

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-12-392-E
: :
: :
COUNTY OF BERKS :

PROPOSED ORDER OF UNIT CLARIFICATION

On December 17, 2012, the County of Berks (County) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude the deputy sheriffs from the court-related unit, currently represented by AFSCME District Council 88 (Union), as a separate unit of guards, as defined by Section 604(3) of the Public Employe Relations Act (PERA). The County specifically alleged that it intends to utilize the Deputy Sheriffs to protect County property and persons thereon from County employes involved in labor demonstrations and potential unrest.

On January 18, 2013, the Secretary of the Board issued an order and notice of hearing designating a hearing date of May 9, 2013, in Harrisburg. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On July 8, 2013, the County filed a post-hearing brief. On August 9, 2013, the Union also filed a post-hearing brief.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).
3. Carl Geffken is the County Chief Operating Officer. Arnel Wetzel, Jr. is the County Human Resources Director. Eric Weaknecht is the elected Sheriff of Berks County. (N.T. 10, 31, 33, 36-37 46, 54).
4. The Union represents three bargaining units at the County: Court Appointed; Court Related; and Residual. The County was involved in negotiations with all three, plus the Teamsters and PSSU, during 2012. The deputy sheriffs are in the Union's court-related unit. (N.T. 13-15, 41-42; PERA-R-13,396 (a)-C (Nisi Order of Certification, 1980)).
5. The County experienced contentious negotiations with PSSU because the County was seeking to have that union agree to wage freezes and employes' paying for parking. (N.T. 16-17).
6. During the summer of 2012, PSSU employes engaged in demonstrations in front of the County's Services Center Building during lunch time. During those demonstrations, the PSSU business agent was chanting with a bullhorn while employes marched with signs. (N.T. 18).
7. The Services Center Building is a sixteen-story building in downtown Reading. The Courthouse is a nineteen-story building across an alleyway from the Services Center. The buildings are connected by a walkway on the third and fourth floors. (N.T. 19).
8. The County contracts with SGI to provide general office security at the Courthouse and the Services Center Building. SGI employes operate metal detectors, and they monitor individuals entering and exiting those buildings. SGI assigns two guards at

each metal detector. There are two metal detectors in the Services Building and one in the Courthouse. There is one SGI supervisor who moves between the two buildings and another supervisor in charge of the overall County SGI operation. (N.T. 21, 27).

9. In July 2012, County administrators prepared a strike plan and met with the Sheriff. The purpose of the plan was to maintain County services and operations during a strike. COO Geffken was concerned that SGI employees were not capable of providing security during a strike and sought to use the Sheriff's deputies to provide security during a strike. County administrators met with the County Commissioners in executive sessions on multiple occasions and informed the Commissioners of the strike plan utilizing the deputy sheriffs to guard property and protect persons. The administrators implemented the strike plan approved by the Commissioners. (N.T. 22-26, 30-32).

10. Soon thereafter, Human Resources Director Wetzel met with Sheriff Weaknecht, his Deputy of Security and the Assistant County Solicitor concerning the use of deputy sheriffs to provide security for County property and persons thereon, in the event of labor demonstrations or unrest. (N.T. 32-33).

11. The Sheriff's office is an arm of the Court; it operates the booking center and processes all criminal arrests in Berks County. It also is responsible for patrolling streets and enforcing traffic laws and issuing traffic citations. Sheriff's deputies are armed, and they wear uniforms and badges. They provide security in courtrooms, and they assist SGI employees at entrances. If an incident should occur at an entrance, SGI employees would dispatch deputy sheriffs because SGI employees are unarmed. Sheriff's deputies provide prison transport and serve warrants. There are a total of 81 deputy sheriffs. (N.T. 55-56).

12. Deputy Sheriffs have experience with responding to emergencies on County property. They have protected people and County property from harm. They responded to a violent assault on a judge and demonstrations at the District Attorney's Office. (N.T. 65-66).

13. County representatives and Sheriff Weaknecht decided and agreed that deputy sheriffs would perform the following duties: provide security; maintain crowd control; ensure safe ingress into and egress from County buildings without interference; ensure that demonstrators do not shout or use obscenities during any demonstrations; ensure that demonstrators are confined to an area left of the parking garage ramp; ensure that demonstrators do not block sidewalks, the street or the ramp to the garage; ensure that no demonstrations are permitted inside any County buildings; ensure that demonstrators do not force members of the public or other County employees to accept any literature; and ensure that no littering occurs. (N.T. 32-34, 56-58; Employer Exhibit 3).

14. PSSU members did in fact engage in demonstrations on County property. On July 16, 2012, Deputies Rice and Vroman were assigned to an employe demonstration in front of the Services Center Building from 11:45 a.m. to 1:00 p.m., where employees were picketing and demonstrating. On July 23, 2012, Mr. Wetzel notified the Sheriff's office that PSSU was holding another demonstration at the Services Center Building at noon that day. On July 23, 2012, Deputies Moyer and Carter were assigned to an employe demonstration from 11:45 a.m. to 1:00 p.m. in front of the Services Center Building. (N.T. 33, 35-36, 59-60, 62-63, 75; Employer Exhibits 4, 7, 9, 10 & 14).

15. On July 26, 2012, Deputies Smith and Phelps were assigned to the employe demonstration in front of the Services Center Building. (N.T. 63-64; Employer Exhibits 11 & 12).

16. On August 2, 2012, Mr. Wetzel again informed the Sheriff's Office of another planned demonstration by PSSU members and asked for assistance with security. (N.T. 36-37; Employer Exhibit 5).

17. On September 19, 2012, Mr. Wetzel requested that the Sheriff provide security with deputies during a planned PSSU demonstration on Friday, September 21, 2012, at the

Services Center Building at noon, which occurred as planned. The PSSU employees marched in front of the Services Center Building. (N.T. 37-38, 48-49; Employer Exhibit 6).

18. Mr. Wetzel observed employees, who were members of other County bargaining units, demonstrate with PSSU employees. Deputy sheriffs were present to maintain security during those demonstrations and to keep the demonstrations in one location. Deputy sheriffs forced back demonstrators on numerous occasions. (N.T. 38-39).

19. On September 21, 2012, Deputies Garipoli and Essig were assigned to provide security at the picket line formed by demonstrating employees in front of the Services Center Building and on Reed Street from noon until 1:00 p.m., which is the street between the Services Center Building and the Courthouse. Deputy Essig directed the Union leadership to remain clear of the traffic flow in and out of the Services Center Building and limited the area in which the employees were permitted to demonstrate. (N.T. 61, 70-72; Employer Exhibit 8 & 13).

20. During 2012, the County was engaged in contract negotiations with AFSCME for the court-appointed, court-related and residual bargaining units. The employees in the Union's residual bargaining unit can strike. (N.T. 39-40).

21. In December 2012, the Union's membership voted down a tentative agreement, after which Mr. Wetzel believed that the employees in the residual unit would strike and met with the Sheriff to ensure that the deputies would provide security during the anticipated strike. (N.T. 40-41, 46).

DISCUSSION

In its petition for unit clarification, the County seeks the removal of deputy sheriffs from the broader court-related County bargaining unit alleging that the County intends to and has utilized County deputy sheriffs to protect County property and persons thereon during times of labor unrest thereby creating a conflict of interest for the deputies and requiring their exclusion under the guard provision of Section 604(3) of PERA. In **Butler County Deputy Sheriff's Unit v. PLRB**, 911 A.2d 218 (Pa. Cmlwth. 2006), the Commonwealth Court provided the appropriate analysis for an employer-filed petition to remove deputy sheriffs from a broader court-related unit into a separate guard unit. It also emphasized that there is a much lower burden of proof where an employer supports a petition to remove deputy sheriffs as guards than when a union files such a petition that is not employer supported. The Commonwealth Court opined as follows:

Based on our prior holdings in **Erie County**, **Washington County**, and **Franklin County**, we agree with the Board that the cases use a different standard for determining whether deputies should be considered guards under Section 604(3) of PERA, depending on whether the employer is supporting the petition for representation or not. Where the employer supports the petition for representation, the relaxed standard outlined in **Erie County**, is appropriate. There, the employer need only show a mere possibility that the employees would be used as guards to protect the employer's property during labor unrest. The rationale behind utilizing a more relaxed standard is that Section 604(3) is an employer-protection to ensure that during labor unrest, the employer would have guards to enforce its rules for the protection of property and safety of persons, without being confronted with a division of loyalty between the employer and dissatisfied fellow union members. **Erie County**, 417 A.2d at 798. The purpose of Section 604(3) is not to give employees/unions an opportunity to bargain out of their existing unit in self-interest. If, on the other hand, the employer opposes the petition filed on behalf of a union, the stricter standard as outlined in **Washington County** and **Franklin County** is appropriate. There, the union must prove that its members actually protected employer property during a past labor dispute. If the employees/union can meet this burden, the petition for representation will be granted. **Washington County**.

Butler County, 911 A.2d at 224.

In the case *sub judice*, the County filed the petition seeking to avail itself to the protections of the guard exclusion so that the deputy sheriffs would not suffer a conflict of interest or a division of loyalty between the employer, and its desire to protect its property, and fellow union workers. Although the County only had to satisfy the more relaxed standard to prevail in this case, it also established the elements of the stricter standard.

During 2012, the County was involved in negotiations with all three bargaining units represented by the Union, a fourth bargaining unit represented by PSSU and a fifth bargaining unit represented by the Teamsters. As a result of contentious negotiations with PSSU and demonstrations by PSSU employes during the summer of 2012, County administrators met with Sheriff Weaknecht to ensure that the deputy sheriffs secured County property and protected persons thereon during labor demonstrations. Although the County had already contracted with SGI to monitor the entrance of individuals into County buildings, the County's Chief Operating Officer Carl Geffken believed that they were not capable of protecting County property and people thereon during labor demonstrations or other potential unrest. Therefore, Mr. Geffken and Mr. Wetzel developed a County strike plan to ensure the continued operations of County services during labor demonstrations or other unrest.

Ensuring continued operations necessitated a security plan for protecting people and property with the deputy sheriffs, who have experience with courtroom security involving large masses of people, emergencies and violent assaults against County officials, due to their training and active role as peace officers. The Sheriff agreed with the County administrators that deputy sheriffs would perform security functions, during labor demonstrations and potential labor unrest, in and around County property. Accordingly, the County has met its burden of proving that the County intends to utilize deputy sheriffs to protect its property and people thereon during times of labor demonstrations within the meaning of **Butler County, supra**, and therefore they must be excluded from the court-related unit represented by the Union under Section 604(3), as a separate unit of guards.

The County also met its burden of proving that the deputy sheriffs are guards under the stricter standard because the record shows that the deputy sheriffs were deployed to protect property and people thereon during actual employe picketing to ensure safe ingress and egress for County employes and the public they serve. Deputy sheriffs were deployed on multiple occasions to control demonstrations and maintain security on County property. On numerous occasions, deputy sheriffs forced back demonstrators who were members of different County bargaining units including PSSU and Teamsters. The Board has explained the statutory exclusion for guards as follows:

The policy for separating a group of employes from a broader public employe unit into a unit of guards under Section 604(3) is to permit an employer to prevent his guard employes' divided loyalty from affecting their ability to enforce the employer's rules for the protection of property and the safety of persons on its premises when those responsibilities are against fellow County employes who **MAY** be in the same bargaining unit or otherwise represented by the same union.

In the Matter of the Employes of Franklin County, 34 PPER 160 at 493 (Final Order, 2003) (emphasis added).

Accordingly, the division of loyalty exists because there is a sympathetic relationship with fellow employes who are not necessarily represented by the same union. Therefore, the deputy sheriffs in this case suffered the very divided loyalty and conflict of interest that the guard exclusion in Section 604(3) is designed to prevent when they forced back fellow County employe demonstrators who were members of County bargaining units and affiliated unions. A union representing a unit of guards is not permitted to have any affiliation with any other union representing employes in the

County, thereby protecting the County from a division of loyalty, and the deputy sheriffs must be removed from the court-related unit. 43 P.S. § 1101.604(3).

The Union argues that, "[a]lthough there is testimony that Mr. Wetzel discussed the issue with the Commissioners, there is no testimony or other evidence establishing that the Commissioners actually decided to use deputies in this way." (Union's Post-hearing Brief at 7). The Union further contends that "[u]nder **Franklin County**, and its progeny, . . ., absent approval of the County Commissioners, the intentions or plans of other County officials are irrelevant." (Union's Post-hearing Brief at 7-8).

However, the record contains substantial evidence that the Commissioners did approve the strike plan. Mr. Wetzel credibly testified that the Commissioners were made aware of the meetings that County administrators were holding among themselves to develop a strike plan, in July of 2012. He further credibly testified that the County administrators discussed these meetings and the strike plan with the Commissioners during executive sessions. Mr. Wetzel then testified that, as a result of those executive sessions with the Commissioners, they implemented the strike plan and met with the Sheriff's Office. (N.T. 24-26). Clearly, the Commissioners approved the plan developed by the County administrators during executive session. Moreover, the Union has not shown that the adoption of the strike plan (requiring the use of deputy sheriffs to enforce the County's rules for the protection of property and persons thereon) required a Commissioner vote at a public meeting.

The Union further maintains that the demonstrations conducted by PSSU did not amount to "labor unrest." (Union's Post-hearing Brief at 8). However, Section 604(3) does not require the presence of "labor unrest" nor does it define the term. Rather it requires of guards that they be employed "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." 43 P.S. §1101.604(3). Under the employer-filed petition standard, an employer need only demonstrate its intent to utilize the guard employes to enforce rules for the protection of persons and property, which was clearly established here. To the extent that the term "labor unrest" is used in the case law, it remains undefined, but such a definition is not necessary because employers utilize guards to prevent labor unrest and not only to quell it.

The record here establishes that the statutory criteria have been met in that deputy sheriffs did in fact forced back demonstrators in front of the Services Center, thereby enforcing the County's rules to keep demonstrators clear of the entrances and exits to ensure safe ingress and egress and to keep demonstrators confined to an area left of the parking garage ramp without blocking the ramp or the sidewalks. The deputies' presence alone prevented the demonstrations from growing into louder or more uncontrolled demonstrations or unrest. Prevention is the preferred type of enforcement of rules to protect persons and property, not the quelling of disturbances after the fact. The effective and desired use of deputies in the function of guards is to have their presence prevent demonstrations from interfering with persons or property. It is, therefore, unnecessary to show that deputies controlled unruly crowds. Their presence at demonstrations, thereby preventing "unrest" is all that is required and the most effective use of deputies and other types of guards.

CONCLUSIONS

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

1. The County is a public employer within the meaning of section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.

4. The County's Deputy Sheriffs are guards within the meaning of Section 604(3) of PERA and are thereby properly excluded from the bargaining unit of court-related employes represented by the Union.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the bargaining unit of employes certified by the Board at PERA-R-13,396(a)-c is amended to exclude the County's deputy sheriffs as guards.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to Pa. 34 Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this seventh day of July, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner