

[J-25-2011]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

ALLEGHENY COUNTY DEPUTY SHERIFFS' ASSOCIATION,	:	No. 29 WAP 2010
	:	
Appellant	:	Appeal from the Order of the Commonwealth Court entered January 28, 2010, at No. 959 CD 2009, affirming the Order of the Pennsylvania Labor Relations Board entered April 21, 2009, at No. PF- R-08-74-W.
v.	:	
	:	
PENNSYLVANIA LABOR RELATIONS BOARD,	:	990 A.2d 86 (Pa.Cmwlt. 2010)
	:	
	:	
Appellee	:	ARGUED: April 12, 2011

OPINION

MR. JUSTICE McCAFFERY

DECIDED: MARCH 26, 2012

In this case, we consider whether deputy sheriffs of counties of the second class are “police officers” for purposes of collective bargaining under the act commonly known as Act 111.¹ The Commonwealth Court determined that they are not, and, for the reasons stated herein, we vacate and remand.

Appellant, the Allegheny County Deputy Sheriffs’ Association (the “Association”), filed a petition with the Pennsylvania Labor Relations Board (the “PLRB”) seeking to

¹ Act of June 24, 1968, P.L. 237, as amended, 43 P.S. §§ 217.1–217.10. Act 111 expressly gives police officers and fire fighters the right of collective bargaining concerning working conditions and the swift and final resolution of disputes by non-appealable arbitration. See 43 P.S. § 217.1.

represent, for collective bargaining purposes under Act 111, deputy sheriffs employed by Allegheny County (the “Deputy Sheriffs”). The Association twice before had attempted to attain this same objective, only to fail before the PLRB and the Commonwealth Court.² However, following those decisions, the General Assembly amended the Crimes Code in 1995, and then the Municipal Police Education and Training Law (“MPETL”) in 1996, to define deputy sheriffs **in a second-class county** (i.e., the Deputy Sheriffs) as police officers. See, respectively, 18 Pa.C.S. § 103; 53 Pa.C.S. § 2162.

Concluding that the aforesaid legislative action was not dispositive of the issue, the PLRB hearing examiner here determined that the Deputy Sheriffs were not “police officers” as contemplated by Act 111 because he found that their primary duties were not those of typical police officers, but rather were those directly related to the operation of the courts. For this reason, the hearing officer concluded that the bargaining rights of the Deputy Sheriffs were governed by Section 805 of the Pennsylvania Public Employee Relations Act (“PERA”), Act of July 23, 1970, P.L. 563, as amended, 43 P.S. § 1101.805.³ In coming to his decision, the hearing examiner found insufficient the

² See Venneri v. County of Allegheny, 316 A.2d 120 (Pa.Cmwlt. 1974), and Allegheny County Deputy Sheriff’s Ass’n v. Pa. Labor Relations Bd., 504 A.2d 437 (Pa.Cmwlt. 1986) (en banc) (“ACDSA I”).

³ Section 1101.805 of PERA provides:

Notwithstanding any other provisions of this act[,] where representatives of units of guards at prisons or mental hospitals or units of employes directly involved with and necessary to the functioning of the courts of this Commonwealth have reached an impasse in collective bargaining and mediation as required in [43 P.S. § 1101.801] has not resolved the dispute, the impasse shall be submitted to a panel of arbitrators[,] whose decision shall be final and

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Association's evidence of numerous police-related activities, in addition to court-related ones, engaged in by the Deputy Sheriffs. Additionally, the hearing officer relied heavily upon Venneri v. County of Allegheny, 316 A.2d 120 (Pa.Cmwlth. 1974), and Allegheny County Deputy Sheriff's Ass'n v. Pa. Labor Relations Bd., 504 A.2d 437 (Pa.Cmwlth. 1986) (en banc) ("ACDSA I"). As noted above, these cases denied previous bids by the Deputy Sheriffs to collectively bargain under Act 111.

The hearing examiner filed a proposed order of dismissal, the Association filed exceptions, and the PLRB dismissed them, issuing a written Final Order against the Association. In arriving at its decision, the PLRB made additional factual findings concerning the duties of the Deputy Sheriffs, concluding that, while the Deputy Sheriffs do perform some traditional police duties, their primary duties are rooted in court functions.⁴

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binding upon both parties[,] with the proviso that the decisions of the arbitrators which would require legislative enactment to be effective shall be considered advisory only.

43 P.S. § 1101.805 (footnote omitted).

⁴ The PLRB summarizes its findings of fact, in relevant part, as follows:

The primary duty of approximately 70-75 deputy sheriffs [of the approximately 150 employed by Allegheny County] is to provide courtroom security for the County's common pleas judges and district magistrates. The primary responsibility of approximately 24-26 deputy sheriffs is to transport prisoners to court proceedings. Seven deputy sheriffs are assigned to hospital duty and watch prisoners taken to the hospital from the County jail pursuant to an order of the common pleas court. Approximately 12 deputy sheriffs serve writs or other process issued by the common pleas court during daylight hours, and two deputy sheriffs serve housing warrants on the evening shift at the court's request. Approximately 16 deputy sheriffs work in the investigation unit of the
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The Association appealed to the Commonwealth Court, which affirmed in a published opinion. Allegheny County Deputy Sheriffs' Ass'n. v. Pa. Labor Relations Bd., 990 A.2d 86 (Pa.Cmwlt. 2010) ("ACDSA II"). The court began by observing that the PERA governs the bargaining rights of all deputy sheriffs as "employees '**directly involved with and necessary to the functioning of the courts of this Commonwealth.**'" Id. at 88 (quoting 43 P.S. § 1101.805) (emphasis in Commonwealth Court opinion). The court then observed, as had the PLRB, that a judicially and administratively created test has been established and used to determine whether law enforcement personnel, other than traditional state and local police officers, fall within the ambit of Act 111. This test asks: 1) are the employees legislatively authorized to act as police; and 2) do they effectively act as police. Id. at 89 (citing Narcotics Agents Reg'l Comm. v. Pa. Labor Relations Bd., 833 A.2d 314 (Pa.Cmwlt. 2003); Cambria County Deputy Sheriffs Ass'n. v. Pa. Labor Relations Bd., 799 A.2d 957 (Pa.Cmwlt. 2002), et al.).

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Sheriff's office and are assigned arrest warrants for fugitives who are subject to the jurisdiction of the court.

. . . .

The Sheriff requires the deputy sheriffs to attend training provided by the Municipal Police Officers' Education and Training Commission (MPOETC). Upon completion of such training, the MPOETC issues certification cards that identify the deputy sheriffs as police officers. The deputy sheriffs carry firearms outside the courthouse, are expected by the Sheriff to exercise their arrest powers, and have made arrests for crimes committed in their presence. However, the vast majority of arrests by deputy sheriffs are made pursuant to court-issued warrants.

PLRB Final Order, entered April 21, 2009, at 2-3.

With respect to the first prong of the test, the court stated that “absent any clear legislation which expressly grants [the Deputy Sheriffs] general police powers in any community, geographic area[,] or jurisdiction, the definitions of ‘police officer’ in 18 Pa.C.S. § 103 and 53 Pa.C.S. § 2162 are insufficient to vest [the Deputy Sheriffs] with the legislative authority to act primarily as Act 111 police officers rather than court personnel.” ACDSA II, supra at 97. With respect to the second prong of the test, the court held that the PLRB correctly found that, although the Deputy Sheriffs “perform some police-type functions, these functions are incidental to their predominantly court-related responsibilities.” Id. at 99. Accordingly, because the court determined that the Deputy Sheriffs had failed to demonstrate that they could meet the two-pronged test, the court concluded that the PLRB had properly dismissed the Association’s petition for Act 111 representation of the Deputy Sheriffs.

The Association filed a petition for allowance of appeal, which we granted on the following issue:

Whether the Commonwealth Court erred in affirming the PLRB’s dismissal of the sheriffs’ association’s petition to represent deputy sheriffs as police officers under Act 111, when the PLRB disregarded Hartshorn v. County of Allegheny, 333 A.2d 914 (Pa. 1975), and Commonwealth v. PLRB, 463 A.2d 409 (Pa. 1983).

Allegheny County Deputy Sheriffs’ Ass’n. v. Pa. Labor Relations Bd., 1 A.3d 867 (Pa. 2010) (per curiam).

Our review of a decision by the PLRB is limited to determining whether there has been a violation of constitutional rights, an error of law, a procedural irregularity, or whether the findings of the PLRB are supported by substantial evidence. Borough of Ellwood City v. Pa. Labor Relations Bd., 998 A.2d 589, 594 (Pa. 2010). The PLRB’s decision must be upheld if its factual findings are supported by substantial evidence,

and if the conclusions of law drawn from those facts are reasonable. Id. Further, the PLRB's interpretation of a governing statute is to be given controlling weight unless clearly erroneous. Id. Because we conclude that the PLRB's decision here constitutes an error of law, we reverse.

Contrary to the conclusions of the Commonwealth Court and the PLRB, the controlling factor in this case is that the General Assembly, in two separate pieces of legislation, specifically singled out for definition as police officers, deputy sheriffs of counties of the second class. No other deputy sheriffs in this Commonwealth have been so defined by the General Assembly. Indeed, the general definition of "police officer" in the Crimes Code does not simply include the Deputy Sheriffs; rather, "deputy sheriffs of a county of the second class who have successfully completed" MPETL training are the **only** law enforcement personnel mentioned as being included in the definition of "police officer." 18 Pa.C.S. § 103. Based on these circumstances and our holdings in the analogous cases of Hartshorn v. County of Allegheny, 333 A.2d 914 (Pa. 1975), and Commonwealth v. Pa. Labor Relations Bd., 463 A.2d 409 (Pa. 1983) ("Capitol Police"), we now hold that deputy sheriffs of counties of the second class are police officers for purposes of Act 111.

While Act 111 does not define "police" or "police officer," neither does PERA single out deputy sheriffs of counties of the second class as "employees" subject to its provisions; rather, PERA simply defines "employee" as "any individual employed by a public employer" **except** for certain categories of public employees including those "covered under" Act 111. 43 P.S. § 1101.301(2).

We have held on two prior occasions that certain non-traditional "police-officer" law enforcement personnel fall under Act 111's reach because of their legislative definition as police officers in statutes unrelated to Act 111. In Hartshorn, supra, this

Court held that Section 1440(b) of the Second Class County Code “makes clear that the legislature intended county detectives to be classified as policemen” for purposes of Act 111 bargaining rights: “[s]ince 16 P.S. § 4440(b) establishes that [the county detectives] are policemen, their right to collective bargaining is then clear under Act 111.” Hartshorn, supra at 915-16.

Section 1440(b) simply provides:

(b) County detectives shall at all times be subject to the orders of the district attorney, and shall investigate and make report to the district attorney as to the conduct in office of magistrates, constables, deputy constables and other officers connected with the administration of criminal justice, to make investigations, and endeavor to obtain such evidence as may be required by the district attorney in any criminal case, and perform such other duties as the district attorney may direct. **Said detectives shall be general police officers and shall have all powers now conferred on constables by existing laws of this Commonwealth, so far as they relate to crime or criminal procedure, and they shall serve subpoenas in cases in which the Commonwealth is a party in a court of record.**

16 P.S. § 4440(b) (emphasis added). Neither 16 P.S. § 4440(b) nor the Second Class County Code generally makes mention of Act 111.

In Capitol Police, supra, we held that the Capitol Police are legislatively vested with Act 111 police powers under Section 646 of the Administrative Code, which provides in pertinent part:

§ 646 Capitol Police, Commonwealth Property Police and Campus Police

The Capitol Police ... shall have the power, and their duty shall be: (a) To enforce good order in State buildings and on State grounds...; (b) To protect the property of the Commonwealth in State grounds and buildings...; (c) To

exclude all disorderly persons from the premises...; (d) In the performance of their duties to adopt whatever means may be necessary; (e) **To exercise the same powers as are now or may hereafter be exercised under authority of law or ordinance by the police of the cities of Harrisburg, Pittsburgh and Philadelphia, municipalities in Dauphin County wherein State buildings are located...**; ... (g) To order off said grounds and out of said buildings all vagrants, loafers, trespassers, and persons under the influence of liquor, and, if necessary, remove them by force, and, in case of resistance, carry such offenders before an alderman, justice of the peace or magistrate[;] and (h) To arrest any person who shall damage, mutilate or destroy the trees, plants, shrubbery, turf, grass-plots, benches, buildings or structures, or commit any other offense within State buildings

71 P.S. § 646 (emphasis added).

More specifically, in Capitol Police, we reversed the Commonwealth Court's determination that the Capitol Police serving in Scranton may not be considered police officers for purposes of Act 111, holding that Section 646 of the Administrative Code makes clear that "Capitol Police serving in Scranton are empowered as are Scranton Police and police generally throughout the Commonwealth." Capitol Police, supra at 413.⁵

In the instant case, deputy sheriffs of counties of the second class have been specifically designated by the General Assembly as police officers in the Crimes Code and the MPETL. See, respectively, 18 Pa.C.S. § 103, and 53 Pa.C.S. § 2162.⁶ The Commonwealth Court did not consider such designations sufficient for Act 111

⁵ We affirmed the Commonwealth Court's decision that approved the "police" status of Capitol Police serving in Pittsburgh, Philadelphia, and Harrisburg for purposes of Act 111. Commonwealth v. Pa. Labor Relations Bd., 463 A.2d 409, 413 (Pa. 1983) ("Capitol Police").

⁶ The MPETL also defines the Capitol Police as police officers. See 53 Pa.C.S. § 2162.

purposes because they lack further explanatory language or the grant of specific powers that the Commonwealth Court concluded was evident in the Second Class County Code and the Administrative Code regarding, respectively, second-class county detectives and the Capitol Police. See ACDSA II, supra at 95-97.

Contrary to the Commonwealth Court's analysis, when the legislature designates a specific class of law enforcement personnel as "police officers," it is not then required to add the words, "which means that these individuals are hereby legislatively authorized to be or act as police officers" in order for its meaning to be made clear. Further, we disagree with the Commonwealth Court's assertion that Section 1440(b) of the Second Class County Code adds meaningful illumination to its designation of second-class county detectives as police officers when it states: "Said detectives shall be general police officers and shall have all powers now conferred on constables by existing laws of this Commonwealth, so far as they relate to crime or criminal procedure." 16 P.S. § 4440(b). The same may be said of the language describing the Capitol Police, to wit, as law enforcement personnel who may "exercise the same powers as are now or may hereafter be exercised under authority of law or ordinance by the police of the cities of Harrisburg, Pittsburgh and Philadelphia, [and] municipalities in Dauphin County." 71 P.S. § 646. Essentially, these statutory provisions, which we used to determine inclusion under Act 111, merely note that certain law enforcement personnel are, or may act, as police officers. The additional verbiage in these statutes, which the Commonwealth Court concluded was determinative in differentiating these statutes from 18 Pa.C.S. § 103 and 53 Pa.C.S. § 2162, adds little or nothing of any

practical nature to the essential definition of these law enforcement personnel as “police officers.”⁷

Moreover, we note the significance of the MPETL definition of “police department” as including:

(1) A public agency of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of the criminal or traffic laws. This paragraph includes the sheriff's office in a county of the second class.

53 Pa.C.S. § 2162 (emphasis added).

The MPETL’s definition of “police department” goes on to identify five other law enforcement organizations, listing the Capitol Police at subparagraph 4. Unmistakably, however, the General Assembly chose to give “the sheriff’s office in a county of the second class” the same primacy as municipal police departments by placing them both in the same first subparagraph. From the specificity of this definition, the legislature’s view of deputy sheriffs of counties of the second class as police officers substantially on a par with traditional municipal police could not be made more plain. Significantly, as the PLRB found, the Deputy Sheriffs are also required to be trained to be police officers pursuant to the MPETL. See 53 Pa.C.S. § 2167 (requiring the training of police officers and all members of police departments, as defined by the MPETL). Therefore, this

⁷ Further, in Capitol Police, we explained that the duties of the Capitol Police as “guards” and “police officers” were “not mutually exclusive and there is necessarily an overlapping of functions.” Id. at 411. As we stated, “[W]e are not persuaded that the status of the Capitol Police as ‘police’ is to depend upon frequency of [police-related] acts. ... In the event of need, [the Capitol Police] possess the ability, capacity and authority to interpose in any situation requiring police intervention.” Id. at 412. The same analysis applies with respect to the Deputy Sheriffs.

case is not distinguishable, in any significant manner, from our prior determinations that Act 111 applied to certain law enforcement personnel based on the language of the relevant statutory scheme governing those specific employees. See Hartshorn, supra; Capitol Police, supra.

Our inquiry with respect to the question accepted for review ends with the recognition that the General Assembly expressly defined -- and thus authorized -- deputy sheriffs of counties of the second class to be police officers.⁸ The pains the legislature took to specifically single out these particular law enforcement personnel, together with our holdings in Hartshorn and Capitol Police, lead to the conclusion that deputy sheriffs of counties of the second class are police officers falling under Act 111. Thus, the PLRB's and Commonwealth Court's application of a judicially and administratively created test to examine whether the Deputy Sheriffs are police officers, after they have been defined as such by the General Assembly, was erroneous.⁹

⁸ Intervening in the proceedings below, Allegheny County argued that it would be unconstitutional for the Deputy Sheriffs to be afforded Act 111 police officer status, citing Article III, Section 31 and Article III, Section 32(1) of the Pennsylvania Constitution. Because the Commonwealth Court determined that its disposition of the Association's appeal obviated any need to address the County's constitutional concerns, it did not review the County's arguments. Allegheny County Deputy Sheriffs' Ass'n. v. Pa. Labor Relations Bd., 990 A.2d 86, 95 n.12 (Pa.Cmwth. 2010). Because these constitutional claims were not addressed below and, moreover, appear to fall beyond the scope of the question accepted for review, we decline to address them here and remand the matter to the Commonwealth Court. See Warehime v. Warehime, 761 A.2d 1138, 1142 n.4 (Pa. 2000).

⁹ We additionally note that nothing in Section 805 of PERA, 43 P.S. § 1101.805, relied upon in part by the Commonwealth Court, compels, or even suggests, a different result. That section merely references **the procedure** to be followed when representatives of employees "directly involved with and necessary to the functioning of the courts" (among other PERA employees) have reached a bargaining impasse. This section does not provide that deputy sheriffs of counties of the second class **must** be represented by such unit representatives. Again, PERA defines employees as any (continued...)

For the above reasons, the order of the Commonwealth Court is vacated, and this matter is remanded to that court for proceedings consistent with this opinion.

Madame Justice Orié Melvin did not participate in the consideration or decision of this case.

Messrs. Justice Saylor and Baer and Madame Justice Todd join the opinion.

Mr. Chief Justice Castille files a dissenting opinion.

Mr. Justice Eakin files a dissenting opinion.

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public employee **except** for certain defined employees, specifically including those covered under Act 111. 43 P.S. § 1101.301(2).