

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

In the Matter of Employes of :  
 : Case No. PLRA-R-14-11-E  
PHILADELPHIA PARX RACETRACK :

**FINAL ORDER**

On December 1, 2014, Local 947, United Service Workers Union, International Union of Journeyman & Allied Trades (Local 947) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) seeking to represent a bargaining unit of "all jockeys employed by the employer", Philadelphia Parx Racetrack (Racetrack). On December 12, 2014 the Secretary of the Board issued a letter declining, "pursuant to 34 Pa. Code §95.81(b), to direct a hearing on the petition because horse jockeys have been determined to be independent contractors rather than employes." On December 29, 2014, Local 947 filed timely exceptions to the Secretary's letter. On January 16, 2015, the Racetrack timely filed a brief in opposition to the exceptions.

On exceptions, Local 947 argues that the Secretary of the Board has no authority under Section 94.81(b) of the Board's Regulations to decline to direct a hearing on a representation petition. However, the Board and the courts have long recognized the Board Secretary's ability to decline to direct a hearing where the Board is without jurisdiction to proceed on the representation petition. **Philadelphia Correctional Officers Association v. PLRB**, 667 A.2d 459 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, 675 A.2d 1254 (Pa. 1996); **Conference of Pennsylvania College Police Lodges v. PLRB**, 719 A.2d 1122 (Pa. Cmwlth. 1998); **Cambria County Deputy Sheriffs Association v. PLRB**, 799 A.2d 957 (Pa. Cmwlth. 2002).

The only claim by Local 947 to justify a factual hearing in this case is a plea that the Board "recognize the erosion of prior Pennsylvania positions as regarding the status of independent contractor versus that of employee." In this regard, Local 947 argues that the Secretary erred in relying on **Davidson v. Workmen's Compensation Appeal Board**, 399 A.2d 1193 (Pa. Cmwlth. 1979) and **Reagan v. Workmen's Compensation Appeal Board**, 405 A.2d 1085 (Pa. Cmwlth. 1979), because those cases held that jockeys were independent contractors retained by the horse owners, but did not address the employment relationship between the jockeys and the racetrack. However, as conceded by Local 947 in its exceptions, **Davidson** and **Reagan** held that horse jockeys were independent contractors. As such, horse jockeys are self-employed and thus cannot be employes of either the owners or the racetrack.

Moreover, the Secretary's December 12, 2014 letter declining to direct a hearing in this case relied on the prior 2006 dismissal of Local 947's previous petition to represent the jockeys at the same racetrack. In **Philadelphia Park Racetrack**, Case No. PLRA-R-06-13-E, the dismissal was also based upon the Commonwealth Court's holding that jockeys are independent contractors. Because no exceptions were filed in Case No. PLRA-R-06-13-E, all issues were waived and the Secretary's 2006 decision became a final determination of the Board. 34 Pa. Code §95.98(b).<sup>1</sup>

Despite the fact that the Board has previously held that the petitioned-for jockeys were independent contractors to which Local 947 did not object, Local 947 offers nothing on exceptions to overcome that prior determination. Neither does Local 947 offer any argument to counter the Secretary's determination here that horse racing jockeys are independent contractors or to support the Board's exercise of jurisdiction over the

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<sup>1</sup> As noted by the Commonwealth Court, the Board does not err in relying on its prior decisions to determine whether to proceed with a hearing. **Pennsylvania State Park Officers Association v. PLRB**, 854 A.2d 674, 688 (Pa. Cmwlth. 2004), *appeal denied*, 582 Pa. 704, 871 A.2d 194 (2005) ("[t]he Board cannot be found to have abused its discretion by relying upon its own established precedent").

Racetrack and jockeys under the PLRA.<sup>2</sup> After a thorough review of the exceptions and all matters of record, the Secretary did not err in declining to direct a hearing on the petition filed by Local 947 seeking to represent the jockeys at the Racetrack. Accordingly, Local 947's exceptions to the Secretary's December 12, 2014 letter shall be dismissed.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act, the Board

**HEREBY ORDERS AND DIRECTS**

that the exceptions filed by Local 947, United Service Workers Union, International Union of Journeymen & Allied Trades are hereby dismissed, and the December 12, 2014 decision of the Secretary, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this twenty-first day of January, 2015. 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.

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<sup>2</sup> It should be noted that with the advent of casino gambling at places that were once exclusively horse racing tracks, such as the Racetrack here, there is a substantial question of whether jurisdiction over the Racetrack lies with the National Labor Relations Board, thus divesting the PLRB of jurisdiction to entertain Local 947's representation petition. **Yonkers Racing Corp. d/b/a Empire City at Yonkers Raceway**, 355 NLRB No. 35 (Advisory Opinion, 2010).