) (holding that a union that represents units of security guards under PERA, could represent security employes because they were not police officers under Act 111).

of Fact and Conclusions of Law set forth in the ODSEL and NOC are supported by the record, and are not in error. Accordingly, the exceptions filed by the Township are dismissed, and the April 26, 2018 ODSEL, and June 4, 2018 NOC, shall be made absolute and final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Lower Swatara Township are hereby dismissed, and the April 26, 2018 ODSEL, and June 4, 2018 NOC, be and hereby are made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this twenty-first day of August, 2018. 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.