

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : PERA-U-16-34-E
 : (PERA-R-12-289-E)¹
TIOGA COUNTY :

PROPOSED ORDER OF UNIT CLARIFICATION

On February 22, 2016, Tioga County (Employer or County) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude all full-time and regular part-time Deputy Sheriffs from a non-professional court related unit.

On March 22, 2016, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating July 1, 2016, in State College, as the time and place of hearing, if necessary.

The hearing was necessary. A hearing was held on July 1, 2016, in State College, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. The American Federation of State, County and Municipal Employees, District Council 86 (Union) did not appear at the hearing despite due notice and did not file a post-hearing brief.² The County filed a post-hearing brief in support of the Petition on August 8, 2016.

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

FINDINGS OF FACT

1. The County is a public employer within the meaning of PERA. (N.T. 7).
2. The Union is an employe organization within the meaning of PERA. (N.T. 7).
3. On January 26, 2016, the Tioga County Board of Commissioners adopted a Strike Prevention and Contingency Plan. On that same day, The Board of Commissioners also resolved:

[T]hat in the event of a strike or labor unrest, the Tioga County Sheriff's Department is responsible for enforcing County rules to protect the safety of individuals on the County's premises and the safety of County property. The Sheriff's Department shall enforce such County rules against County employees and others. Deputy Sheriffs shall guard County facilities and property, control demonstration, insure safe access to and from County property during labor unrest, and shall patrol and maintain security on County property during labor picketing, work stoppages and other forms of labor unrest.

(N.T. 10, 12; Employer Exhibit 1, 2).

DISCUSSION

The County seeks to exclude all full-time and regular part-time Deputy Sheriffs from a unit including non-professional court related employes because the Deputy Sheriffs are "guards" pursuant to PERA. Section 604(3) of PERA provides, in part:

¹ The caption in this matter has been amended to reflect the correct certification docket number.

² The Union did participate in conciliation on April 19, 2016.

The [B]oard 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 [B]oard 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). This section has been interpreted by the Board and our Courts to require that when an employer supports a petition for representation, as is the case in this matter, the employer need only show a mere possibility that the employees would be used as guards during labor unrest to be classified as guards pursuant to PERA. **Butler County v. PLRB**, 911 A.2d 218, 224 (Pa. Commw. Ct. 2006); **Erie County Area Vocational-Technical School v. PRLB**, 417 A2d 796 (Pa. Commw. Ct. 1980); **In re Employees of the County of Berks**, 46 PPER 6 (Proposed Decision and Order 2014).

The record in this matter shows that in the event of a strike or other labor unrest, the County has adopted plans that foresee that Deputy Sheriffs will enforce rules to protect the property of the County and the safety of individuals on the County's premises from strikers, picketers and demonstrators, including other employes in the Deputy Sheriff's current bargaining unit. Since Deputy Sheriffs may be required to perform these functions during labor unrest, their inclusion in the non-professional court related unit is not appropriate.

CONCLUSION

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

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 positions of full-time and regular part-time Deputy Sheriffs are guards pursuant to PERA and therefore are properly excluded from the bargaining unit.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the bargaining unit of employes certified by the Board at PERA-R-12-289-E is amended to exclude full-time and regular part-time Deputy Sheriffs as guards.

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 1st day of September, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner