

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-R-23-2-W
: :
ERIE COUNTY :

FINAL ORDER

A Petition for Representation under the Public Employee Relations Act (PERA) was filed with the Pennsylvania Labor Relations Board (Board) on January 3, 2023, by the National Correctional Employees Union (Petitioner), alleging that it represented thirty percent or more of the Deputy Sheriffs and support personnel employed by Erie County (Employer) and requesting pursuant to Section 603(c) of PERA that the Board schedule a hearing and order an election. The Petition also alleged that the employees in the petitioned-for unit are currently represented by the American Federation of State, County and Municipal Employees, District Council 85, Local 2666 (Incumbent Union) and that a three-year collective bargaining agreement covering said employees expired on December 31, 2022.

On January 19, 2023, the Secretary of the Board issued a letter dismissing the Petition. Upon investigation of the Petition, the Secretary noted that the Deputy Sheriffs and support personnel are included in the broader unit of nonprofessional court-related employees represented by the Incumbent Union at PERA-U-82-676-W.¹ Therefore, the Secretary declined to direct a hearing on the Petition based upon the Board's longstanding policy of conducting rival representation proceedings in the unit as currently certified.

On February 8, 2023, the Petitioner filed timely exceptions with the Board, challenging the Secretary's dismissal of the Petition for Representation. In the exceptions, the Petitioner alleges that a separate unit consisting of only Deputy Sheriffs is appropriate because they lack a community of interest with the positions in the current bargaining unit of nonprofessional court-related employees.

Section 604 of PERA provides that the Board "shall determine the appropriateness of a unit". 43 P.S. § 1101.604. In this respect, the Board is guided by its longstanding, broad-based bargaining unit policy under Section 604(1)(ii) of PERA, which directs the Board, when determining the appropriateness of a unit, to consider the effects of overfragmentization. In City of Philadelphia, 10 PPER ¶ 10059 (Final Order, 1979), the Board stated that:

¹ On July 5, 1983, the Board consolidated the previously certified bargaining units represented by the Incumbent Union at PERA-R-6505-W, PERA-R-6506-W, PERA-R-6507-W, PERA-R-6508-W, PERA-R-6509-W, and PERA-R-6511-W into one bargaining unit comprised of all "nonprofessional court-related employees, including ... employees in the offices of Recorder of Deeds, Clerk of Courts, Register of Wills, District Attorney, Sheriff, Prothonotary and Public Defender".

The public policy of the Commonwealth and the purpose of the Act as set forth in Section 101 is to promote orderly and constructive relationships between public employers and their employees and to preserve at the same time the rights of the citizens of the Commonwealth to keep inviolate the guarantees for their health, safety and welfare. It is our considered judgment that the public policy of the Act will best be effectuated by avoiding the dangers of overfragmentization inherent in the certification of a bargaining unit limited to a small number of employees from among a much larger group. The whipsaw effect bargaining with a myriad of fragmented bargaining units has on an employer undermines rather than fosters harmonious employe-employer relations and the rights of the public.

Id. at 97. In furtherance of this policy, the Board does not splinter off groups of employees from existing units, but conducts rival representation proceedings in the unit as currently certified. Commonwealth of Pennsylvania, Office of Attorney General, 43 PPER 84 (Final Order, 2011); Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole, 43 PPER 20 (Final Order, 2011). Further, the Board will only grant severance of an existing bargaining unit if either (1) the employees sought to be severed no longer exhibit an identifiable community of interest with the remaining employees in the unit, or (2) the interests of the group of employees seeking severance have not been fairly and adequately represented in the existing unit. Berks County, 32 PPER ¶ 32082 (Final Order, 2001), aff'd sub nom., Deputy Sheriffs Association of Berks County v. PLRB, 795 A.2d 1064 (Pa. Cmwlth. 2002), appeal denied, 800 A.2d 934 (Pa. 2002).

Here, the Petitioner asserts that the Deputy Sheriffs lack an identifiable community of interest with the other employees in the nonprofessional court-related unit because their job functions and scope of work have changed since consolidation of the units in 1983. However, the Board has consistently held that differences in job functions and scope of work is insufficient to prove that deputy sheriffs lack a community of interest with other nonprofessional court-related employees. See Berks County, supra.; Montgomery County, 26 PPER ¶ 26086 (Final Order, 1995), aff'd sub nom. Deputy Sheriffs Association of Montgomery County v. PLRB, 687 A.2d 432 (Pa. Cmwlth. 1996), appeal denied, 694 A.2d 623 (Pa. 1997); Lebanon County, 33 PPER ¶ 33164 (Final Order, 2002); Luzerne County, 31 PPER ¶ 31061 (Final Order, 2000). Indeed, it is well-settled that an identifiable community of interest can exist despite differences among employee classifications. Commonwealth of Pennsylvania, Office of Attorney General, supra. Therefore, the Petitioner's argument on this issue is meritless.

Further, the Petitioner does not allege that the interests of the Deputy Sheriffs have not been fairly and adequately represented in the existing unit. To the contrary, the Petitioner alleges in its exceptions that the Employer and the Incumbent Union have agreed to provisions in the expired CBA that specifically set forth the terms and conditions of employment for the Deputy Sheriffs, including pay increases. As such, the Petitioner has failed to allege sufficient facts to warrant severance of the Deputy Sheriffs from the existing bargaining unit represented by the Incumbent Union.

The Petitioner here is not seeking to represent all of the nonprofessional court-related employees, but is only seeking to represent the Deputy Sheriffs. To permit the Petitioner to proceed on its Petition would not only violate PERA's admonition under Section 604(1)(ii) against overfragmentization, but would be contrary to the Board's policy of conducting rival representation proceedings in the unit as previously certified. Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole, supra. Accordingly, the Secretary properly dismissed the Petition for Representation, which was filed for an inappropriate unit.²

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Petitioner's exceptions and affirm the Secretary's decision not to direct a hearing on the representation petition.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the National Correctional Employees Union are hereby dismissed and the Secretary's January 19, 2023 decision declining to direct a hearing on the Petition for Representation be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member this twenty-first day of March, 2023. 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.

² The Board notes that, pursuant to Section 604(3) of PERA, deputy sheriffs can be included in their own bargaining unit if they will be utilized as security guards by the employer. However, even if it were alleged that the Deputy Sheriffs at issue here are security guards, the Petitioner would be precluded from representing them because the Petitioner represents persons other than security guards. 43 P.S. § 1101.604(3) (employee organizations representing security guards "may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification."). Wayne County, 54 PPER 40 (Final Order, 2022).