

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : PERA-U-15-294-W
 :
 CLARION COUNTY :

PROPOSED ORDER OF UNIT CLARIFICATION

On October 19, 2015, the County of Clarion (County) filed a petition for unit clarification, under the Public Employee Relations Act (PERA or Act) with the Pennsylvania Labor Relations Board (Board) requesting that the Board exclude deputy sheriffs from the court-related nonprofessional unit certified by the Board at Case No. PERA-R-96-58-W. In that matter, the Board certified Teamsters Local No. 538 (Union or Teamsters) as the exclusive collective bargaining representative of a unit of employees that includes "all full-time and regular part-time nonprofessional employees directly involved with and necessary to the functioning of the courts but not hired, fired and directed by the courts, including but not limited to nonprofessional employees in the Sheriff's Department, Register and Recorder's Office, Prothonotary and Clerk of Courts' Office, District Attorney's Office and Jury Commissioner's Office; and excluding elected officials, management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act."

On November 6, 2015, the Secretary of the Board issued an Order and Notice of Hearing designating February 1, 2016 at 10:00 a.m., in Harrisburg, as the time and place for a hearing to determine and resolve any issues raised by the petition, if necessary. The February 1, 2016 hearing was continued at the request of the Teamsters, over the objection of the County, with the understanding that the parties would attempt to enter into a stipulated record of facts.

On March 7, 2015, the Board received the Stipulated Record (S.R.) and a hearing became unnecessary. The Examiner, on the basis of the Stipulated Record and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. Clarion County is a public employer within the meaning of section 301(1) of the Act. (S.R. 1)
2. Teamsters Local No. 538 is an employee organization within the meaning of section 301(3) of the Act. (S.R. 2)
3. On June 23, 2015, the County Commissioners signed a Strike Prevention and Contingency Plan which designates employees classified as Deputy Sheriffs to guard facilities and property, control demonstrations, ensure safe access to and from County property during labor unrest, and to patrol and maintain security on County property during labor unrest. (S.R. 6)
4. The Teamsters acknowledge that the County intends to use Deputy Sheriffs as guards in the event of labor unrest, as set forth in the Strike Prevention and Contingency Plan. (S.R. 7)
5. The County's petition is not requesting the exclusion of any clerical or other employees, not classified as Deputy Sheriffs, within the Office of the Sheriff currently in the bargaining unit. (S.R. 8)

DISCUSSION

In **Butler County Deputy Sheriff's Unit v. PLRB**, 911 A.2d 218 (Pa. Cmwlth. 2006), the Commonwealth Court agreed with the Board that there is a much lower burden of proof

in determining whether deputy sheriffs are security guards as defined in PERA when the employer seeks to avail itself to the guard protections under the Act and remove the deputy sheriffs as a separate unit of guards. The Commonwealth Court opined as follows:

Based on our prior holdings in **Erie County**, **Washington County**, and **Franklin County**, we agree with the Board that the cases use a different standard for determining whether deputies should be considered guards under Section 604(3) of PERA, depending on whether the employer is supporting the petition for representation or not. Where the employer supports the petition for representation, the relaxed standard outlined in **Erie County**, is appropriate. There, the employer need only show a mere possibility that the employees would be used as guards to protect the employer's property during labor unrest. The rationale behind utilizing a more relaxed standard is that Section 604 (3) is an employer-protection to ensure that during labor unrest, the employer would have guards to enforce its rules for the protection of property and safety of persons, without being confronted with a division of loyalty between the employer and dissatisfied fellow union members. **Erie County**, 417 A.2d at 798. The purpose of Section 604 (3) is not to give employees/unions an opportunity to bargain out of their existing unit in self-interest. If, on the other hand, the employer opposes the petition filed on behalf of a union, the stricter standard as outlined in **Washington County** and **Franklin County** is appropriate. There, the union must prove that its members actually protected employer property during a past labor dispute. If the employees/union can meet this burden, the petition for representation will be granted. **Washington County**.

Butler County, 911 A.2d at 224.

In this case, the County filed the petition seeking to avail itself to the protections of the guard exclusion so that the deputy sheriffs would not suffer a conflict of interest or a division of loyalty between the County, and its desire to protect its property, and fellow union workers in the County. The stipulated record shows that the County met its burden of proving the more relaxed standard and established that the County intends to use deputy sheriffs to protect County property and persons thereon. On June 23, 2015, the County Commissioners signed a Strike Prevention and Contingency Plan, which designates employes classified as Deputy Sheriffs, to guard facilities and property, control demonstrations, ensure safe access to and from County property during labor unrest, and to patrol and maintain security on County property during labor unrest. (F.F. 3; S.R. 6). A union representing a unit of guards is not permitted to have any affiliation with any other union representing employes in the County, thereby protecting the County from a division of loyalty. The deputy sheriffs, therefore, must be removed from the court-related unit. 43 P.S. § 1101.604(3).

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 County's Deputy Sheriffs are guards within the meaning of Section 604(3) of PERA and are thereby properly excluded from the bargaining unit of court-related employes represented by the Union, as certified at Case No. PERA-R-96-58-W.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the bargaining unit of employes certified by the Board at PERA-R-96-58-W is amended to exclude the County's deputy sheriffs as guards.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions to this order filed pursuant to 34 Pa. Code § 95.98 (a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this fifteenth day of March, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner