

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
 : Case No. PERA-U-09-465-E
 : (PERA-R-5662-C)
LANCASTER COUNTY :

FINAL ORDER

Lancaster County (County or Employer) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 15, 2010, challenging an Amended Proposed Order of Unit Clarification (POUC) issued on June 25, 2010. In the POUC, the Hearing Examiner granted the Petition for Unit Clarification filed by the American Federation of State, County and Municipal Employees, District Council 89 (Union) which sought to include the positions of maintenance mechanic I and maintenance mechanic II in the prison guard bargaining unit. The Union did not file a response to the exceptions.

The Hearing Examiner's findings of fact are summarized as follows. The County employs one individual, Jean Kraft, in the position of maintenance mechanic I and six individuals in the position of maintenance mechanic II. Ms. Kraft is responsible for buildings and grounds, lawn care, vehicle maintenance, drainage maintenance, inside custodial work, trash removal, snow removal, moving furniture and spring and fall "purgues." Ms. Kraft performs these duties with the assistance of prison inmates. Ms. Kraft's job description for maintenance mechanic I states that an essential function of the position is to "[s]upervise inmates assigned to assist." Ms. Kraft's supervision of inmates typically does not take her onto a cell block or a pod. Ms. Kraft supervises the prison inmates without the assistance of corrections officers. The inmates that she supervises are all eligible for work release. If the inmates under Ms. Kraft's control begin a fight, she is responsible for making a radio call for assistance, also known as a "code." Ms. Kraft is also responsible for calling a "code" on her radio if an inmate in her custody flees. Depending on the job they are assigned to do, the inmates Ms. Kraft supervises often have access to tools such as screwdrivers, hammers, lawn equipment and hedge trimmers. Ms. Kraft is responsible for accounting for all of the tools the inmates use. Ms. Kraft is responsible for writing up inmates for disciplinary reasons.

Jay Lenhart is one of the five maintenance mechanic IIs employed by the County. Mr. Lenhart is responsible for various maintenance work, including plumbing, heating, electrical work and equipment repair. The job description for maintenance mechanic II states that an essential function of the position is to "[s]upervise inmates assigned to assist in maintenance." Among the duties of the inmates supervised by Mr. Lenhart are assisting him in digging up cement to find a drain line, repairing lawn mowers and repairing cell doors within the pods. The inmates who help Mr. Lenhart come from the ranks of inmates eligible for work release. Mr. Lenhart is responsible for supervising inmates outside the prison "security perimeter," which means "outside the prison walls."

Thomas Dissinger is a maintenance mechanic II at the Lancaster County Prison. Mr. Dissinger testified that he supervises inmates outside the security perimeter of the prison. This has included taking them to the training center or to the courthouse, taking them to lunch and ensuring that they take their medications. Mr. Dissinger has had to write up an inmate for disciplinary reasons, including one inmate who spit at him. This resulted in the inmate receiving added jail time. Mr. Dissinger has had to break up inmate fights. On one occasion, Mr. Dissinger had to assist a corrections officer in closing a cell door so that an inmate could not get out. Mr. Dissinger held the door closed until relief arrived. Mr. Dissinger has the authority to direct an inmate to lock up. When Mr. Dissinger is outside the prison walls with inmates, the corrections officers cannot see him or the inmates he is supervising because of the line of sight from the prison watch tower. The inmates use tools such as screwdrivers, wrenches and hammers. Mr. Dissinger is responsible for accounting for all of the tools that are used by the inmates.

In the POUC, the Hearing Examiner determined that the positions of maintenance mechanic I and maintenance mechanic II are "guards at prisons" within the meaning of Section 604(3) of PERA. Accordingly, the Hearing Examiner granted the Union's Petition

for Unit Clarification that sought to include these positions in the prison guard bargaining unit.

In its exceptions, the Employer argues that the Hearing Examiner erred by failing to make certain findings of fact, and by concluding that maintenance mechanics are prison guards because they allegedly do not perform any role in the care, custody or control of inmates.

Section 604(3) of PERA provides 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:

...

(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) (emphasis added).

Recently, in Department of Corrections, 41 PPER ¶ 100 (Final Order, 2010), the Board addressed the issue of whether barber and cosmetology instructors should be included in a bargaining unit of prison guards. The employe representative in that case argued that the employes were professional employes and should be included in the bargaining unit with other professional teachers rather than in the bargaining unit with prison guards. The Board rejected that argument and held that the employes were prison guards because they were involved in the care, custody and control of inmates, even if they spent most of their time teaching inmates a trade. Similarly, in Fayette County, 14 PPER ¶ 14159 (Final Order, 1993), upon which the Hearing Examiner relied herein, the Board found that a maintenance worker at a prison was a guard where most of his work hours were devoted to maintaining the prison, but he also served as a guard. The Board determined that the maintenance worker's prison guard duties were sufficient to classify him as a prison guard under PERA because it is the nature of an employe's duties, and not the frequency thereof, that is controlling on this issue.

In Luzerne County, 15 PPER ¶ 15155 (Order Directing Submission of Eligibility List, 1984), a Board Hearing Examiner reached the same result concerning residential aides, who were responsible for work release inmates. The residential aides did not have any training in firearms, hand-to-hand combat, first-aid, security or search and inspection procedures. Nor did they have any role in apprehending escaping inmates, checking inmate cells or quelling disturbances. Nonetheless, the Hearing Examiner held that these employes were guards under Section 604(3) of PERA because they were a "vital cog in the security apparatus of the prison", due to the fact that they had sole responsibility to watch for escaping inmates during nights and weekends at the work-release building. The Board further stated that the fact that the work-release inmates could leave during the day did not detract from the fact that the County was responsible for the security of these inmates at night and on weekends.

In its brief, the County argues that the Hearing Examiner's decision is inconsistent with numerous Board decisions where the Board found that the employes at issue were not prison guards. Specifically, the County cites to Somerset County, 22 PPER ¶ 22055 (POD, 1991), Fayette County, *supra*, and Cumberland County, 12 PPER ¶ 12198 (ODSEL, 1981), all of which dealt with employes who worked as cooks in prisons. The County argues that the cooks in those cases, like the maintenance mechanics in this case, supervised inmates while they were working, but were found not to be prison guards because they were instructed to call for assistance if they had a problem and did not have access to cell blocks.

Here, the maintenance mechanics supervise inmates while they are working outside of the prison walls. Thus, the role of the maintenance mechanics in the security infrastructure of the prison is measurably greater than the role played by the cooks in Somerset County, Fayette County and Cumberland County. Further, like the residential aides in Luzerne County, who were the only county employes watching inmates at night and on weekends, the maintenance mechanics in this case are the only County employes watching inmates when they are outside the prison walls. As part of this supervision of inmates in areas that are not secured, the maintenance mechanics ensure that the inmates do not steal tools that may be turned into dangerous weapons. The maintenance mechanics are also responsible for keeping track of the inmates and have the duty to sound the alarm if one of them attempts to escape. The maintenance mechanics also have the authority to write up the inmates for disciplinary reasons and have, on occasion, helped to secure inmates or break up fights. Like the residential aides in Luzerne County, the performance of these duties by the maintenance mechanics shows that the Employer has entrusted them with the care, custody and control of inmates under their supervision and demonstrates that the maintenance mechanics are part of the security infrastructure of the prison. The positions of maintenance mechanic I and maintenance mechanic II are therefore properly included in the prison guard bargaining unit.

The Employer also argues that the Hearing Examiner erred by failing to allow the testimony of Gary Shimp, who is the Maintenance Supervisor at the Lancaster County Public Safety Training Center. In her offer of proof, counsel for the Employer indicated that Mr. Shimp's testimony would show that he works with inmates on a daily basis and is not responsible for the security of inmates. The Employer argues that this testimony would show that the maintenance workers at the prison are likewise not responsible for inmate security. In Dauphin County, 34 PPER ¶ 99 (Final Order, 2003), the Board held that the hearing examiner did not err by excluding testimony regarding the level of security at other county buildings that are not prisons because that information was not relevant to the level of security at the county's youth detention center. Likewise, in this case, the supervision, or lack thereof, of inmates at the Public Safety Training Center is not relevant to the question of whether maintenance employes are prison guards within the meaning of Section 604(3) of PERA. Accordingly, the Hearing Examiner did not err by excluding Mr. Shimp's testimony.

Finally, as to the Employer's argument that the Hearing Examiner erred by failing to make numerous findings of fact, the Board stated in Colonial Intermediate Unit 20 Education Association v. Colonial Intermediate Unit, 36 PPER 36113 (Final Order, 2005), that a hearing examiner is only required to set forth those facts that are necessary to support his decision and is not required to summarize all of the evidence presented, or to make findings that are unnecessary or irrelevant, even if there is substantial evidence to support such findings. See also Page's Department Store v. Velardi, 464 Pa. 276, 287, 346 A.2d 556, 561 (1975) ("When the fact finder in an administrative proceeding is required to set forth his findings in an adjudication, that adjudication must include all findings necessary to resolve the issues raised by the evidence and which are relevant to a decision."); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988). Here, none of the findings proposed by the Employer are necessary or relevant to the Hearing Examiner's decision, as the findings he made show that the maintenance mechanics are part of the security infrastructure of the prison and are therefore properly in the prison guard bargaining unit.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Employer are hereby dismissed, and the June 25, 2010 Amended Proposed Order of Unit Clarification be and hereby is made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman and James M. Darby, Member, this fifteenth day of March, 2011. 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.