

D.R. NO. 2023-12

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

NEW JERSEY TURNPIKE
AUTHORITY,

Public Employer,

-and-

Docket No. CU-2022-022

IFPTE LOCAL 200,

Petitioner,

-and-

IFPTE LOCAL 193C

Intervenor.

SYNOPSIS

The Director of Representation clarifies the supervisory unit of International Federation of Professional and Technical Engineers (IFPTE) Local 200 to include traffic control supervisors (TCSs) employed by the New Jersey Turnpike Authority who perform their duties exclusively on the Garden State Parkway (Parkway). The Authority and intervenor IFPTE Local 193C opposed, arguing that the Parkway-exclusive TCSs should be included in Local 193C's Parkway supervisory unit.

The Director found that because Local 200 did not consent to the placement of the newly-created Parkway-exclusive TCS position in Local 193C's unit nor execute a subsequent agreement regarding its own unit definition, Local 200 had not waived its right to file a clarification of unit petition. The Director found that Local 200's recognition provision was broad enough to cover the Parkway-exclusive TCS position, whereas Local 193C's title-specific recognition provision in effect when the position was created did not encompass it. The Director found that Local 200's collective negotiations agreement had specifically-negotiated terms for the TCS title and that Local 200 had already represented TCSs who non-exclusively performed work on both the New Jersey Turnpike and the Parkway. The Director also found that because Local 193C had never previously represented the TCS title and its recognition provision did not encompass it, N.J.S.A. 27:23-42(b) was not implicated because Local 193C's historical unit structure was not being disturbed, and it was irrelevant whether other Local 193C unit titles performed similar work.

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Appearances:

For the Public Employer,
Genova Burns, LLC, attorneys
(Douglas E. Solomon, of counsel)

For the Petitioner,
Weissman and Mintz, attorneys
(Stephen P. Weissman, of counsel)

For the Intervenor,
Mets Schiro and McGovern, LLP, attorneys
(James M. Mets, of counsel)

DECISION

On June 30, 2022, International Federation of Professional and Technical Engineers (IFPTE) Local 200 filed a clarification of unit petition, seeking the Commission to clarify that two traffic control supervisors (TCS) employed by the New Jersey Turnpike Authority (Authority) who perform their duties solely on

the Garden State Parkway (Parkway) are included in Local 200's supervisory unit. On August 1, 2022, the IFPTE Local 193C's request to intervene in this matter was granted. The position of Local 193C and the Authority is that the petitioned-for employees are included within Local 193C's supervisory unit.

Local 200 and Local 193C submitted preliminary position statements on August 11, 2022. The assigned Commission staff agent conducted a telephone conference with the parties on August 15, 2022. After settlement discussions and extension grants, on October 14, 2022, Local 200 filed and served a brief, a certification of Traffic Control Supervisor Martin Mancino (Mancino Cert.), and a certification of Local 200 President Michael Calleo with exhibits (Calleo Cert.). Local 193C advised that based on prior representations, it believed Local 200 would withdraw the petition and that therefore Local 193C did not submit anything. The Authority also did not submit anything.

The second conference was conducted on October 17, 2022. After further settlement discussions and extension grants, on November 3, 2022, Local 193C filed and served a brief and a certification of President of Local 193C and Crew Supervisor James Lawson with exhibits (Lawson Cert.). The Authority did not submit anything, and Local 200 did not request leave for supplemental submissions.

We have conducted an administrative investigation to

determine the facts. N.J.A.C. 19:11-2.2. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts.

Calleo has held the position of President of Local 200 since 1989. Calleo states in his certification that, in 1989, Local 200 was initially certified by the Commission as the exclusive majority representative of supervisors employed by the Authority in all departments other than Operations and Administration. However, there is no record of such certification. Rather, I take administrative notice that on the date referenced in Local 200's most recent CNA recognition provision (August 17, 1989), a petition by the New Jersey Turnpike Toll Supervisors Association was withdrawn after settlement. I assume that the unit was voluntarily recognized and that sometime later, Local 200 was recognized as the majority representative of the unit, as evidenced by a 1994-1997 CNA between Local 200 and the Authority in the Commission's contract database.

On October 22, 1997, the title of Traffic Control Supervisor (TCS), among other titles, was added to Local 200's unit by way of a Commission certification. (Dkt. No. RO-93-47). Since 1997, TCSs have been represented by Local 200. (Calleo Cert. ¶12).

Local 193C has been the majority representative of all crew supervisors on the Parkway for more than 35 years. (Lawson Cert.

¶8). In or about 2003, the Authority, which had responsibility for the New Jersey Turnpike (Turnpike), assumed responsibility for the operation and maintenance of the Parkway after the New Jersey Highway Authority was abolished. Local 193C continued to be the exclusive majority representative for crew supervisors working on the Parkway (Lawson Cert. ¶12).

From 2003 to May 2022, Local 200 TCSs have performed TCS duties on the Parkway on an as needed basis, including, during severe weather events and other emergencies. Since 2018, any full-time TCS assignments on the Parkway were assigned to Local 200 TCSs. Martin Mancino, a Local 200 TCS, was assigned to work full-time on the Parkway for approximately 12 months during the 2019 calendar year and for 12 months during the 2021 calendar year. As recently as the week of October 2, 2022, Mancino was assigned to work as a TCS on the Parkway. (Calleo Cert. ¶4; Mancino Cert. ¶3).

TCSs report to the Manager, Traffic Operation, who is responsible for traffic operations on both the Turnpike and the Parkway. The Manager of Traffic Operations reports to the Assistant Director of Operations, who in turn reports to the Director of Operations. The Director of Operations is responsible for all operations on the Turnpike and the Parkway. (Calleo Cert. ¶6).

The recognition provision in Local 200's 2007-2011

collective negotiations agreement (CNA) provides:

The Authority recognizes the Association as exclusive representative of the Supervisors in the Authority's Engineering, Finance/Budget, Operations, and Technology and Administrative Services Departments, and Turnpike Division Toll Collection and Turnpike Division Maintenance as certified by the Public Employment Relations Commission in its written opinion dated August 17, 1989 and October 22, 1997 in accordance with the Laws and Constitution of the State of New Jersey. Additionally, the Authority recognizes Local 200A as the exclusive representative of Turnpike Division Interchange Managers in accordance with the M.O.U. dated 12/9/02.

(Calleo Cert. Schedule B). In addition to TCSs falling under the reference to the Operations Department, Appendix C of the CNA, which lists job titles in the unit, includes TCSs. (Calleo Cert. Schedule C). The 2007-2011 CNA was the last time Local 200 and the Authority produced a single integrated contract document, and since 2011, Local 200 and the Authority have executed three memoranda of agreement (MOAs) providing salary increases and updating the salary scales in Appendix C to the 2007-2011 CNA. (Calleo Cert. ¶8, Schedule C).

Article VIII(E) of the 2007-2011 CNA is entitled "OPERATIONS DEPARTMENT - TRAFFIC CONTROL SUPERVISORS" and sets forth the negotiated work week and shifts for TCSs. Article IX(E) is entitled "OPERATIONS, ENGINEERING, FINANCE/BUDGET, AND TECHNOLOGY AND ADMINISTRATIVE SERVICES DEPARTMENTS", and Article IX(E)(4)(d) sets forth the overtime policy for TCSs. Article XVI(T) lists

job titles eligible for safety shoe reimbursement, and TCS is one of the listed titles.

The 2003-2007 CNA that was originally between the Local 193C and the New Jersey Highway Authority (superceded by the New Jersey Turnpike Authority) provides:

This Authority recognizes the Union as the sole bargaining agent, pursuant to Chapter 303, P.L. 1968, of all crew supervisors, equipment trainers, garage supervisors, sign shop supervisor and pavement marking supervisor employed by the New Jersey Highway Authority.

(Calleo Cert. Scheduled D). The titles listed in the recognition provision are also included with salary schedules and job descriptions in Appendix A to the CNA. TCS is not a listed title. (Calleo Cert. Scheduled D).

The recognition provision in the first CNA executed between Local 193C and the New Jersey Turnpike Authority, which covered the period of 2007-2011 provides:

This Authority recognizes the Union as the sole bargaining agent, pursuant to Chapter 303, P.L. 1968, of all crew supervisors, equipment trainers, garage supervisors, sign shop supervisor and pavement marking supervisor employed by the Authority and assigned to the Garden State Parkway.

The CNA included job descriptions for the listed titles and a salary schedule, but did not refer to TCSs. The 2011-2019 and 2019-2023 MOAs between Local 193C and the Authority, which only included the sections of the prior CNA that were modified, did

not include a section for or modify the recognition provision. (Lawson Cert. Exhibit A, B, C).

Local 193C unit members are assigned to one of eight Districts/Maintenance Yards, which are spread out geographically on or near the Parkway. Each crew supervisor is responsible to determine the best procedure or method to accomplish daily tasks, assign work schedules, locations, and provide on-the-job direction/guidance and instruction to subordinates, and to ensure that all personnel are aware of and comply with all safety protocols. Local 193C unit members supervise approximately 220 maintenance personnel employed by the Authority who work on the Parkway and are represented by IFPTE Local 196, Chapter 1. (Lawson Cert. ¶8-11).

In or about May 2022, the Authority posted a job opening for a TCS position. Calleo certifies that the job duties identified in the posting are identical to the job duties performed by TCSs represented by Local 200 and that the pay scale for the posted position is identical to the negotiated pay scale for TCSs represented by Local 200. For the first time, the May 2022 posting for the TCS position identified the position as a Local 193C position. Prior to May 2022, Local 193C had never represented employees with the title TCS. (Calleo Cert. ¶5, Schedule A).

The job posting stated: "A vacancy exists within the

Operations Department for the position of "Traffic Control Supervisor - Pky." (TCS-Pky). It states that applicants will be reviewed by the Human Resources Department and the Operations Department. The position description states that the TCS will report to the Manager, Traffic Operations. The position description provides that the TCS will, among other duties, (1) supervise, inspect monitor and assist in lane closing installations; (2) coordinate filed activities between the State Police Construction Unit and Engineering, Operations or Toll Collection Departments or other outside agencies to ensure the safe installation/removal of lane or roadway closings; (3) assist in closings and openings of roadways during periods of construction; (4) monitor traffic conditions during inclement weather and major events; and (5) conduct traffic counts, surveillance and other monitoring operations. (Lawson Cert. Exhibit D).

These specific duties, however, do not appear in the job descriptions in Local 193C's CNA, although those descriptions do say that they are for information purposes only and that the responsibilities and duties of crew supervisors are subject to addition and deletion. (Lawson Cert. Exhibit C).

Lawson certifies generally that duties in the TCS-Pky job description were previously performed by Local 193C. (Lawson Cert. ¶13). He certifies that Local 193C crew supervisors,

sometimes in conjunction with the New Jersey State Police and Local 196 unit members assigned to the Parkway, performed duties set forth in the TCS-Pky job description. He further certifies that he personally performed those duties on many occasions since 2003. (Lawson Cert. ¶14).^{1/}

Two supervisors represented by Local 193C were awarded the newly created TCS-Pky positions. (Lawson Cert. ¶14).

ANALYSIS

Generally, the purpose of a clarification of unit petition is to resolve questions concerning the scope and composition of a collective negotiations unit as defined by a Commission certification or by a recognition provision in a CNA. New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER 370, 371 (¶30160 1999); Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). A petition seeking to add a newly-created title based on the recognition provision of the CNA is appropriately filed prior to the execution of the next succeeding CNA of the petitioner. Trenton Bd. of Ed., D.R. No. 2012-4, 38 NJPER 372 (¶126 2012).

To the extent the TCS-Pky position can be considered a "new"

^{1/} Lawson certifies that he reviewed the certifications of Caleo and Mancino, in which they certify that they have performed TCS duties on the Parkway, and he certifies that he is not aware of any Local 200 TCS performing TCS duties on the Parkway. (Lawson Cert ¶15). He does not however certify that he has personal knowledge that they have not performed such duties. In light of the certifications of Caleo and Mancino, I find that they have performed TCS duties on the Parkway.

title, Local 200 properly filed its petition shortly after the Authority posted for the position and indicated in the posting that it was a Local 193C unit position, and before execution of any subsequent agreement between Local 200 and the Authority.

The petition is procedurally appropriate and timely, notwithstanding whether there was any agreement between Local 193C and the Authority to include the TCS-Pky position within Local 193C's unit, as Local 200 was not a party to such an agreement and did not waive its right to file the petition. Trenton Bd. of Ed. (petitioner's clarification petition was timely when filed before executing subsequent agreement and where petitioner was not a party to employer's agreement with another union to add new title to that union's unit).

The instant matter has many similarities to City of Newark, D.R. No. 2018-18, 44 NJPER 415 (¶116 2018). In that case, SEIU Local 617's unit was narrowly-defined by specific police department titles in its recognition provision, while Newark Council 21's unit was broadly-defined as all white-collar and professional employees in its recognition provision. Local 617 had never previously represented the disputed PST Trainee title and the title was not included in its recognition provision, though it claimed that other titles it represented performed similar duties. Council 21 had represented the PST Trainee title, though the title had historically been assigned to the

fire department only. The City assigned some PST Trainees to the police department, leading to the competing claims. The Director found that it was unnecessary to determine the job duties actually performed by Local 617's unit titles or whether PST Trainees assigned to the police department should be considered an existing title or a new title, because Local 617's unit definition did not use language that could encompass the title.

In the instant matter, Local 193C's unit is described narrowly by specific titles: crew supervisors, equipment trainers, garage supervisors, sign shop supervisor and pavement marking supervisor. It is narrowed further by the recognition's provision's reference to the Parkway. That is, Local 193C only represents those specific titles when assigned to the Parkway, not those titles when assigned to the Turnpike. The recognition provision does not cover Parkway-assigned supervisors in general.

Local 193C has never previously represented the TCS title. Its most recent CNA, executed after the Authority exercised jurisdiction over the Parkway, makes no reference to TCSs, and the job descriptions included in the CNA do not have specific references to TCS duties.

Local 200's recognition provision is much broader. It refers to supervisors generally within various departments, including the Operations Department, and without language limiting it to either the Turnpike or Parkway. A prior

certification specifically added the TCS title to Local 200's unit on October 22, 1997, and this certification is referenced within the most-recent CNA's recognition provision, executed after the Authority exercised jurisdiction over the Parkway. Further, the TCS title itself is specifically referenced numerous times in the CNA. Local 200 has actually previously represented TCSs performing duties on the Turnpike and the Parkway.

The only thing new regarding the TCS positions at issue in this matter are that the employees holding them will be exclusively assigned to the Parkway and will not be performing work on the Turnpike. Like the Director in City of Camden, I find it unnecessary to determine whether this should be considered a "new" title. Local 193C's unit description does not cover it, whereas Local 200's unit description does. The supervisory positions are still within the Operations Department, which Local 200's description encompasses.

To the extent the Authority's placement of the Parkway-exclusive TCSs into Local 193C's unit can be viewed as having expanded Local 193C's unit description, Local 200 has timely petitioned for clarification based on its pre-existing recognition provision and can rightfully challenge the propriety of Local 193C's new unit definition because Local 200 had not consented to the Authority's placement. Trenton Bd. of Ed. It is thus proper for me to view the locals' respective unit

definitions as they were when the Parkway-exclusive TCS positions were created. Under these unit definitions, the positions fall within Local 200's broader unit, and fall outside of Local 193C's narrower unit. City of Newark.^{2/}

Practicality also favors finding Local 200's unit to be more appropriate. Local 200 represents TCSs that have duties on the Turnpike and Parkway. If Local 193C were to represent those TCSs who work only on the Parkway, there might be situations in the future where two different employees with the same TCS title and working on the Parkway are represented by different unions and have different terms and conditions of employment simply because one of them also performs duties on the Turnpike. It would be difficult for others to know which union is representing which TCS without knowing whether there have been Turnpike assignments,

^{2/} Shortly after City of Newark was decided, the Workplace Democracy Enhancement Act (WDEA) was enacted. N.J.S.A. 34:13A-5.11 et seq. (P.L. 2018, c. 15, effective May 18, 2018). It created a new basis (performance of unit work) for accretion through a clarification of unit petition, separate from the language of a recognition provision. Union Cty. V-T Sch. Bd. of Ed. D.R. No. 2023-5, NJPER (¶ 2022). It provides that the Commission promulgate rules to resolve disputes over the inclusion of employees performing unit work in the appropriate unit. N.J.S.A. 34:13A-5.15(e). The Commission rules provide that such a petition not seek employees already included in an existing unit. N.J.A.C. 19:11-1.5(c)(1). Thus, even if Local 193C had filed its own petition on the basis of unit work, I would have found that the TCSs were already included within Local 200's unit based on Local 200's CNA and prior representation of TCSs. Whether TCSs can be said to be performing work that Local 193C's unit also performs is likewise irrelevant in resolving the current matter, as Local 200 already represents TCSs.

and could lead to further unit placement disputes if a TCS generally exclusive to the Parkway is needed for emergent reasons on the Turnpike for a minuscule amount of time.

Local 193C states in its brief that the employees who have been assigned to the TCS-Pky positions previously held other supervisory positions in Local 193C's unit. Local 193C cites to N.J.S.A. 27:23-42(b), enacted May 27, 2003, when the New Jersey Highway Authority was abolished, which provided that all then-existing employee representatives would be retained to act on behalf of their respective employees until such time as the employees, pursuant to law, elected to change those representatives. Local 193C points to the Director's language in New Jersey Turnpike Authority, D.R. No. 2005-14, 31 NJPER 36 (¶18 2005) indicating that the Director did not find that the Legislature intended to keep all units distinct along Parkway and Turnpike lines, but rather, only intended that the then-existing unit structures and negotiated agreements not be disturbed.

Local 193C argues that clarifying the Parkway-exclusive TCSs as being included in Local 200's unit would disturb Local 193C's unit because it would disturb the work assigned to Local 193C's unit. This is a non-sequitur. Local 193C's unit is not defined in a way that encompasses employees merely performing some duties associated with TCS work. Local 193C has not previously represented the title TCS, but Local 200 has. New Jersey Turnpike

Authority contemplates that units could include employees working on the Parkway and Turnpike. Local 200 has already represented such TCSs. Parkway-exclusive TCSs were not represented by Local 193C until 2022, and so Local 193C's unit structure existing when N.J.S.A. 27:23-42(b) was enacted is not being disturbed.

Accordingly, I find that Local 200's supervisory unit includes TCSs, including those TCSs who perform their duties solely on the Parkway.

ORDER

Local 200's unit is clarified to include traffic control supervisors who perform their duties solely on the Garden State Parkway. This decision is effective immediately.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Director of Representation

DATED: March 3, 2023
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by March 13, 2023.