

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-R-14-162-E
: :
CUMBERLAND COUNTY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On May 14, 2014, Teamsters Local 776 (Petitioner or Union) filed a petition for representation with the Pennsylvania Labor Relations Board (Board) alleging that thirty per cent or more of the full-time and regular part-time nonprofessional, non-court appointed, court related employes of Cumberland County (Respondent or County) wished to be represented by the Union and that the Union desired to be certified as their representative.

On June 11, 2014, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on July 17, 2014, in Harrisburg, Pennsylvania.

The parties requested a continuance of the matter to allow time to reach an agreement of the unit description, the list of employees eligible to vote and the time and place for an election. The parties did not arrive at an agreement. The hearing examiner continued the hearing to September 9, 2014, at which time the parties were afforded a full opportunity to present evidence and cross-examine witnesses.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Cumberland County is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA). (N.T. 13)
2. Teamsters Local 776 is an employe organization under Section 301(3) of PERA. (N.T. 13-14)
3. The County owns, and operates programs in, five buildings in Carlisle Borough: the old prison, domestic relations' offices, human services building, the old courthouse, the new courthouse and annex, and the adult probation office. The County owns, and operates programs in, four buildings in Middlesex Township: the County nursing home, the County prison, the Office of Aging and the public safety building. The County owns, and operates programs in, two buildings in the west annex of Carlisle Borough: the garage and the conservation district offices. (N.T. 34-36)
4. The Sheriff, Ronny Anderson, is an elected official. In the Sheriff's Office there are also the positions of chief deputy sheriff, three sergeants, three corporals and approximately 20 full-time deputy sheriffs and five or six part-time deputies. There are also six clerks and six security guards and their supervisor at the courthouse. (N.T. 15-17)
5. The Sheriff's Office provides services for three major functions: civil process (the serving of legal papers, including protection from abuse orders, money judgments and mortgage foreclosures); court security (courtroom security and transportation of inmates to and from the courts) and the warrants section (serving warrants and providing licenses for firearms). The deputy sheriffs move back and forth between all three functions. (N.T. 18-19, 58-60)
6. The deputy sheriffs also provide security at the entrances to the County buildings described in Finding of Fact No. 3, screening the entrants to those buildings. (N.T. 18, 21-23 and 26)

7. The Sheriff is responsible for determining the level of security screening that will be applied to County employees entering those buildings. (N.T. 24)
8. The Sheriff is responsible for providing security as required to ensure order when people engage in demonstrations at or near the courthouse. (N.T. 25)
9. The Sheriff was the lead agency in a multi-agency security effort involving the Carlisle Police Department and the Pennsylvania State Police at a demonstration conducted by the Ku Klux Klan. (N.T. 25)
10. The County has a collective bargaining agreement with AFSCME for the employees at the County nursing home. (N.T. 50, 53-54)
11. Sometime around 2003, the Sheriff had to respond to a complaint from the County nursing home involving a union representative leafletting on the roadway in front of the employee entrance. The Sheriff deputy had to explain to the union representative the proper place to be as so to comply with the nursing home's no solicitation rule and so as not to impede the movement of employees coming in and out of work. (N.T. 27-28, 43-44)
12. Sheriff Anderson expects that the deputy sheriffs will respond to similar incidents in the future. (N.T. 29)
13. Lawrence Thomas is the County's Chief Clerk. In that position, he is responsible for directly overseeing all the departments that are under the County Commissioners' jurisdiction and for working in conjunction with departments that are under other elected officials' jurisdiction. (N.T. 48-49)
14. Mr. Thomas testified that the County Commissioners would use the Sheriff for any disturbances that would occur at the County nursing home. (N.T. 50)

DISCUSSION

The County raises one issue in this case: should the deputy sheriffs be excluded from the list of employees eligible to vote in an election for the representative of the nonprofessional, non-court appointed, court related employees of the County?

The County asserts that the deputy sheriffs should be excluded as guards pursuant to Section 604(3) of PERA, which states,

The board shall ...

(3) not permit guards at prisons and mental hospitals, employes directly involved with and necessary to the functioning of the courts of this Commonwealth, or any individual employed as a guard 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 to be included in any unit with other public employes, each may form separate homogeneous employe organizations of the latter designated employe group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

43 P.S. § 1101.604(3)

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**.

911 A.2d at 224.

In order to meet its burden of proving the "mere possibility" standard set forth in **Butler County**, the County offered the testimony of Sheriff Ronny Anderson. Sheriff Anderson has served 33 years in the Sheriff's Office, the last five as the elected Sheriff. Sheriff Anderson testified that in the event of labor unrest that required the protection of property, the County would call and deploy the deputy sheriffs. He testified about an incident that occurred in 2003 where the deputy sheriffs were sent to the County nursing home to instruct a union supporter of the appropriate place to leaflet employees so as to avoid blocking a driveway.

Additionally, the County offered the testimony of Lawrence Thomas, the County's Chief Clerk. This is the leading non-elected administrative position in the County government. Thomas testified that in the event of any type of picketing or strike activity involving employees the county would rely upon the Sheriff's Office for the safeguarding of people and property. Thomas also testified that the county looks to the Sheriff's office to establish order and ensure the security of staff entering or leaving its facilities. Thomas also testified that the County relies upon the deputy sheriffs to provide security training and expertise for situations that might be out of the ordinary security abilities of other County departments.

The Union contends that the County's evidence is insufficient to meet its burden of proving the deputy sheriffs are guards. The Union argues that the County has produced speculative testimony that hardly shows a credible possibility of using the deputy sheriffs to protect County property. The Union points out that the County produced no evidence of strike activity at county buildings. The leafletting incident with the labor union representative at the county nursing home occurred over ten years ago. Deputy sheriff Dawn Kell testified that in her almost two decades on the job as a deputy sheriff the county has never directed her to protect county property in the event of a labor dispute. Finally, the union points out that the County Commissioners do not have a written policy on when and under what circumstances deputy sheriffs would be deployed by the County to protect property in the event of a labor dispute.

However, under **Butler County**, the evidence the county presented is sufficient to prove that the deputy sheriffs are guards under Section 604(3) of PERA. The County need only show the possibility of using the deputy sheriffs to protect the county's property. The history of the deputy sheriffs' involvement in such matters demonstrates that the County's current expectation of using the deputy sheriffs again in a similar manner is not speculative or incredible.

Finally, the Union argues that if the Board approves a bargaining unit that excludes deputy sheriffs, the County would potentially then have to deal with a separate unit of deputy sheriffs in the future. Such an outcome, the Union argues, is contrary to the mandates of Section 604(1)(ii) of PERA, which directs the Board to "take into consideration . . . the effects of overfragmentization." 43 P.S. § 1101.604(1)(ii). This argument is better addressed to the full Board, which has already approved such an exclusion in other county court related units. See, e.g. **Butler County**, *supra*. and the cases cited therein.

The County has proven that it intends to use the deputy sheriffs "to enforce against employes and other persons, rules to protect property of the employer" in or around County buildings. The case law allows the County to show the "mere possibility" of using the deputy sheriffs in that manner in order to seek their exclusion from the unit as guards within the meaning of Section 604(3) of PERA.

CONCLUSIONS

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

1. That Cumberland County is a public employer under Section 301 (1) of PERA.
2. That Teamsters Local 776 is an employe organization under Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the unit appropriate for the purpose of collective bargaining is a unit comprised of all full-time and regular part-time nonprofessional employees who are directly involved with and necessary to the functioning of the courts and who are not hired, fired, and directed by the courts, including, but not limited to, the employes in the sheriff's office, district attorney's office, clerk of courts' office, prothonotary's office, register of wills office, clerk of orphans' court, public defender's office and coroner's office, and excluding all management level employes, supervisors, first level supervisors, confidential employes and guards as defined in PERA.
5. That the deputy sheriffs are guards under Section 604(3) of PERA and are excluded from the unit.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the County shall within ten (10) days of the date of this order submit to the Board a current alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twentieth day of November, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner