

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-14-337-E
 :
 CARBON COUNTY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On October 17, 2014, the Carbon County Sheriff's Association (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation pursuant to the Public Employee Relations Act (PERA) alleging that thirty per cent or more of the deputy sheriffs, including Sergeants and the Lieutenant, who are directly involved with and necessary to the functioning of the Court of Common Pleas of Carbon County (County), wish to be exclusively represented by the Union, as a separate unit of guards. On November 4, 2014, the Secretary of the Board issued an Order and Notice of Hearing (ONH) directing that a hearing be held on Tuesday, December 2, 2014. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On December 12, 2014, the notes of testimony from the hearing were filed with the Board. On January 8, 2015, the Union filed its post-hearing brief. On January 9, the County filed its post-hearing brief.

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

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3)
3. The parties stipulated and agreed that the employes in the proposed unit of guards share an identifiable community of interest. (N.T. 3)
4. The parties stipulated and agreed that the employes in the proposed bargaining unit are guards. The County intends to utilize deputy sheriffs to protect County property during times of labor unrest. (N.T. 3, 8)
5. In the Sheriff's Office, there are the following positions, ranking highest to lowest: Elected Sheriff; Chief Deputy; Lieutenant; Sergeant; and deputy. (N.T. 7-8)
6. Sergeants work side-by-side with deputies daily, and they perform the same duties. (N.T. 18-19, 43, 67)
7. Sergeants can verbally reassign deputies to different posts throughout the day; they can verbally warn deputies too. (N.T. 16-17, 20, 23-24)
8. The parties stipulated and agreed that the Sheriff's Office utilizes a printed form known as an "Employe Warning Record" for providing written warnings to deputy sheriffs. (N.T. 22)
9. Only the Elected Sheriff can decide and issue discipline. He follows the recommendation of the observing Sergeant or Lieutenant approximately 75% of the time. (N.T. 25-26, 48-49; Employer Exhibit 3)
10. Sergeants and the Lieutenant perform prisoner transportation, warrant service and execution as well as courtroom security duties like deputies. (N.T. 42-43, 53-55)

11. When two deputies are on an assignment, the senior deputy is in charge. The senior deputy would have the same authority on the scene as a Sergeant. (N.T. 60-61)
12. Sergeants spend approximately 40% of their time overseeing deputies. The Lieutenant spends approximately 20% of her time overseeing Sergeants. (N.T. 62)
13. Sergeants are not involved in promotions. (N.T. 63)
14. Sergeant Long makes most of the duty assignments, which are subject to last-minute changes. (N.T. 673-64)

DISCUSSION

The County posits that the Sergeants should be excluded from the proposed unit of guards because they are first-level supervisors and that the Lieutenant should be excluded because she supervises the Sergeants, as first-level supervisors, making her a managerial employe. As the party seeking the exclusion, the County has the burden of proving the necessary factual elements to support the exclusion. **In the Matter of the Employes of State System of Higher Educ.**, 29 PPER ¶ 29234 (Final Order, 1998), **aff'd**, 737 A.2d 313 (Pa. Cmwlth. 1999). The Board will only consider actual job duties performed and will only consider written job descriptions to corroborate testimony of actual job duties. **In the Matter of the Employes of Elizabeth Township**, 33 PPER ¶ 33053 (Final Order, 2002). Written descriptions alone are not substantial, competent evidence of job duties. *Id.* Furthermore, "[a] mere job title or appellation, such as, supervisor or manager is not sufficient to overcome the actual duties performed as evidence of being a supervisor under Section 301(6) of PERA." **West Perry School District v. PLRB**, 752 A.2d 461 (Pa. Cmwlth. 2000), **appeal den'd**, 568 Pa. 675, 795 A.2d 984 (2000).

First-Level Supervisor

Section 301(6) of PERA provides as follows:

(6) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

43 P.S. §1101.301(6). Section 604(5) of PERA provides that "[i]n determining supervisory status the [B]oard may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. 1101.604(5); **West Perry Sch. Dist.**, *supra*. In determining whether an employe or employes should be deprived of the rights, benefits and privileges provided by PERA, the Board may "consider such factors as frequency, duration and importance of the various supervisory duties performed." **West Perry Sch. Dist.**, 752 A.2d at 465. As Hearing Examiner Wallace aptly noted:

The Board will find an employe to be a supervisor if the employe actually exercises authority set forth in Section 301(6) of the Act and if the employe's exercise of such authority carries with it the power to reward or sanction employes. **Belle Vernon Area School District**, 21 PPER ¶ 21165 (Final Order, 1990). The Board will not find an employe to be a supervisor if the employe only exercises supervisory authority sporadically. **Pennsylvania State University**, 19 PPER ¶ 19156 (Final Order, 1989). Nor will the Board find an employe to be a supervisor if the employe's exercise of supervisory authority is as a substitute for his or her own supervisor. **Monroe County**, 18 PPER ¶ 18002 (Final Order,

1986). Nor will the Board find an employee to be a supervisor if the employe's recommendations are not given controlling weight.

Cf. City of Bethlehem, 19 PPER ¶ 19205 (Final Order, 1988).

In The Matter of the Employes of Philadelphia Housing Authority, 22 PPER ¶ 22082 (Order Directing Submission of Eligibility List, 1991).

The record in this matter does not contain substantial competent evidence that the Sergeants meet the statutory criteria for first-level supervisor and, therefore, that they should be deprived of rights under PERA. The record demonstrates that Sergeants are lead workers or team leaders who spend the majority of their time performing the same duties as deputies and working alongside deputies. They are not involved in hiring or promotions and they sporadically recommend discipline, which must be determined and issued by the Sheriff. Although they exercise the authority to reassign deputies and adjust the work schedule to meet daily demands and changes, the extent to which they perform these functions is not sufficient to meet the threshold of statutory supervisor.

Management Level Employee

The County also maintains that the Lieutenant should be excluded because she is above the first level of supervision. "[M]anagement level employe" is defined in Section 301(16) of PERA as follows:

"(16) 'Management level employe' means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision."

43 P.S. 1101.301 (16)

The Commonwealth Court, in **Pennsylvania Ass'n of State Mental Hosp. Physicians v. PLRB**, 554 A.2d 1021 (Pa. Cmwlth. 1989) adopted the Board's test for determining whether an employe is a management level employe under Section 301(16). This test provides that an employe is a management level employe if any one of the following three factors is established: (1) the employe is involved directly in the determination of policy; (2) the employe directs the implementation of policy; or (3) the employe is above the first level of supervision. **Id.** at 1023.

The County has not demonstrated on this record that the Lieutenant is a management-level employe under any of the three prongs mentioned above. Nothing in the record establishes that the Lieutenant either determines or implements policy. Although the record establishes that the Lieutenant is above the Sergeants, it does not establish that the Sergeants are first-level supervisors, within the meaning of PERA.

CONCLUSIONS

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

1. The County is a public employer within the meaning of section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The employes in the proposed bargaining unit of guards in Carbon County share an identifiable community of interest.
5. The position of Sergeant is not supervisory and is properly included in the bargaining unit of guard employes at the County.

6. The position of Lieutenant is not a management-level position and is properly included in the bargaining unit of guards at the County.
7. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer that is a guard unit comprised of all full-time and regular part-time Deputy Sheriffs, Sergeants and Lieutenants in the Sheriff's Office of Carbon County, Pennsylvania and excluding management level employes, first-level supervisors, confidential employes, as defined in the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the County shall within ten days of the date hereof submit to the Board and the other parties an alphabetized list of the **names and addresses** of the employes eligible for inclusion in the unit set forth above.

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 twelfth day of February, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner