

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

PROPOSED ORDER OF UNIT CLARIFICATION

On July 22, 2013, the American Federation of State, County, and Municipal Employees, Local 159 (AFSCME or Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Public Employee Relations Act (PERA or Act), seeking to include Security Officers at the City of Philadelphia (City or Employer) Youth Study Center in the prison guard unit. On August 7, 2013, the Secretary of the Board issued an Order and Notice of Hearing, designating a September 5, 2013 pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning October 16, 2013, in Harrisburg, as the time and place of hearing, if necessary.

After a number of continuances, the hearing was held on April 14, 2014, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. AFSCME filed a post-hearing brief in support of its position on June 5, 2014. The City filed a post-hearing brief in support of its position on July 7, 2014. AFSCME subsequently filed a "Supplemental Post-Hearing Brief" in support of its position on July 9, 2014, alleging a change in authority due to the Pennsylvania Supreme Court's June 16, 2014 decision in **Lancaster County v. PLRB**, No. 36 MAP 2013 (Pa. 2014).

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

FINDINGS OF FACT

1. The City is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6)
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)
3. AFSCME Local 159 has two chapters; Local 159A, which consists of support services employes, and Local 159B, which consists of employes classified as prison guards within the meaning of Section 604(3) of PERA. Local 159B includes correctional officers at the Philadelphia Prison System and Youth Detention Counselors (YDCs) at the Philadelphia Juvenile Justice Services Center (Center or JJSC). (N.T. 15-16)
4. AFSCME District Council 33 is the exclusive bargaining representative of all employes in Local 159A and Local 159B by virtue of a 1961 Ordinance that was grandfathered into PERA. Local 159 is an affiliated local of AFSCME District Council 33. 43 P.S. § 1101.2003; See **AFSCME District Council 33 and AFSCME Local 159 v. City of Philadelphia**, 39 PPER 128 (Final Order, 2008)
5. There are approximately 1,860 correctional officers and 120 YDCs in the bargaining unit. (N.T. 19)
6. The City's Department of Human Services (DHS) operates a juvenile detention facility called the Philadelphia Juvenile Justice Services Center (Center or JJSC), located at 91 North 48th Street, Philadelphia, Pennsylvania. (N.T. 17, 37-38)
7. Before being relocated to its present address on North 48th Street, the Center was located at 3232 Henry Avenue in Philadelphia from 2009 to 2013 and known as the Youth Study Center (YSC). (N.T. 74-76)

8. The Center's residents consist of juveniles who have been adjudicated, 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. (N.T. 40, 81-83)

9. The Center employs YDCs who perform the primary function of supervising the juveniles assigned to the JJSC. The Center employs approximately 120 YDCs who are represented by AFSCME District Council 33 Local 159. (N.T. 19, 80-81; Respondent Exhibits 1-3)

10. 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). (N.T. 20-24)

11. 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. (N.T. 56-57)

12. In addition to general building security, the Security Officers supervise residents when they come to court or are in the lobby area. (N.T. 58)

13. The Security Officers have had situations where they had to restrain the juveniles because of their volatile nature or will impede them if they try to run. (N.T. 58)

14. At the previous facility, the Security Officers also assisted the YDCs in escorting the residents to and from the family visiting area. (N.T. 59)

15. 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. (N.T. 57-59)

16. 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. (N.T. 59-60)

17. 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. (N.T. 60-61)

18. The Security Officers have the authority to restrain a juvenile resident at the discretion of their immediate supervisor. The Security Officers carry handcuffs, which are used to restrain and detain any volatile or unruly resident, citizen or other person who violates the code of conduct in the facility. (N.T. 66-67)

19. The City has trained a recent Security Officer recruit in crisis management techniques used by the YDCs. (N.T. 61-64)

20. 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. (N.T. 44-45)

21. 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 facility, including the lobby and internal areas. (N.T. 26-30)

DISCUSSION

In its brief, AFSCME contends that the Security Officers working at the Center are "guards at prisons" within the meaning of the Act. While acknowledging that their predominant function may be to provide security to the physical facility and oversee the safety of visitors, AFSCME maintains that the Security Officers also perform vital security functions with respect to the residents, and therefore, they should be included in the City's guard unit. The City, meanwhile, argues that the Security Officers are not "guards at prisons" as defined by the Act. The City posits that the Security Officers only provide security for the building and general public, and are not responsible for the care, custody, and control of the juvenile residents. The City further submits that the Security Officers do not even have a community of interest with the guards in Local 159B, and as a result, AFSCME's petition should be denied.

Section 604(3) of PERA provides, in relevant part, 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:

(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over fragmentation...

(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.¹

43 P.S. § 1101.604(3).

Although the Act does not define the term, the Pennsylvania Supreme Court recently noted that the Board has a longstanding and consistent interpretation of "guards at prisons," which includes any employe that is responsible for the security of inmates at a prison. **Lancaster County v. PLRB**, No. 36 MAP 2013 (Pa. 2014) citing **Dept. of Corrections**, 41 PPER 100 (Final Order, 2010) (instructors); **Westmoreland County**, 32 PPER ¶ 32133 (Proposed Order of Dismissal, 2001) (correctional counselors and treatment supervisors); **Commonwealth of Pennsylvania, Dept. of Corrections**, 19 PPER ¶ 19025 (Proposed Order of Unit Clarification, 1987) (food service instructors, equipment operators, tradesmen instructors, and factory foremen who worked alone with inmates); **Luzerne County**, 15 PPER ¶ 15155 (Order Directing Submission of Eligibility List, 1984) (residential aides); **Fayette County**, 14 PPER ¶ 14159 (Final Order, 1983) (maintenance workers); **Cumberland County**, 13 PPER ¶ 13035 (Order Directing Submission of Eligibility List, 1982) (records clerk who escorted inmates to quarters and doctor); **Huntingdon County**, 12 PPER ¶ 12156 (Order Directing Submission of Eligibility List, 1981) (cooks who supervised work release inmates). Likewise, the Supreme Court noted that it is the nature of an employe's duties that is controlling, and not the frequency thereof. *Id.* at p. 15 citing **Dept. of Corrections; Fayette County, supra**. Indeed, the Court specifically stated "we find that the legislature intended the definition of the term 'guards at prisons' in the labor context to be broad, and to include those in

¹As AFSCME points out, the City's prison guards are in a unique situation. As a result of Section 2003 of the Act, 43 P.S. § 1101.2003, the City's guards are part of a heterogeneous unit that includes non-guard public employes. Nevertheless, the Board has held that the City's guards are entitled to bargain as a distinct unit and have the right to interest arbitration. **AFSCME District Council 33 and AFSCME Local 159 v. City of Philadelphia**, 39 PPER 128 (Final Order, 2008), *aff'd sub nom, City of Philadelphia v. PLRB*, 982 A.2d 136 (Pa. Cmwlth. 2009).

positions which supervise inmates and which are responsible for the security of inmates as a part of the overall security of the prison." *Id.*

In this case, the record shows that the Security Officers in question qualify as "guards at prisons," as that term has been defined by the Board and the courts. Indeed, the record demonstrates that the Security Officers regularly conduct perimeter searches and interior checks of the facility to search for the residents while they maintain radio contact with their shift manager. The Board has long held that employees who conduct searches within the prison or patrol the facility are responsible for the security of inmates, which clearly establishes the job positions as another link in the chain of security. **In the Matter of the Employes of Chester County**, 16 PPER ¶ 16178 (Order Directing Submission of Eligibility List, 1985). Similarly, the record shows that the Security Officers will impede the residents if they try to run and physically search for the residents in the event of an escape, alongside the police. It is well settled that employees who watch for escaping inmates are prison guards within the meaning of Section 604(3) of the Act. **Luzerne County, supra**. Further, the record shows that the City issues the Security Officers handcuffs, which the Security Officers use at the discretion of their supervisor to restrain and detain any volatile or unruly resident. And, on occasion, 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. These facts also weigh heavily in favor of a determination that the Security Officers in question are prison guards. See **In the Matter of the Employes of Lancaster County**, 41 PPER 151 (Order Directing Submission of Eligibility List, 2010). Finally, the City has trained a recent Security Officer recruit in crisis management techniques used by the YDCs, which is also indicative of prison guard status under the Act. **Dept. of Corrections, supra**. Accordingly, the Union has established that the Security Officers are guards at prisons within the meaning of Section 604(3), and as such, they will be included in the City's guard unit.

Next, the City maintains that the Security Officers do not even share a community of interest with the guards in Local 159B, and as a result, AFSCME's petition should be dismissed. Specifically, the City asserts that it did not stipulate to any community of interest and AFSCME failed to present any evidence to establish the same. The City's argument is not persuasive.

In determining whether employees share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures, bargaining history, and employees' desires. **West Perry School District v. PLRB**, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, working conditions, or other factors. *Id.* at 464.

In this case, the record demonstrates that the Security Officers have a community of interest with the prison guards in Local 159B. First of all, the Security Officers work for the same employer as the correctional officers and YDCs, which is the City of Philadelphia. In addition, the record demonstrates that the functions of the Security Officers at the JJSC, 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 System. The correctional officers monitor every aspect at the Prison facility, including the lobby and internal areas. This is identical to the general building security type job duties of the Security Officers at the JJSC. Likewise, the Security Officers physically work at the same location as the YDCs, who are in the prison guard unit. These factors, in and of themselves, are enough to support a community of interest between the Security Officers and the guards in Local 159B.

What is more, however, and perhaps most importantly, the record shows that the Security Officers qualify as prison guards pursuant to Section 604(3) of the Act, meaning that they are responsible for the security of the residents at the JJSC. Thus, the same factors, such as working conditions and the type of work performed, which support prison

guard status also support the conclusion that the Security Officers in question share an identifiable community of interest with the existing prison guard unit in Local 159B. See **In the Matter of the Employes of Temple University Health System Episcopal Hospital**, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010) *citing* **In the Matter of the Employes of Riverview Intermediate Unit**, 37 PPER 106 (Final Order, 2006) (holding that professional status of both the employes at issue and the employes in the existing bargaining unit speaks to the question of whether an identifiable community of interest exists). This is especially true, where, as here, the Security Officers in question are already members of the same bargaining unit as the prison guards. See **City of Philadelphia v. PLRB**, 982 A.2d 136 (Pa. Cmwlth. 2009) (explaining that the 1961 Ordinance, which was grandfathered into PERA authorizes the Mayor of the City to enter into an agreement with AFSCME regarding its representation of City employes, essentially creating one huge bargaining unit containing employes that, under PERA, could not be in the same unit). As AFSCME pointed out at the hearing, the community of interest already exists as these employes, both guards and non-guards, are all represented by AFSCME District Council 33. (N.T. 12-13). Accordingly, the Security Officers clearly share an identifiable community of interest with the prison guards in Local 159B.

CONCLUSION

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

1. The City is a public employer within the meaning of Section 301(1) of PERA.
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The Security Officers are prison guards within the meaning of Section 604(3) of PERA.

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 unit is amended and the Security Officers are prison guards within the meaning of Section 604(3) of PERA, such that they are entitled to interest arbitration pursuant to Section 805 of PERA.

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 (20) days of the date hereof, this order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-first day of August, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner