

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-U-18-227-E
:
:
MONROE COUNTY :

PROPOSED ORDER OF DISMISSAL

On August 31, 2018, Teamsters Local 773 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Public Employee Relations Act (PERA or Act) seeking to accrete the position of Sergeant at the Monroe County Prison (Prison) into the existing bargaining unit of correctional officers. On September 24, 2018, the Secretary of the Board declined to direct a hearing because the position of Sergeant previously had been litigated and found by the Board to be properly excluded from the bargaining unit as supervisory (PERA-R-86-85-E) and the petition did not allege changed circumstances.

On October 15, 2018, the Union filed exceptions and a supporting brief, with an attached affidavit from Union President Dennis Hower, averring that circumstances have changed and that Sergeants no longer perform supervisory functions. On November 20, 2018, the Board issued an Order Directing Remand to Secretary for Further Proceedings. On December 4, 2018, the Secretary of the Board issued an Order and Notice of Hearing designating a hearing date of March 20, 2019, in Harrisburg. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On May 29, 2019, the Union filed its post-hearing brief. Monroe County (County) filed its post-hearing brief on July 1, 2019.

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

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 75)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 75)

3. At the Prison, the County employs a Warden, two deputy wardens, three shift lieutenants, a Training Lieutenant, an Intake Lieutenant, eight sergeants and approximately 125 correctional officers. Garry Haidle is the Warden. On nights, weekends and holidays, the sergeants are in command of the jail, except for the occasional Saturday that a Lieutenant may work. When there is no Lieutenant present, Sergeants process and oversee incoming inmates. Sergeants attend supervisor training provided by the Commonwealth of Pennsylvania, Department of Corrections, and the County Commissioners Association of Pennsylvania. Sergeants participate in committees that

recommend policy changes to the Warden. (N.T. 7-8, 51, 72-73, 98, 107-108, 115-117, 124, 133, 145, 195; Respondent Exhibit 2)

4. There are two sergeants on each of the three shifts at the prison and an additional two swing sergeants. Sergeants start their shift one-half hour before the officers' shift to ensure that holes in the upcoming shift are filled and to prepare for briefings at role call for the incoming shift. (N.T. 10, 53)

5. At roll call, sergeants inform the officers of changes in post assignments that deviate from the lieutenant's schedule. At this time, sergeants also read messages left by the Training Lieutenant, record attendance and report attendance matters to the Lieutenant. They also inspect officers' uniforms and inform the officers of other information from the prior shift, e.g., if an inmate had a seizure. (N.T. 54-55, 64-65, 69-71, 124)

6. Sergeants implement and enforce the attendance policy. There is a point system at the jail to track absenteeism and tardiness. Tardiness results in points; and absenteeism, without having the time, results in an occurrence. The accumulation of points can lead to an occurrence. Sergeants issue working suspensions for violating the attendance policy. (N.T. 74, 87-88, 124, 133, 158-160)

7. Sergeants do not rotate shifts. Sergeants and correctional officers are paid hourly. Correctional officers receive overtime, but sergeants do not typically receive overtime, unless they must stay late to finish a report. (N.T. 13-14)

8. Sergeants and correctional officers receive the same health and pension benefits, the same sick, personal and vacation leave, and similar longevity increases, although it is paid differently. All sergeants currently at the Prison were promoted from within the facility. (N.T. 14-15)

9. Approximately, three or four groups of applicants per year are interviewed for hiring. When interviews are conducted for correctional officer candidates, the Prison utilizes two interview panels. One panel contains a correctional officer, a sergeant and a Human Resources Specialist. The second panel contains a correctional officer, a sergeant and a lieutenant. (N.T. 20-23, 25-26, 117-118)

10. The panel members record the candidates' answers and score their responses to pre-determined questions. The panel members discuss the candidates and submit their scores. Although some candidates are rejected immediately by the panel based on personality, no hiring determinations are made by the panel. The Warden makes the ultimate hiring decisions based on the panel submissions and recommendations. The role of sergeants in the hiring process is the same as that of correctional officers. (N.T. 24-25, 27, 147)

11. Lieutenants prepare the work schedules on the computer for the week, which begins on Sunday and ends on Saturday. The schedule contains the titles of all the posts and a correctional officer's name is assigned to each post. The lieutenants rotate the officers' post assignments every two months. When the lieutenants are busy or on vacation, the sergeants develop the rotation schedule. The sergeants do not reward officers with favorable post assignments or additional compensation. (N.T. 28-29, 41-44, 59)

12. Sergeants assign correctional officers to various posts when "plugging holes" in the schedule created by call-offs, and they have discretion regarding post assignments based on the needs of the jail. When an officer calls off for an upcoming shift, another officer is "mandated," i.e., required to stay to fill the shift. The mandated officer may request a favorable post assignment and the officer previously assigned to that favorable post can be moved to fill the post vacated by the call-off. When considering whether an officer can be assigned to a particular post, the sergeants must consult a list to determine whether the officer is qualified for that post. For example, an officer assigned to a perimeter post must be firearms qualified. (N.T. 27, 54-56, 168, 173, 190-191)

13. A mandatory is a binding supervisory order or directive; it is an order to work the next, additional shift. When officers are mandated, the sergeants follow the collective bargaining agreement (CBA) and seek volunteers from a list of most senior officers on the previous shift. If there are no volunteers, the sergeants mandate the least senior officer(s) to stay. There is no discretion in the manner in which sergeants seek volunteers or require officers to stay. (N.T. 29-32, 173, 191)

14. Sergeants have discretion to issue "training forms" to officers, after counseling them, documenting the officer's failure to perform expected or requested tasks or neglect of duty. Sergeants issue Supervisory File "Counseling Statement" forms to officers documenting a second counseling for neglect of duty. A sergeant's third counseling to an officer for neglect of duty may result in discipline. Sergeants issue written confirmations of verbal reprimands, working suspensions¹ and written reprimands, without approval from the shift lieutenants, which become part of the officers' personnel files. (N.T. 44-45, 113, 122-126, 169; Respondent Exhibit 5)

15. Sergeants issue written occurrences to officers for improper inmate head counts, security violations such as allowing an unrestrained inmate into the sally-port, improperly inspecting the mail, losing money orders and sleeping during their shift. (Respondent Exhibit 6)

16. Sergeant Patrick issued a Working Suspension Notice to an officer, dated November 28, 2017, advising the officer that he shall serve a one-day working suspension and that "[t]his working suspension is the third level of discipline of the MCCF Absenteeism Policy." Sergeant Eyer issued a Working Suspension Notice to an officer stating that "the next level of discipline under this policy shall be termination." Sergeant Eyer issued another Working Suspension Notice to a different officer stating that "[t]his working suspension is the fifth level of discipline of the MCCF Absenteeism Policy . . . [and] that the next level of discipline under this policy shall be termination." The sergeants regularly issue discipline. (N.T. 181; Respondent Exhibit 5) (emphasis original)

17. Sergeants do not have post assignments. They tour inside and outside the jail, and they observe and talk to the officers and the inmates. They tour the kitchen and food service operations as well as the laundry facilities to ensure proper functionality. They see if the officers need anything, determine whether the officers are properly performing their duties and following guidelines. They determine whether the officers and the

¹ It is unclear from the record how a working suspension is served.

inmates are safe and secure. During their tours, the sergeants inspect officers' activities, their log books and movement sheets, which track inmate activities and head counts. The sergeants ensure that the doors are closed, lights are on and the officers are awake. Sergeants spend at least 50% of their shift touring the facilities, observing officers and inmates and correcting both. (N.T. 60-63, 94-95, 102-105, 110-113, 140, 172, 186-188)

18. Sergeants approve leave requests or short-term vacations provided there is a spot available. A sergeant can approve a late vacation request for up to a week without a lieutenant's permission, if the staffing levels and schedule permit. Sergeants also approve the use of personal leave during a shift to permit an officer to arrive late or leave early. (N.T. 65-66, 88-89, 129-130)

19. Sergeants investigate inmate-on-inmate and inmate-on-officer assaults. The sergeants interview the officers, take pictures and prepare an investigation package, which they give to the Warden and deputy wardens. Sergeants also prepare written reports summarizing officer infractions, which they give to their lieutenant. (N.T. 69-70, 86-87)

20. Sergeants complete employe performance reviews (EPRs) of correctional officers which may be considered for promotions, but not for scheduling or compensation. Lieutenants review the EPRs. Management relies on EPRs to determine officer performance capabilities, proper training and to inspire self-improvement. (N.T. 92-93, 95, 154-155)

21. Sergeants complete and conduct EPRs annually for all correctional officers based on their start date because they are in the position to observe the officers' performance and functionality on a daily basis. The Human Resources Department for the County notifies the Warden, on a monthly to bi-monthly basis, of which employes are due for an evaluation. At the time of the hearing, the County employed 109 correctional officers. The Warden credibly testified that 109 EPRs would be completed this year. The sergeant and the shift Lieutenant will review the EPR with the officer and submit the EPR to Human Resources. (N.T. 120-121)²

22. Sergeants evaluate probationary employes bi-monthly. These bi-monthly evaluations are reviewed by the shift lieutenant. If a probationary officer is not retained, two sergeants and a shift lieutenant sign a non-retention form, which is forwarded to the Warden and Deputy Wardens. Retention forms are signed by two sergeants and a shift lieutenant, but not forwarded to the Warden and Deputy Wardens. Sergeants have significant input regarding which probationary officers are offered retention. Lieutenant Carver defers to the recommendations of his two sergeants. (N.T. 118-119, 173-175)

23. The sergeants' job duties, as listed in the job description from August 1998, have not changed from that time. Sergeants assemble shift response teams and pick the officers for those teams. The sergeants select which officers will conduct transport operations. (N.T. 146, 166, 196; Respondent Exhibit 1)

² I credit Warden Haidle's testimony that the sergeants evaluate all the officers every year over the Union's witness's testimony that, as a sergeant, he had performed a few evaluations over the years and that he had not performed an evaluation for some time.

24. Hearing Examiner Thomas P. Leonard, Esquire issued the original order (Leonard Order) determining the unit description and excluding the sergeants as supervisors. In the Matter of the Employes of Monroe County, 17 PPER ¶ 17176 (ODSEL, 1986), which was affirmed by the Board. Monroe County, 18 PPER ¶ 18002 (Final Order, 1986).

25. In his order, Examiner Leonard made the following relevant findings of fact:

14. That on a typical eight-hour shift, called a security unit, the sergeant is responsible for the operation of the jail with the assistance of the corporals. The corporals are in charge of three separate blocks which are staffed by six (6) correctional Officers. There are twenty-eight (28) beds in one unit; twenty-four (24) beds in the second; and nineteen (19) in the third unit.

. . . .

17. That on each shift, a sergeant is responsible for determining that the unit is adequately staffed and that the correctional officers are rotating in the best way possible for the unit. Scheduling is the responsibility of Lieutenant Lessig. The decision on the method of rotation, though, is initially made by the correctional officers on each unit.

18. That sergeants have performed evaluations for probationary employes and correctional officers for promotions and transfers.

19. That one sergeant, Mr. Bentzoni, performed an evaluation of an employe that resulted in the employe being denied a promotion from his probationary status. The employe was eventually fired.

20. That sergeants and the corporals take prospective employes on a tour of the jail. During this tour, they observe the prospective employes and answer any questions a prospective employe may have. However, the corporals do not formally interview applicants.

(Joint Exhibit 1) (citations to the record omitted)

DISCUSSION

The Union and the County both recognize that, pursuant to the Board's remand order, the Union has the burden of establishing the factual allegations contained in Mr. Hower's affidavit, which aver that the sergeants' job duties have changed since the original determination in 1986 and that they no longer perform supervisory duties. (Union's Post-hearing Brief at 7; County's Post-hearing Brief at 2). The Union emphasizes that, at the time of the original determination to exclude sergeants from the bargaining unit as supervisors, the chain of command included the position of corporal, which ranked between the sergeants and the officers. Also, the warden of the jail was the County Sheriff, assisted by two administrators.

(Union's Post-hearing Brief at 7). The Union further maintains that Hearing Examiner Leonard concluded that corporals were not supervisors based on the same duties that the sergeants now perform, i.e., occasional issuance of counseling forms, reprimands and other similar duties. (Union's Post-hearing Brief at 8). The change in circumstances since 1986, argues the Union, "is the elimination of Corporals, thereby reducing the supervisory responsibility of Sergeants to de minimus function." (Union's Post-hearing Brief at 8). The placement of the sergeants directly above the officers, asserts the Union, places the sergeants in the lead worker role that the corporals had filled rather than the role of supervisors. (Union's Post-hearing Brief at 8).

The County argues that the Union's focus on the elimination of the corporals elevates form (i.e., titles) over substance instead of assessing whether supervisory duties have changed. (County's Post-hearing Brief at 2). The County further contends that comparing duties of sergeants, relied upon in the original Leonard Order, to the duties of record in this petition for unit clarification demonstrates that the supervisory duties have not changed. (County's Post-hearing Brief at 2-8).

The initial inquiry in this case is to determine whether the job duties, relied on by Hearing Examiner Leonard in concluding that the sergeants, at the time, were supervisors within the meaning of Section 301(6) of PERA, have changed into non-supervisory duties. The change in the command structure and administration of the jail is of no moment; the focus is on job duties. I agree with the County that the fact that corporals were eliminated does not necessarily mean that the sergeants replaced corporals, lost supervisory duties or were demoted to lead workers with the title of sergeant. Contrarily, this record shows that the duties of the former corporals were added to the existing supervisory duties of the sergeants.

Based on this record, I conclude that the supervisory responsibilities that Hearing Examiner Leonard previously relied upon for concluding that the sergeants were supervisors under Section 301(6) of PERA have not changed or diminished for the sergeants. Also, the record does not establish that those supervisory duties were reassigned to or absorbed by a different rank or classification of employes within the Prison. Moreover, the Warden credibly testified that the job duties of the sergeants, as listed in the job description for the sergeant position, have not changed since its publication in 1998.

Hearing Examiner Leonard found that the sergeants were responsible for the operation of the jail with the assistance of the corporals. The record in the case sub judice shows that, at present, the responsibility over the security units, kitchen, food service, laundry and perimeter fall entirely on the sergeants, without assistance from corporals. Examiner Leonard also relied on the fact that the sergeants are responsible for determining that the jail is adequately staffed for safety and security. The record in this case demonstrates the same set of facts. On this record, the sergeants are responsible for ensuring an adequate complement to ensure safety and security of the jail, the inmates and the officers.

The sergeants are presently responsible for "plugging holes" in the shift schedule that arise from call-outs. Sergeants exercise their authority in mandating officers to stay to cover those vacancies. The sergeants also determine the qualifications of officers to accept certain post assignments. Also, when ensuring adequate staffing, sergeants can authorize leave and

vacation but will only grant such leave or vacation when, in their determination, staffing levels permit. When considering officers' qualifications for last-minute post changes, the sergeants are rotating officers in the best interest of the unit, a factor relied upon by Examiner Leonard. As in the original unit determination, the scheduling is the responsibility of the shift lieutenant. Also, as in the original determination, the sergeants still determine post assignments and adjustments to account for call-offs and rest periods. The sergeants determine and select officers for transportation operations and shift response teams. They can mandate that officers stay over to work an extra shift to cover call-offs. These mandatories are direct orders that only one with supervisory authority can enforce.

Hearing Examiner Leonard also relied on the fact that sergeants have performed evaluations for probationary employes and correctional officers for promotions and transfers. The record here shows that sergeants perform evaluations on officers, which can affect promotions. Moreover, they conduct monthly or bi-monthly evaluations of probationary employes which are heavily relied upon for determining whether they are promoted to correctional officer 2 and retained. The record additionally shows that the sergeants have significant input in determining which officers are retained and promoted to a correctional officer 2. Although the shift lieutenants are involved in the process, the record shows that they defer to their sergeants' recommendations because sergeants observe the performance of the officers on the front line.

The sergeants are constantly touring and patrolling the entire Prison evaluating officer's job performance on a daily basis, not just at EPR time. They cite officers for breaches in protocol as well as established guidelines, practices and procedures. They are regularly educating and counseling officers on proper procedure and behavior. Also, contrary to the Union's position, the sergeants do indeed issue discipline, even though it does not rise to the level of termination. The record is clear that the sergeants issue written reprimands and working suspensions, which are identified as discipline by their own terms, and which can lead to termination progressively.

The sergeants daily inspect the facilities, the inmates and officers. They evaluate officers' performance. They frequently counsel officers and direct them to perform discrete tasks. They regularly mandate that officers remain and work additional shifts, and failing to comply with such an order constitutes insubordination subject to discipline. They discipline officers and enforce the tardiness and absenteeism policies. They reassign officers to different posts than previously assigned by the lieutenant to ensure safety and security and the proper and effective operation of the Prison. And they daily enforce prison guidelines, protocols and policies.

In the aggregate, sergeants perform these duties and responsibilities for a majority of their shifts and those duties have not changed or diminished since Hearing Examiner Leonard concluded that the sergeants are supervisors. Also, the sergeants do not work alongside bargaining unit correctional officers, nor do they perform bargaining unit work as lead workers. Moreover, the sergeants are not just filling in for higher ranking personnel when they execute supervisory authority. The sergeants are in absolute command and control of the Prison every night shift, every Sunday and every holiday, when higher ranking personnel are not present. As Hearing Examiner Leonard determined in 1986, the sergeants remain "responsible for

the operation of the jail," except now they do not have the assistance of the corporals. (F.F. 25, ¶ 14).

The sergeants, on this record, have extensive supervisory authority over corrections officers and they do not perform the same job functions as corrections officers, as previously determined by Hearing Examiner Leonard. Based on the conclusion that the sergeants' supervisory duties have not changed, I am barred by res judicata from reaching a different conclusion regarding the supervisory status of the sergeants than that of the Leonard Order.

On this record, the Union did not adequately establish that the supervisory duties and responsibilities, which were determinative in Hearing Examiner Leonard's 1986 unit determination order, have changed or diminished or that they were reassigned to employes holding another position. Accordingly, the petition for unit clarification is dismissed.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record, 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 supervisory duties and responsibilities of the sergeants have not changed or diminished since 1986 when the supervisory status of those positions was previously litigated and determined.
5. The Petition for Unit Clarification is barred by res judicata and is properly dismissed.

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 Petition for unit clarification 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 at Harrisburg, Pennsylvania, this third day of July 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner