

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF

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PERA-R-15-284-E

THE OFFICE OF THE SHERIFF OF  
SCHUYLKILL COUNTY

**PROPOSED ORDER OF DISMISSAL**

On October 6, 2015, the Schuylkill County Deputy Sheriffs' Association (Union or Association) filed a petition for representation, under the Public Employee Relations Act (PERA or Act) with the Pennsylvania Labor Relations Board (Board), alleging that thirty percent or more of the deputy sheriffs in the Office of the Sheriff wish to be represented by the Association and severed from the broader unit of court-related, non-court-appointed employes (certified at PERA-R-5235-C, as amended by PERA-U-87-57-C (Nisi Order of Unit Clarification, 1987)), as a unit of guards under Section 604(3) of PERA.

On October 22, 2015, the Secretary of the Board issued an Order and Notice of Hearing designating November 17, 2015, at 10:00 a.m., in Harrisburg, before Hearing Examiner Stephen Helmerich, Esquire, as the time and place for a hearing to determine and resolve any issues raised by the petition, if necessary. Examiner Helmerich granted three continuances to the parties. On February 22, 2016, I notified the parties that the matter had been reassigned to me. The hearing was held on February 23, 2016, during which the Association presented testimonial and documentary evidence. The County's attorney informed me during a pre-hearing telephone conversation that the County knowingly and unequivocally decided not to participate in the hearing. Accordingly, the County did not present testimonial or documentary evidence and neither party cross-examined any witnesses. On March 28, 2016, the Union filed its post-hearing brief.

The Examiner, on the basis of all matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. Schuylkill County is a public employer within the meaning of Section 301(1) of the Act. (PERA-U-87-57-E, Nisi Order of Unit Clarification, 1987)
2. The Association is a labor organization within the meaning of Section 301(3).
3. The County's Office of the Sheriff contains the following ranks below the Sheriff: Captain, Lieutenant, Sergeant and Deputy. (N.T. 6-7)
4. The County Courthouse and the County Prison are next to each other separated by a street. Both the Prison and the Courthouse are County property. (N.T. 8-9)
5. In 2001, a crowd of approximately 100 people gathered around the County Prison. The County's Sheriff at the time, Francis McAndrew, instructed the Deputies to maintain ingress and egress to the prison and its sally port and to ensure daily operations at the prison and the Courthouse. (N.T. 8-11)
6. The crowd assembled to support the Teamsters in a change in bargaining representatives for County prison employes from AFSCME to Teamsters. (N.T. 9-10)
7. The Deputy Sheriffs were responsible for the security on County property at the Courthouse and the Prison during the 2001 crowd control event. (N.T. 9-10)
8. In 2005, approximately 75 Teamster employes working at the Prison assembled at the Prison to support new leadership in a contested Teamsters election. (N.T. 11-12)

9. Again, the Sheriff directed Deputy Sheriffs to ensure ingress and egress as well as the maintenance of operations at the Courthouse and the Prison. (N.T. 11-12)

10. During both assemblies, the crowd carried signs. (N.T. 12)

## DISCUSSION

In **Butler County Deputy Sheriff's Unit v. PLRB**, 911 A.2d 218 (Pa. Cmwlth. 2006), the Commonwealth Court agreed with the Board that there are two different burdens of proof in determining whether deputy sheriffs should be severed from a broad-based court-related bargaining unit, as a separate unit of guards within the meaning of Section 604(3) of PERA. When the County files the petition, there is a much lower burden of proof. **Butler County**, 911 A.2d at 224. However, in a union-filed petition, opposed by the county, a much higher burden of proof is appropriate. **Id.** The **Butler** Court opined as follows:

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**, [613 A.2d 670 (Pa. Cmwlth. 1992)] and **Franklin County**, [885 A.2d 613 (Pa. Cmwlth. 2005)] 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. The Association met its burden of proving that the Deputy Sheriffs were in fact utilized to secure County property, persons thereon and the maintenance of operations in County buildings. However, the Board and the Commonwealth Court additionally require that the historical or intended use of deputy sheriffs to protect County property be at the direction or insistence of the County Commissioners Office and not the Sheriff.

In **Franklin County**, the Commonwealth Court drew a distinction between court-related statutory duties as well as general law enforcement duties of deputy sheriffs as neutral peace officers on the one hand as compared to the performance of security guard duties under Section 604(3) of PERA, on the other. **Franklin County**, 885 A.2d at 618-619. In **Franklin County**, a sheriff's office manual contained a strike action plan that included the protection of persons and county property and also ensured the maintenance of law and order during a strike. The Court agreed with the hearing examiner's and the Board's conclusion that the sheriff's policies did not qualify the deputy sheriffs as guards under Section 604(3) because the Manual, which was never adopted or approved by the Office of the Commissioners, did not indicate that the county commissioners intended to use the deputy sheriffs to protect county property and persons thereon during labor unrest. **Id.** at 616-620. Labor policy for the County and the decision to sever the Deputy Sheriffs as guards resides within the sound discretion of the Office of the Commissioners and its actions, through either Commissioner-approved policy or Commissioner-directed historical actions.

The **Franklin County** Court stated the following:

Even assuming **arguendo** that the strike duties contained in the Manual would be sufficient to qualify the deputy sheriffs as guards for purposes of Section 604(3) of PERA, which would essentially mandate a separate bargaining unit for the deputies, we also agree with the Board that the Manual by itself is insufficient to establish that the County will in fact utilize the deputy sheriffs to protect County property and the safety of persons on its premises in the event of a strike by County employes.

**Franklin County**, 885 A.2d at 619. The **Franklin** Court further opined that it did not believe that “the [s]heriff’s policies contained in the Manual must be considered to be official [c]ounty policy for purposes of collective bargaining between the parties.” **Id.** at 620. Moreover, the **Franklin** Court held as follows:

we agree with the Board that absent approval by the [c]ounty [c]ommissioners, the [s]heriff’s [o]ffice in the present case is not authorized to establish a separate bargaining unit for the deputy sheriffs based solely on the [s]heriff’s own policy regarding possible duties of the deputies in the event of a strike by [c]ounty employees.

**Id.** at 620. In **Washington County**, the Commonwealth Court affirmed the Board’s decision concluding that the deputy sheriffs should be severed from the broader court-related unit as a separate unit of security guards under Section 604(3) and granting the Union’s petition for representation. The Court explicitly quoted finding of fact No. 5 which provided the following:

That during a strike by SEIU against the County in February 1990 the [c]ounty’s Sheriff **at the request of the [c]ounty commissioners** assigned deputy sheriffs to the [c]ounty’s health center and jail to make sure that SEIU’s picketers at those locations did not prevent employes and others from entering those job sites.

**Washington County**, 613 A.2d at 672-673 (citations to the record omitted)(emphasis added). In **Washington County**, the Board and the Court relied on two main factors in determining that the deputy sheriffs were guards under the union-filed petition for representation: (1) the historical fact that the deputy sheriffs protected county property and persons thereon during labor unrest in the past; and (2) THE SHERIFF’S OFFICE WAS ACTING AT THE REQUEST OR DIRECTION OF THE OFFICE OF THE COMMISSIONERS WHO SET LABOR POLICY FOR THE COUNTY. Otherwise, the deputy sheriffs are merely performing their statutory functions as neutral peace officers.

In the case **sub judice**, the Association did not adduce any substantial, competent evidence establishing that Sheriff McAndrews assigned deputy sheriffs to ensure ingress and egress and the maintenance of operations at the County Courthouse and Prison at the direction or request of the County Commissioner’s Office. On this record, therefore, the Deputy Sheriffs were performing their normal duties as neutral peace officers and not guarding County property under the control of the Commissioners within the specific meaning of Section 604(3) of PERA. The Board has a broad-based bargaining unit policy for employes of county government. The Board will not compromise that policy, under a county-opposed, union-filed petition seeking to sever the deputy sheriffs as security guards, unless the union proponent of the guard unit shows that the deputy sheriffs are in fact security guards at the historical or intended direction of the Commissioners. Accordingly, the petition is dismissed.

## 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 not security guards within the meaning of Section 604(3) of PERA and shall remain in the court-related non-court appointed bargaining unit currently represented by the Schuylkill County Court Related Employees Union.

**ORDER**

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

**HEREBY ORDERS AND DIRECTS**

that the Petition for Representation filed by the Union is dismissed.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

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

SIGNED, DATED AND MAILED this twelfth day of April, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner