

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-24-225-E
: (PERA-R-13,276-C)
COUNTY OF LUZERNE :

PROPOSED ORDER OF DISMISSAL

On October 1, 2024, the Luzerne County Sheriffs' Association (Association) filed a petition for representation (Petition) with the Pennsylvania Labor Relations Board (Board), alleging that 30% or more of the deputy sheriffs in the County of Luzerne (County) support the formation of a separate bargaining unit of nonprofessional security guards pursuant to Section 604(3) of the Public Employees Relations Act (PERA or Act), with the Association as their exclusive collective bargaining representative. The Petition also alleges that the deputies are currently represented by AFSCME Council 87 (AFSCME).

On November 5, 2024, the Secretary of the Board issued an Order and Notice of Hearing designating a hearing date of January 7, 2025, in Harrisburg. The matter was originally assigned to Hearing Examiner John Pozniak, Esquire. Hearing Examiner Pozniak continued the hearing, at the request of the Petitioner, to February 11, 2025. Hearing Examiner Pozniak conducted the hearing on that date, during which the Association, the County, and AFSCME had an opportunity to present testimony, introduce documents, and cross-examine witnesses. On April 4, 2025, AFSCME, the Association, and the County filed post-hearing briefs in support of their respective positions. On April 10, 2025, I notified the parties that the Board's Chief Counsel reassigned the Petition to me.

The Examiner, on the basis of the testimony and exhibits presented at the hearing, and from all of the matters and documents 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. 7-8; Board-1)
2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7-8)
3. AFSCME is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7-8; Board-1; AFSCME-1)
4. On October 24, 1979, the Board certified AFSCME as the exclusive collective bargaining representative of all full-time and regular part-time nonprofessional, noncourt-appointed employes involved with and necessary to the functioning of the courts, and excluding, among others, the Chief Deputy of the Sheriff's Office. (Board-1)
5. The County's "Sheriff and Security Office" is comprised of the following 4 divisions: Transportation, PFA, Warrant, and Civil. There are

approximately 27-31 deputies of which approximately 20 deputies are certified. The County also employs 5 private civilian security guards. Michael Flynn has been a County Deputy Sheriff since September 2021, and he is now a Corporal. Corporal Flynn is also the President of the Association. (N.T. 14-16, 22, 25-26)

6. The County owns and operates a number of properties, 7 of which are staffed by deputies. These properties include the Hazleton Annex, the Children and Youth Building, the Penn Place Building, the Central Court Building, the Wilkes-Barre Annex, the Brominski Building, and the County Courthouse. The Hazleton and Wilkes-Barre Annexes are Courthouse Annexes housing the Register of Wills and offices for obtaining marriage licenses, gun permits, and other services. (N.T. 17-18)

7. The private security guards work at the Central Courthouse, the Wilkes-Barre Annex, the Brominski Building, and the Hazleton Annex. (N.T. 25-26)

8. The Sheriff and Security Office is in the Department of Judicial Services. The Sheriff reports to the head of Judicial Services, who reports directly to the County Manager. The County Manager reports to County Council. (N.T. 18-20; Association-1)

9. Flynn testified that the deputies perform the duties on the job description for the position of deputy sheriff. He testified that deputy sheriffs are responsible for security at County properties and the security of persons within County owned buildings. (N.T. 20-21; Association-2)

10. The Sheriff's Office operates security posts that monitor suspicious activity. At security posts, deputies confiscate and secure weapons. Deputy sheriffs also respond to security threats and incidents in County Buildings. (N.T. 20-21)

11. During Corporal Flynn's tenure of County employment, no employees have gone on strike or picketed. (N.T. 24)

12. A Home Rule Charter (Charter), adopted by the County Electors in 2010, establishes the form of County government. The Charter also establishes a County Council, instead of a board of commissioners, as the highest governing authority for the County. There are 11 elected members on County Council. Council appoints the County Manager by a majority of at least 6 votes. (N.T. 30-32, 43; Association-1; Association-3)

13. Romilda Crocamo, Esquire has been the County Manager since May 2023. Ms. Crocamo was the County's Solicitor from 2015 to July 2021. As County Manager, Ms. Crocamo oversees safety and security for County Buildings and properties. (N.T. 28-29, 30, 39)

14. Article II of the Charter establishes the powers and duties of the Council. Article II provides, in relevant part, that the Council is the legislative body that has the power to appoint a County Manager as the head of the Executive Branch of government. Council also appoints a County Clerk. Council additionally adopts an Administrative Code, and other codes, as well as ordinances, and resolutions. Council has the sole authority over budgetary and taxation matters, and it has the power to confirm appointments made by the County Manager. Council also has the power to create, combine, alter, or abolish any County division, bureau, office, agency, and the functions,

powers, and duties thereof. Only Council has the power and authority to approve collective bargaining agreements by a majority vote. (N.T 54-55; Association-3, § 2.09)

15. Under the Charter and the Administrative Code, the County Manager has the authority to direct personnel and carry out Council's policies. Any litigation or settlement thereof by the County Manager must also be approved by County Council. The County Manager directs and controls the operations and activities of all County employes who report through other positions to the Manager. The County Manager directs the deputy sheriffs to handle security in the County, as well as emergency planning and management. The County Manager may recommend to Council ordinances, resolutions or policies. Only Council can approve such policy changes through a majority vote. (N.T. 34-36, 44, 51-52,55-57, 65; Association-3; Association-4)

16. Ms. Crocamo does not know of any labor unrest, strike, or picketing by County employes. She does not know whether deputies have provided safety and security during labor unrest. If there were to be labor unrest, Ms. Crocamo would deploy deputy sheriffs to maintain safety and security on County property. According to Ms. Crocamo, providing for the safety of persons and the protection of County property during labor unrest is under the umbrella of the deputies' safety and security responsibilities. (N.T. 36-37, 49-52, 59)

17. Kerri Gallagher is an AFSCME District Council 87 employe. For 20 years, Ms. Gallagher has been responsible for negotiating contracts and side agreements, overseeing grievances, and conducting labor-management meetings on behalf of AFSCME employes. Ms. Gallagher remembers that, in 2013, County employes engaged in informational picketing outside the Courthouse for 45 minutes and that the deputy sheriffs were not deployed to the event. (N.T. 78-82)

18. On August 13, 2024, Ms. Crocamo sent a letter to the attorney for the Association. The letter stated the following:

Effective immediately, in addition to ensuring the day-to-day security operations at Luzerne County property and facilities, the members of the Office of the Sheriff of Luzerne County shall enforce County rules to protect County property during times of labor unrest, work stoppages and strikes. During such times of labor unrest, work stoppages and strikes, they shall be assigned to any picket line or protest to protect county property and to secure free access to County facilities for other employees, elected officials and the public.

(Association Ex.-5)

19. Ms. Crocamo testified that she intends to direct the deputy sheriffs to protect County property and persons thereon during labor unrest or work stoppages. In a July 2024 meeting, 2 deputies gave Ms. Crocamo a paper with the language that became the August 13, 2024 letter. Ms. Crocamo did not write the letter. Ms. Crocamo did not inform AFSCME of the letter. She further testified that she supports the Association's Petition to remove the deputies from the court-related unit to form a separate unit of guards only. (N.T. 38-42)

20. Section 6.05 of the Administrative Code provides that the Sheriff and Security Department has the responsibility to "perform Security Duties as necessary to provide for the safety of those in county buildings and properties including parking areas, including screening people entering the county buildings for weapons." The Administrative Code does not specifically provide that the Sheriff and Security department will be deployed in times of labor unrest. (N.T. 46; Association Ex. 4 at p. 47)

21. During the 2024 Presidential election, the County received a bomb threat. Ms. Crocamo directed the deputy sheriffs to evacuate the threatened building and to determine when the evacuees could return to the building. Handling bomb threats is not specifically provided for in the deputy sheriff job description. (N.T. 49-52)

22. County Council has not passed a resolution providing that deputy sheriffs will protect County property and persons on County property during times of labor unrest. Council has not taken any formal vote or action regarding the Petition. (N.T. 47, 60-61, 68-69)

23. Ms. Crocamo appoints a management team to negotiate collective bargaining agreements on behalf of the County. Ms. Crocamo and her team then meet in executive session with Council members at which time they explain the tentative agreements and answer questions. After Council approves the tentative agreements, Council votes to ratify them during a public meeting by majority vote. (N.T. 47-48)

24. Council officially voted to adopt the collective bargaining agreement (CBA) with AFSCME for the court-related unit which provides terms and conditions of employment for the deputies. Council also voted to ratify a side agreement with AFSCME to give bonuses to the deputies beyond the CBA. Article I, Section 1 of the CBA provides that AFSCME "is recognized as the exclusive representative for collective bargaining purposes for employees established by certification of the [Board], more specifically referred to as Court Related; PERA-R-13,276-C," which includes the deputy sheriffs. (N.T. 62-63; AFSCME-1)

DISCUSSION

The Board has previously determined that the deputy sheriffs in Luzerne County are not guards within the meaning of Section 604(3) of the Act. In the Matter of the Employes of Luzerne County (Luzerne I), 31 PPER 31061 (Final Order, 2000). The Commonwealth Court affirmed the Board's determination. Deputy Sheriffs of Luzerne County v. PLRB, 32 PPER 32001. (Pa. Cmwlth. 2000) (Memorandum Opinion). In that decision, the Board concluded that the County's deputies were not guards within the meaning of Section 604(3) where the deputies were responsible for security and protecting persons and property generally, the deputies provided security duties during labor unrest once in the distant past, and the County had a separate security force that could provide protection of persons and property during labor unrest. Thus, the Association in this case has the burden to show changed circumstances or a change in the law. Philadelphia Community College, 19 PPER 19110 (Final Order, 1988).

The determinative facts in Luzerne I have not changed. The Association, however, posits that the 2010 Charter instituted changes giving broad executive authority to the County Manager, who supports the Petition and who

intends to deploy deputies to protect County property and persons thereon during labor unrest. The Association contends that the County Manager's recent support for the Association's Petition meets the requirements for concluding that the County's deputies are now guards under Section 604(3) of the Act.

In Erie County, 38 PPER 224 (Final Order, 2007), the Board discussed the different standards for determining whether a petitioned-for group of county deputies qualifies for the guard exclusion under PERA. The Erie County Board opined as follows:

In Butler County Deputy Sheriff's Unit v. PLRB, 911 A.2d 218 (Pa. Cmwlth. 2006), the Commonwealth Court recognized that the standard for determining whether deputy sheriffs should be considered guards under Section 604(3) of PERA depends on whether or not the employer supports the petition for representation. When the employer supports the petition, the more relaxed standard set forth in Erie County Area Vo-Tech School v. PLRB, 417 A.2d 796 (Pa. Cmwlth. 1980) applies. Pursuant to that standard, employees will be classified as guards if there is a mere possibility that they will be called to protect the employer's property during a period of labor unrest. In Butler County, the Court explained that:

[t]he 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.

Id. at 224 (emphasis added). When the employer does not support the petition, a stricter standard is appropriate. Pursuant to that standard, outlined in Washington County v. PLRB, 613 A.2d 670 (Pa. Cmwlth. 1992) and Franklin County Deputy Sheriff's Association v. PLRB, 885 A.2d 613 (Pa. Cmwlth. 2005), the union must show that the employees were either actually directed by the County Commissioners to protect County property during a past period of labor unrest or there must exist a policy of the County Commissioners that they intend to use those employees in that capacity in the future. In this case, because the County did not seek to avail itself of the protections provided to it by Section 604(3) by contending that the deputy sheriffs are in fact guards within the meaning of PERA, we agree with the Hearing Examiner that the stricter standard set forth in Franklin County and Washington County must apply.

In Franklin County, the Commonwealth Court held that the County Commissioners must express the intent to utilize the deputy sheriffs to protect county property during labor unrest by other county employees to qualify deputy sheriffs as guards under PERA. The Court made clear that guard status in court settings is only achieved when the necessary security functions are performed at the behest of the County Commissioners and not at the direction of the elected sheriff or pursuant to an order of the Court of Common Pleas. The Court rejected the notion that the elected sheriff could create guard status by either directing deputy sheriffs to guard county property during labor unrest by county employees or by promulgating a policy to use deputy sheriffs as guards in the future. Because

the Franklin County Commissioners had not used the deputy sheriffs as guards in the past and there was no clear indication that the County Commissioners would use the deputy sheriffs in a guard capacity in the future, they were found not to be guards. In contrast, in Washington County, it was undisputed that the County Commissioners directed deputy sheriffs to provide security at a picket line during a strike that occurred while the petition was pending before the Board. As such, even though the employer opposed the union's representation petition, the deputy sheriffs were found to be guards.

Erie County, 38 PPER 224 (Final Order, 2007) (emphasis added).

The Association argues that the County Manager and Council Chair support its Petition, which therefore must be evaluated under the less burdensome standard applied to petitions, where evidence shows that the employer intends to use deputy sheriffs to protect property and persons thereon during labor unrest, and not under the more onerous standard applied to the petitions without employer support, as in Luzerne I. Based on the testimony of the Council Chair and the County Manager as well as the County Manager's August 13, 2024 letter to the Association's Counsel, "it is clear the County supports the Petition for Representation filed by the Association." (Association Brief at 6). Under the County Charter and the County Administrative Code, argues the Association, the authority to deploy deputy sheriffs as guards within the meaning of Section 604(3) of the Act rests solely with the County Manager. The Association further asserts that the County Manager "testified unequivocally" that, under the Charter and the Code, she oversees security in the County, and she intends to deploy the deputies as guards during labor unrest. The Association asserts that the County Manager's unequivocal support requires the use of, and satisfies, the test from Erie Vo-Tech, *supra*, that there is a "mere possibility" that deputies will be deployed during labor unrest to protect property and persons thereon. (Association Brief at 6).

Similarly, the County's attorney argues that "the employer, Luzern County, supports the petition . . . and is unequivocal in insisting that deputy sheriffs will be used as guards to enforce the employer's rules and protect the employer's property during labor unrest."¹ (County Brief at 12). The County's attorney further argues that County Council does not have the authority under the Charter or the Code to deploy deputy sheriffs or determine their duties and instead the Charter and the Code grant those powers to the County Manager who has unequivocally asserted that she will deploy deputies to protect County property and persons thereon during labor unrest. *Id.* Action by Council is not required to support the Petition, contends the County's attorney, because the power to supervise and direct the deputies, as well as employes in other County departments, agencies, boards, and commissions, rests with the County Manager under the Charter. (County Brief at 13-14). The County's attorney asserts that the form of County government under the Charter and the extensive executive powers of the County Manager make this case distinguishable from cases, like Franklin County, *supra*. (County Brief at 13-14).

¹ The order for appearance for Mr. Gartley states that he is counsel of record for "Luzerne County (Employer)." It is unclear from the order for appearance and the record whether Mr. Gartley represents the interests of Council or the County Manager or both, given the nature of the case.

There is no question that the Charter establishes a unique and atypical County government granting extensive executive and managerial authority to the County Manager. And certainly, the County Manager and 1 Council member support the Association's Petition. Also, the record shows that the County Manager has the authority to deploy deputies to protect County property and persons thereon during labor unrest and plans to do so. Thus, there appears to be at least the "mere possibility" that deputies will be deployed during labor unrest, within the meaning of Erie County Vo-Tech.

However, the "mere possibility" test is not the applicable standard in this case. The Association and the attorney for the County have not accounted for the Commonwealth Court's determination that the legislative body in county government ultimately controls labor policy and county property. The Butler County Court, in referring to Franklin County, supra, emphasized "that the [c]ounty [c]ommissioners are the exclusive managerial representative for purposes of collective bargaining, and that absent approval by the [c]ounty [c]ommissioners, the sheriff's office was not authorized to establish a separate bargaining unit for the deputies based solely on the sheriff's own policy regarding the possible duties of the deputies in the event of a strike by [c]ounty employees." Butler County, 911 A.2d at 224. Also, the Board and the Commonwealth Court have held that deputy sheriffs' general security functions do not warrant severing them into a separate guard unit unless the deputies have in fact enforced the governing body's rules for the protection of property and persons thereon. Franklin County, supra.

The legislative body responsible for labor policy and collective bargaining in this case is the 11-member Council just like the board of Commissioners in Franklin County, supra. In Franklin County, the elected sheriff had complete managerial authority to direct the deputies. The sheriff in that case implemented a policy to use deputies to protect county property and persons thereon during labor unrest. The Court concluded that the sheriff's policy was not controlling because the policy was not implemented by the county's legislative body, i.e., the board of commissioners. Similarly, the County Manager's policy to direct deputies in this case, like the Sheriff's policy in Franklin County, is also not controlling. The County Manager is not authorized to establish a separate bargaining unit without Council approval. It is not sufficient for the County Manager, at the behest of the Association, to issue a letter supporting the Association's position in an attempt to bypass Council and persuade the Board to apply the standard reserved for petitions filed after a legislative resolution intending to deploy deputy sheriffs to protect county property and persons thereon and thereby establish a separate unit of guards for the deputies. The County Manager's control over the direction of personnel does not equate to control over County labor policy and collective bargaining. Agreeing with the Association's position in this case would contradict Franklin County and could cause elected officials and managers in other counties to implement their own labor policies or directives, without legislative approval, for the purpose of creating deputy sheriff guard units at the behest of guard unions.

The County's Charter requires that a majority of Council approve collective bargaining agreements and therefore labor policy. In fact, Council ratified the CBA with AFSCME for the court related, noncourt appointed bargaining unit, which includes the deputies. In Article I, Section 1 of the CBA, Council recognized AFSCME as the exclusive collective bargaining representative for the deputy sheriffs. The County Manager does not have the authority to override Council's vote to recognize AFSCME as the bargaining

representative of deputy sheriffs and force the County to bargain with a different bargaining representative for the deputies. Creating a separate, additional bargaining unit of guards, by carving the deputies out of the existing court-related unit already approved by Council, requires a Council vote that would effectuate the removal of the deputies as guards, and no longer represented by AFSCME, by designating them as responsible for protecting County property and persons thereon during labor unrest, where the deputies have not been used in that capacity in the past.

Absent a history of guard activity, only Council has the authority to determine whether it wants to fragment out another bargaining unit and bargain with an additional employe representative after it bargained with AFSCME for deputies' terms and conditions of employment. Only Council can determine if it wants to avail itself to the employer protection of a guard unit and prevent a division of loyalty among employes, not the County Manager. If Council has to vote to approve a collective bargaining agreement, and if Council has to vote to approve a side agreement to give bonuses to deputies during the term of the CBA, then Council has to vote on whether to carve the deputies out of their current bargaining unit and place them in a separate guard unit represented by a different union and renegotiate deputies' terms and conditions of employment.

The Charter grants Council the power to create, combine, alter, or abolish any County division, bureau, office, agency, and the functions, powers, and duties thereof. Accordingly, although the County Manager has extensive authority to direct personnel, Council has the ultimate authority to alter the functions and duties of the Office of the Sheriff in a manner that effectuates a change to the bargaining unit status of the deputies. In this context, I disagree with the Association's and the County attorney's argument that Council does not have the authority under the Charter or the Code to deploy deputy sheriffs or determine their duties and that only the County Manager has those powers under the Charter. The Council is the highest power in the County. The County Manager reports to Council and serves at the pleasure of Council. This provision of the Charter would also authorize Council, which is above the County Manager, to countermand the County Manager, which may or may not be the case here. The County Manager is supposed to have policy recommendations approved by Council. There is no evidence that Ms. Crocamo sought and obtained Council approval for her support of the Association's Petition and a bargaining policy change which she intended to effectuate the creation of another bargaining unit.

Additionally, litigation or settlement thereof by the County Manager must also be approved by County Council. There is no evidence that Council approved litigating or supporting this Petition. The County continues to maintain a non-deputy-sheriff security force as before, and Council may intend to rely on those employes to protect property and persons thereon during labor unrest to avoid a division of loyalty. Thus, the Association had the burden of proving that deputies have been used in the past to protect property and persons thereon during labor unrest. The record in this case shows that, since Luzerne I, there have been no incidents of labor unrest where Council deployed deputy sheriffs to protect property and persons thereon. Accordingly, the circumstances have not changed since Luzerne I, and the County's deputy sheriffs are not guards within the meaning of Section 604(3) of the Act. Therefore, 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 Association is an employe organization within the meaning of Section 301(3) of PERA.
3. AFSCME is an employe organization within the meaning of Section 301(3) of PERA.
4. The Board has jurisdiction over the parties hereto.
5. The County's Deputy Sheriffs are not guard employes within the meaning of Section 604(3) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Petition for Representation is dismissed.

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 days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fifth day of April, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner