

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-R-23-3-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 Prison Maintenance employees 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 Prison Maintenance employees are included in the broader unit of nonprofessional residual employees represented by the Incumbent Union at PERA-R-83-123-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 Prison Maintenance employees is appropriate because they lack a community of interest with the positions in the current bargaining unit of nonprofessional residual 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-6510-W and PERA-R-6512-W into one bargaining unit comprised of all "nonprofessional county executive residual unit employees, including but not limited to employees in the Offices of Building Maintenance, Voter Registration, Voting Machine Custodian, Assessment, Personal Property Tax, County Owned Property, Switchboard Operator, County Planning, Public Works, Mental Health/Retardation, Children's Services, Health Department, Veterans' Office, Parks and Recreation, Rodent Control, Controller's Office, and County Library System".

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 overfragmentation 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 employee-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 Prison Maintenance employees lack an identifiable community of interest with the other employees in the nonprofessional residual 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 a lack of an identifiable community of interest. See Berks County, supra.; West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), appeal denied, 795 A.2d 984 (Pa. 2000); 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). 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 Prison Maintenance employees 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 Prison Maintenance employees, including bumping/transferring rights. As such, the Petitioner has failed to allege sufficient facts to warrant severance of the Prison Maintenance employees from the existing bargaining unit represented by the Incumbent Union.

The Petitioner here is not seeking to represent all of the nonprofessional residual employees, but is only seeking to represent the Prison Maintenance employees consisting of four employees. 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 Employe 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 Prison maintenance employees who are responsible for the care, custody and control of prison inmates may be included with a unit of prison guards within the meaning of Section 604(3) of PERA. Lancaster County v. PLRB, 94 A.3d 979 (Pa. 2014).