

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-R-10-86-E
 :
 CHESTER UPLAND SCHOOL DISTRICT :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On May 28, 2010, Teamsters Local Union No. 312 (Teamsters or Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation seeking to have the Board investigate a question of representation and certification of a collective bargaining representative for an appropriate unit of Chester Upland School District (District) police officers under Act 111 of 1968, 43 P.S. § 217.1 et seq. as read in pari materia the Pennsylvania Labor Relations Act (PLRA), 43 P.S. § 211.1 et seq.

On June 11, 2010, the Secretary of the Board issued an order and notice of hearing directing that the parties participate in a telephone pre-hearing conference to determine the need for a hearing and the issues raised in the petition. The date of July 1, 2010 was set for a hearing if necessary before Timothy Tietze Esquire, a hearing examiner of the Board.

The hearing was necessary, but was continued to August 19, 2010, on the motion of the District without objection from the Union. The hearing was continued again to September 14, on the motion of the District over the objection of the Union.

In lieu of a hearing, the parties requested the opportunity to submit a stipulation of facts. On September 28, 2010, the hearing examiner acknowledged the parties' request. On November 19, 2010, the examiner notified the parties that because no stipulations had been sent to the Board, a hearing was necessary.

On November 30, 2010, the Chief Counsel of the Board re-assigned this case to Thomas P. Leonard, Esquire, a hearing examiner of the Board, due to Examiner Tietze' leaving the employment of the Board. The examiner scheduled the matter for a hearing on January 24, 2011, in Media. The hearing was held on that rescheduled date, at which time all parties in interest were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

The Union submitted a post hearing brief on February 23, 2011. The District submitted a post hearing brief on March 7, 2011.

The Examiner, on the basis of the testimony and exhibits presented at the hearing, and from all matters of the documents of record, makes the following

FINDINGS OF FACT

1. The Chester Upland School District is a political subdivision of the Commonwealth of Pennsylvania under Act 111 of 1968 (Act 111) and is an employer within the meaning of Section 3(c) of the Pennsylvania Labor Relations Act (PLRA).

2. That Teamsters Local Union 321 is a labor organization within the meaning of Section 3(f) of the PLRA.

3. The District has created a School Response Team, whose purpose is to patrol inside and outside of District school buildings and to address district wide riots, group fights or other large disturbances. The Response Team members includes the ranks of captains, sergeants, police officer 3's and police officer 1's. (N.T. 15, District Exhibit 1)

4. The parties stipulated and agreed that the positions of captains, sergeants and school police officer 3's are legislatively authorized to act as police and do act as police under Act 111 and are therefore eligible to be included in a unit of police officers. (N.T. 6-8)

5. That the parties stipulated and agreed that there are two captains: Terry Allen and Leon Middletown. (N.T. 6)

6. That the parties stipulated and agreed that there are two sergeants: Marla Allen and James Chapel. (N.T. 6)

7. That the parties stipulated and agreed that there are four school police officer 3's: Vernon Garner, Jr., John Gilbert, Roland Norman and Brandon Rhone. (N.T. 7-8)

8. The District also employs school police officer 1's. There are currently 27 persons employed in this position. (N.T. 16, District Exhibit 1)

9. The school police officer 1's have the following responsibilities and job requirements:

School Police officer 1's have the authority to detain students on or within 1000 feet of school property. They do not carry weapons and do not have arrest powers. Responsibilities include, but are not limited to, set-up of the security equipment (kiosk machine, scanner, metal detector), conduct security checks of all students and visitors entering the building, intervene in student fights or disorderly conduct using appropriate restraints and to document all serious incidents. The position reports to the Operations Sergeant. Requirements are a high school diploma, one year of school safety experience, and professional experience working with youth.

(N.T. 9-10, 11, 15, District Exhibit 1)

10. The school police officer 3's have the following responsibilities and job requirements:

School Police Officer 3's carry weapons and have arrest powers. They also have authority to issue citations. Responsibilities include, but are not limited to, patrol assigned sectors within the school district, respond to emergencies via dispatch within the District's jurisdiction, intervene in student fights or disorderly conduct using appropriate restraints, assist in crowd control during fire drills/evacuations, render first-aid and CPR to students, staff or visitors and document all serious incidents on required forms. They must also work special details assigned by the Operations Captain. Requirements are a minimum of thirty (30) college credits, Act 120 certification, four years experience as a police officer in a municipality or urban community and demonstrated knowledge with computer software and operations.

(N.T. 9-10, 11, 15, District Exhibit 1)

11. John K. Watson, a school police officer 1, testified that school police officer 1's do not carry firearms. (N.T. 18-20)

DISCUSSION

The union's petition for representation seeks certification as the exclusive representative of all full-time and regular part-time police officers of the District including but not limited to school police.

An election must be held to determine the representative. Prior to an election being conducted, the Board must determine the employees who are eligible to vote. The parties stipulated to the eligibility of eight employees. However, two issues were presented in the hearing that require a decision.

First, the District contends that school police officer 1's are not eligible for representation in an Act 111 unit of police officers but rather should be defined as guards for inclusion in a unit of security guards as set forth in Section 604(3) of the Public Employe Relations Act (PERA), 43 P.S. § 1101.604(3).

In deciding whether employees are police under Act 111, the Board and the courts apply a two-part test that requires that the particular employees (1) be legislatively authorized to act as police, and (2) in fact effectively act as police. Allegheny County Deputy Sheriff's Association v. PLRB, 990 A.2d 86, at 89, 97 (Pa. Cmwlth. 2010), petition for allowance of appeal granted ___ Pa. ___ 1 A.2d. 3rd 867; Cambria County Deputy Sheriffs Association v. PLRB, 799 A.2d 957 (Pa. Cmwlth. 2002) and Commonwealth v. PLRB (Park Rangers), 558 A.2d 581 (Pa. Cmwlth. 1989).

The District points out that there are at three aspects to the police officer 1's job responsibilities and requirements showing they do not "effectively act as police," the second part of the test for police in the case law cited above. The police officer 1's do not have arrest power, they do not carry firearms and they do not need Act 120 certification to be hired or to perform their jobs. Given this record, it must be concluded that the police officer 1's do not "effectively act as police." Accordingly, police officer 1's will not be eligible to vote on the question of whether the union should be certified as the exclusive representative of the police in the District. Therefore, the District's contention is granted.

Second, the District contends that the Board should certify two separate units. One unit would be for police officer 3's; the other unit would be for captains and sergeants, on the grounds that they are supervisors. However, Act 111 does not define "supervisor" nor does it exclude supervisors from its coverage. In numerous cases the Board has found an appropriate unit of police officers to include supervisory ranks above patrol officers. For example, in Commonwealth v. Commonwealth, Pennsylvania Labor Relations Board, 441 A.2d 470 (Pa. Cmwlth. 1982), aff'd in part, rev'd in part, 463 A.2d 409 (Pa. 1983) the courts approved the Board's determination that an appropriate unit of the Capitol Police included Police Officers IV (lieutenants), Police Officers III (sergeants), Police Officers II and Police Officers I. Similarly, in the present case, an appropriate unit would include the ranks of captains and sergeants with the police officer 3's. Therefore, the District's contention that there should be two separate units of police officers is dismissed.

CONCLUSIONS

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

1. That Chester Upland School District is an employer within the meaning of Section 3(c) of the PLRA and a political subdivision of the Commonwealth of Pennsylvania under Act 111.
2. That Teamsters Local Union No. 312 is a labor organization within the meaning of Section 3(f) of the PLRA and Act 111.
3. That the Board has jurisdiction over the parties hereto.
4. That the unit deemed appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time police officers of the District, including but not limited to captains, sergeants and school police officer 3's; and excluding any managerial employees.
5. That the positions of captains, sergeants and school police officer 3's are eligible to be included in a unit of police officers.
6. That the position of school police officer 1 is not eligible to be included in a unit of police officers.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the examiner

HEREBY ORDERS AND DIRECTS

that the District shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employes in the employer unit described in Conclusion Number 4 above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this decision and order may be filed to the Order of the Board's Representative pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this thirty-first day of March, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner