

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-U-13-175-E
 :
 CITY OF PHILADELPHIA :

PROPOSED ORDER OF UNIT CLARIFICATION

On January 21, 2015, the Pennsylvania Labor Relations Board (Board) issued an Order Directing Remand to Hearing Examiner for Further Proceedings (Order Directing Remand). The Board's Order Directing Remand was issued following the City of Philadelphia's (City) filing of exceptions to the Examiner's August 21, 2014 Proposed Order of Unit Clarification (POUC). In the POUC, the Examiner granted the Petition for Unit Clarification filed by the American Federation of State, County and Municipal Employees (AFSCME), Local 159 (Local 159) and concluded that Security Officers working in the Philadelphia Juvenile Justice Services Center (JJSC or Center) are "guards at prisons" within the meaning of Section 604(3) of the Public Employee Relations Act (PERA or Act). Therefore, the Examiner held that Security Officers should be classified as prison guards for the purposes of collective bargaining.

In the Order Directing Remand, the Board sustained the City's exceptions in part, dismissed the City's exceptions in part, vacated Finding of Fact 19, and remanded the matter to the Hearing Examiner for the limited purpose of determining whether Local 159 was authorized to file the Petition for Unit Clarification on behalf of AFSCME District Council 33 (District Council 33), who is the exclusive bargaining representative of all employees in Local 159. In connection therewith, a hearing was scheduled for February 18, 2015 in Harrisburg to address this issue. However, the hearing was continued in light of the party's joint request to submit factual stipulations in lieu of participating in a hearing. On April 30, 2015, the Board received the jointly executed stipulations of fact.

The Examiner, on the basis of the testimony and exhibits presented at the hearing, and from all of the matters and documents of record, incorporates by reference the Findings of Fact set forth in the August 21, 2014 POUC, and makes the following:

ADDITIONAL FINDINGS OF FACT

22. Samuel L. Spear, counsel to District Council 33, stated in a February 5, 2015 letter following the Board's January 21, 2015 Order Directing Remand that District Council 33 fully authorizes Local 159 to act on its behalf in litigating a unit clarification petition on behalf of the Security Officers employed by the City at the JJSC. (Joint Exhibits 1 & 2)

DISCUSSION

In the August 21, 2014 POUC, I granted the Petition for Unit Clarification filed by Local 159 and concluded that the Security Officers working at the JJSC are "guards at prisons" within the meaning of Section 604(3) of PERA. On September 11, 2014, the City filed timely exceptions to the POUC arguing, *inter alia*, that the Board lacks statutory authority to reorganize the bargaining unit without District Council 33 being a party to the Petition for Unit Clarification. On January 21, 2015, the Board issued an Order Directing Remand sustaining the City's exceptions in part, dismissing the City's exceptions in part, vacating Finding of Fact 19, and remanding the matter to the Hearing Examiner for the limited purpose of determining whether Local 159 was authorized to file the Petition for Unit Clarification on behalf of District Council 33, who is the exclusive bargaining representative of all employees in Local 159.

In relevant part, the Board expressly stated as follows:

The City finally alleges that the Board recognized in **AFSCME District Council 33 v. City of Philadelphia**, 39 PPER 128 (Final Order, 2008), that District

Council 33 "has the 'final say' with regard to all collective bargaining matters for its employees" and that the Board lacks authority to reorganize the bargaining unit without District Council 33 being a party to the Petition for Unit Clarification. In that case, the Board explained that PERA reserves the right of District Council 33 to select Local 159 as its agent for purposes of collective bargaining. However, the Board also noted that the decisions of District Council 33 regarding collective bargaining for its members prevail in the event that they differ with those of Local 159.

The record in this case is silent regarding the authority granted by District Council 33 to Local 159 to file the instant Petition for Unit Clarification. However, there is no indication that District Council 33 objects to Local 159's Petition. Further, the City in its brief generally recognizes the authority given to Local 159 by District Council 33 to bargain on behalf of the prison guard and non-prison guard employees who work in the Center and the Philadelphia Prison System, including the Security Officers at issue here. Therefore, if Local 159 is authorized to file the Petition for Unit Clarification, the Security Officers should be classified as prison guards under Section 604(3) of PERA.

In its post-hearing brief, the City generally states that District Council 33 is the only recognized bargaining representative for the City's employees and that the Board is not authorized to assign employees between locals within the bargaining unit. The City did not directly argue at the hearing (N.T. 10-12) or in its post-hearing brief that the Petition for Unit Clarification should be dismissed because Local 159 did not have the authority to file the instant Petition. Therefore, the Hearing Examiner did not address this issue in the POUC. Accordingly, the Board finds it necessary to remand this matter to the Hearing Examiner for the limited purpose of determining whether Local 159 was authorized to file the Petition for Unit Clarification. However, this remand is not an opportunity to relitigate the issue of whether the Security Officers are "guards at prisons" within the meaning of Section 604(3) of PERA, but merely to ascertain whether District Council 33 disagrees with Local 159's decision to file the instant Petition for Unit Clarification.

In the Matter of the Employees of City of Philadelphia, 46 PPER 64 (Order Directing Remand to Hearing Examiner for Further Proceedings, 2015).

Following the Board's January 21, 2015 Order Directing Remand, the parties submitted a jointly executed stipulation of facts. According to the parties stipulation, Samuel L. Spear, counsel to District Council 33, stated in a February 5, 2015 letter that District Council 33 fully authorizes Local 159 to act on its behalf in litigating a unit clarification petition on behalf of the Security Officers employed by the City at the JJSC. As a result, District Council 33 does not object to Local 159's decision to file the instant Petition for Unit Clarification. As such, I find that Local 159 was authorized to file the petition on behalf of District Council 33. Therefore, the Security Officers should be classified as prison guards pursuant to Section 604(3) of PERA.

CONCLUSION

The Examiner, therefore, after due consideration of the foregoing and the record as a whole, incorporates by reference herein, and makes a part hereof, CONCLUSIONS numbers 1 through 4 inclusive as set forth in the initial POUC issued on August 21, 2014.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the unit is amended and the Security Officers are prison guards within the meaning of Section 604(3) of PERA, such that they are entitled to interest arbitration pursuant to Section 805 of PERA.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this eighth day of May, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner