

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY SPORTS AND EXPOSITION
AUTHORITY,

Petitioner,

-and-

Docket No. CU-2022-008

FIRE AND EMT LOCAL UNION
NO. 1412, AFL, CIO,

Employee Organization,

-and-

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,
AND HELPERS, LOCAL UNION NO. 560,

Employee Organization.

SYNOPSIS

The Public Employment Relations Commission grants Local 1412's request for review, reversing the Director of Unfair Practices decision, D.R. No. 2023-8, 49 NJPER 328 (¶78 2023), and remanding it for an evidentiary hearing. The Director's decision granted a clarification of unit petition filed by the NJSEA clarifying the unit of Local 560 to include "people ambulance drivers" (PADs) at the East Rutherford Sports Complex. The Director found that recognition clause language in Local 560's CNA contained specific language identifying the petitioned-for employees, compared with more general language in the recognition clause of Local 1412's CNA. The Commission finds that an evidentiary hearing is needed because there exists substantial and material factual disputes which were not sufficiently resolved by the parties, and therefore, not adequately addressed in the Director's decision. The parties did not factually establish, and the Director's decision did not address, the factors for determining which unit was most appropriate under the "community of interests" standard, including the distinction between Local 560 PADs and Local 1412 EMTs regarding paid live events at the American Dream facility and whether change to that work affected the two units' definition or "community of interests."

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2023-40

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Appearances:

For the Public Employer/Petitioner,
Gibbons, P.C., attorneys (John C. Romeo, of counsel)

For the Fire and EMT Local Union No. 1412, AFL-CIO,
Trenk Isabel Siddiqi & Shahdanian, P.C., attorneys
(John L. Shahdanian, of counsel)

For the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen, and Helpers, Local Union No.
560 (Nicholas Jayme, Business Agent)

DECISION

On January 24, 2023 the Fire and EMT Local Union No. 1412,
AFL-CIO (Local 1412) filed a request for review of a decision of
the Director of Representation (Director), D.R. No. 2023-8, 49
NJPER 328 (¶78 2023), which granted a clarification of unit (CU)

petition filed by the New Jersey Sports and Exposition Authority (NJSEA) clarifying the unit of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, Local No. 560 (Local 560) to include "people ambulance drivers" (PADs) at the East Rutherford Sports Complex (Sports Complex or Meadowlands). The Director found, inter alia, that recognition clause language in Local 560's collective negotiations agreement (CNA) contained specific language identifying the petitioned-for employees, compared with more general language in the recognition clause of Local 1412's CNA. Local 1412 filed a letter brief in support of its request for review, and the NJSEA filed an opposing brief with exhibits.^{1/}

By way of background, NJSEA is a party to CNAs with both Local 1412 and Local 560. The recognition clause in Article 1 of Local 1412's CNA (covering the term of February 1, 2016 through January 31, 2021)^{2/} provides:

The Employer hereby recognizes and acknowledges that the Union is the exclusive

^{1/} On February 15, 2023, Local 560 filed a letter brief with exhibits in opposition to Local 1412's request for review. We did not consider Local 560's submission as it was filed beyond the 7-day deadline to file an opposition to a request for review and without the required written request for leave to file out of time. See N.J.A.C. 19:11-8.4. Nonetheless, it appears that Local 560's opposition brief essentially reiterates its position presented to the Director in D.R. No. 2023-8.

^{2/} The parties are currently in negotiations for a successor CNA.

representative for all the employees employed by the Employer in its Fire and EMT Department in the State of New Jersey, (excluding Monmouth County) exclusive of the supervisor above the rank of Lieutenant and Detectives, Office, Clerical, Management and Confidential employees, for the purpose of collective negotiations.

[Emphasis added.]

The recognition clause, Article 1, Section 1, of Local 560's most recent CNA (covering the term of December 1, 2020 through November 30, 2023), which has not substantially changed from previous contracts, provides:

The Employer hereby recognizes and acknowledges that the Union is the exclusive and authorized collective bargaining representative for all Authority employees who are engaged in the operation of Authority owned or leased tractors, water trucks, valet trucks, buses and trams, people ambulances at the East Rutherford Sports Complex on a part-time basis, as further provided in Article 3, Section 5, pick-up and step vans when such vehicles are used to haul materials and trash only, rollers pulled by tractors, stadium turf water remover, stadium turf sweeper, fork lift trucks (at the discretion of the Employer), non-hydraulic boom trucks under 45 feet in height and other such equipment as may be designated from time to time by the Employer, in writing, and the driving of vehicles to locations for repair and for vehicle MVC inspections and registrations, but excluding watchmen, guards, professional employees and supervisors for the purpose of collective negotiations.

[Emphasis added.]

Article 3, Section 5 of the Local 560 CNA guarantees that Local

560 PADs "shall receive a minimum of 16 hours of work per week" and that the NJSEA "agrees to maintain a minimum of four part-time EMT certified driver positions available for the Local 560 bargaining unit" This provision did not appear in prior contracts between NJSEA and Local 560.

Local 560's unit includes approximately 3-4 PADs, all of which must be EMT-certified pursuant to statute in order to be on board ambulances.^{3/} Local 1412's is comprised of approximately 7 full-time and 40 part-time EMTs, as well as various other titles

^{3/} The parties all agree that PADs must be EMTs and, therefore, any reference to PADs necessarily refers to EMTs. See NJSEA brief at 1. Local 560 asserts "only certified EMTs can drive ambulances." See Local 560's May 27, 2022 position statement at 2. Local 1412 asserts that statutorily in New Jersey all ambulance drivers must possess EMT certifications, citing N.J.A.C. 8:40-6.3 ("Required crewmembers") and 6.4 ("Crewmember duties"). See Local 1412 brief at 4 and its October 7, 2022 response to the Director's questions and requests for information. N.J.A.C. 8:40-6.3 provides the following:

(a) When "in-service," each BLS [basic life support] ambulance shall be staffed with a minimum of two EMT-Basics.

1. A provisionally certified EMT-Basic, as identified at N.J.A.C. 8:40A-7.4, may serve as a third crewmember, but shall not be utilized to meet the minimum crewmember requirements set forth in (a) above.

N.J.A.C. 8:40-6.4 specifies the collective duties of all crewmembers staffing a BLS ambulance, which includes, but is not limited to, safely operating the ambulance under subsection (2).

in the Fire and EMT Department, including Firefighters, EMT Intake Specialists, and EMT Field Medics. NJSEA asserts that duties performed by Local 1412 and Local 560 EMTs are the same, but Local 560 PADs were assigned to drive NJSEA-owned ambulances at the sports complex during "paid live events," whereas Local 1412 EMTs were assigned to drive ambulances at all other times.

Local 1412 maintains that Local 560 Teamster EMTs only drive ambulances, and rarely participate in patient care, although statutorily they are required to perform all EMT duties, if necessary. Local 1412 asserts that its EMTs must also regularly drive ambulances since there are only two Local 560 EMTs currently employed by the NJSEA. Local 1412 further asserts that Local 560 Teamsters generally represent drivers who operate all types of vehicles on NJSEA property. On the other hand, Local 1412 represents all emergency personnel who work on NJSEA property, including EMTs, Firefighters, and Security Guards. Local 1412 asserts that it is the most appropriate unit to represent all EMTs employed by the NJSEA, including those EMTs who are Local 560 members, because of the clear recognition clause in its CNA that makes Local 1412 the exclusive representative for all EMTs employed by the NJSEA. Local 1412 asserts that Local 560 cannot be the best unit to represent EMTs because Local 560 purports to separate and classify EMTs who drive ambulances from those who do not, which is contrary to

statute. Further, Local 1412 maintains that all EMTs, including Local 560 EMTs, are deployed through the same chain of command, which assigns Local 560 EMTs to drive ambulances, while Local 1412 EMTs are assigned to all posts, including driving ambulances.

On April 4, 2022, the NJSEA filed its CU petition seeking to clarify whether the PADs belong to Local 1412's or Local 560's bargaining unit. The petition asserts that changes at the Sports Complex, including the opening of American Dream, a retail and entertainment complex at the Meadowlands, and subsequent negotiation sessions between both locals and NJSEA, have resulted in both locals claiming rights to exclusive representation of the NJSEA's PADs. The NJSEA explains that for decades both Local 1412 and Local 560 ambulance drivers worked alongside each other at the Sports Complex, despite overlapping recognition language contained in the parties' CNAs. Issues arose during the latest round of negotiations with Local 560 when Local 560 asserted that, pursuant to its CNA's recognition clause, it should be the exclusive representative of PADs at the Sports Complex. NJSEA asserts that, prior to reaching a new CNA with Local 560, it consulted with Local 1412, which did not object to additional hiring or hours for Local 560 members. Local 1412 disputes this assertion. NJSEA asserts that it has refrained from reassigning any work at the Sports Complex following Local 1412's filing of a

grievance and unfair practice charge (UPC) regarding the disputed work between the two locals. Local 1412's March 4, 2022 unfair practice charge, CO-2022-186, alleges that the NJSEA unilaterally altered terms and conditions of employment, including transferring work to employees represented by a different labor union. NJSEA explains that Local 560 also filed a grievance claiming that the NJSEA is failing to honor the new CNA and is not assigning Local 560 drivers with the work guaranteed by Articles 1 and 3. Thus, the NJSEA claims it was put in a dilemma: hire Local 560 PADs and get grieved by Local 1412, or do not hire them and get grieved by Local 560. NJSEA emphasized that it has no preference between Local 560 and Local 1412, but rather sought a determination as to which unit is most appropriate for the PADs/EMTs.

On September 7, 2022, the Director requested additional information from the parties, including the names, titles, dates of hire, and job descriptions for the petitioned-for employees, and a description of the duties that those employees actually perform. NJSEA and Local 1412 each replied to the information request on October 7, 2022. Local 1412 provided a comprehensive answer to the Director's request to address which was the most appropriate unit based on the Commission's long-standing "community of interest" standard in CU petitions. Local 560 provided no response to the Director's request for information.

Following a review of the parties' submissions, the Director determined that there were no substantial or material factual issues requiring an evidentiary hearing pursuant to N.J.A.C. 19:11-2.6.

On January 12, 2023, the Director issued his decision on the NJSEA's CU petition, determining that the respective recognition clauses support that Local 560 PDAs are properly included in the Local 560 bargaining unit. The Director found that Local 560's recognition clause specifically identifies employees engaged in operating people ambulances at the Sports Complex on a part-time basis, whereas Local 1412's recognition clause contains more generic language, identifying "all the employees employed by the Employer in its Fire and EMT Department" The Director reasoned that Local 1412's generic recognition language encompasses EMTs, but Local 560's language is more specific in identifying the employees subject to the CU petition. The Director concluded that the specific language identifying the PDAs as part of Local 560's unit must be given priority over the general language in Local 1412's CNA encompassing similar employees. Thus, the Director clarified Local 560's unit to include the PDAs and rejected Local 1412's position that the PDAs are part of its unit.

The grounds for granting a request for review are set forth in N.J.A.C. 19:11-8.2(a), which states, in pertinent part:

A request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

Local 1412 argues that the Commission should grant its request for review because a substantial question of law is at issue; the Director's decision was clearly erroneous on the most substantial factual issue; and the Director did not conduct a hearing or take any testimony regarding the relevant issues. Local 1412 claims that the Director's decision conflates which CNA recognition clause has more specific language. Local 1412 claims that the Director's decision completely ignored the job certification status that is legally required to drive an ambulance. Further, Local 1412 argues that NJSEA's CU petition was filed in retaliation for Local 1412's UPC. Local 1412 asserts that the Director's decision on the CU petition should have been stayed pending the resolution of Local 1412's UPC. Local 1412 disputes NJSEA's claim that both locals are claiming

rights to the same work. Local 1412 asserts that it should have retained its long-standing, nearly 40-year history, of operating ambulances for NJSEA and no other local should be permitted to infringe on its exclusive representation of the NJSEA's EMTs.

In response to Local 1412's request for review, NJSEA reiterates that it has no preference as to whether the clarification results in a determination more or less favorable to Local 1412 or Local 560. Rather, it only filed the CU petition to clarify which local properly represents NJSEA's EMTs who drive ambulances at the Meadowlands. NJSEA explains that it filed its CU petition for several reasons including changed circumstances and new facilities/operations pursuant to N.J.A.C. 19:11-1.5(b)(3)(i) and (iv), and not under (vi) as alleged by Local 1412 or in retaliation for Local 1412's UPC. NJSEA asserts that it apprised the Commission of its decades-long practice of assigning Local 560 PDAs to drive ambulances during paid live events and to assign Local 1412 EMTs to drive ambulances at all other times. NJSEA explains that the issues arose when the American Dream opened and Local 560 took the position that all events at American Dream were paid live events.

Among other reasons, N.J.A.C. 19:11-8.2(a) allows for review of the Director's decision if: (1) a substantial question of law is raised concerning the interpretation or administration of the Act or its rules; or (2) it is clearly erroneous on a substantial

factual issue, and such error prejudicially affects the rights of the party seeking review. We find such review is warranted here because a substantial question of law remains unresolved, namely the issue of which unit, Local 560 or Local 1412, is most appropriate for the NJSEAs PADs/EMTs under the Commission's long-standing "community of interest" standard. Additionally, there remain substantial factual issues that need to be resolved in order to determine which unit is most appropriate.

The Commission is responsible for determining the appropriate collective negotiations unit when questions concerning representation of public employees arise. N.J.S.A. 34:13A-6(d). When more than one unit is potentially appropriate, the Commission must decide which unit configuration is the most appropriate. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231, 257 (1974). The Commission must define the negotiations unit "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3. Historically, the Commission has applied a number of factors in defining community of interest and deciding which unit is most appropriate, as follows. Somerset Cty., D.R. No. 2014-14, 40 NJPER 527 (¶172 2014), request for rev. denied at P.E.R.C. No. 2014-88, 41 NJPER 55 (¶15 2014).

To determine whether the requisite community of interest exists in a proposed unit, the Commission examines a number of factors, such as common employer, shared goals, common

supervision, location of employment, job duties, and similarity in wages, hours and terms and conditions of employment. The importance of any one factor in a particular case depends upon how it interrelates with other factors.

Several other considerations are also relevant with respect to unit determinations. The New Jersey Supreme Court has affirmed the Commission's policy favoring broad-based negotiations units over units structured along departmental or occupational lines. The Commission has explained that broad-based units streamline negotiations by reducing the potential for such problems as competing demands, whipsawing and continuous negotiations that could result from negotiations with numerous smaller units. The Commission also examines whether a proposed unit would lead to undue unit fragmentation or proliferation. Additionally, the Commission considers the history of the negotiations units, the extent of organization of the petitioned-for titles, the desires of the parties and the Act's purpose. Lastly, the Commission must balance the need to find the most appropriate unit with the public employees' right to obtain representation.

[40 NJPER at 528-529 (Internal citations and quotations omitted).]

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), explains the circumstances under which a unit clarification petition is appropriate:

Clarification of unit petitions are designed to resolve questions concerning the exact composition of an existing unit of employees for which the exclusive representative has already been selected Occasionally a change in circumstances has occurred, a new title may have been created . . . or the employer may have created a new operation or

opened a new facility which would make a clarification of unit proceeding appropriate Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or diminish the scope of the negotiations unit for reasons other than the above.

[3 NJPER at 251; see also City of Jersey City, D.R. No. 2020-7, 46 NJPER 159 (¶38 2019), request for rev. denied P.E.R.C. No. 2020-24, 46 NJPER 232 (¶54 2019).]

In unit clarification cases, the party asserting a claim for inclusion (or defense against inclusion) of an employee in a unit bears the burden of producing competent evidence in support of that claim or defense. State of New Jersey (Office of Employee Relations), D.R. No. 2023-3, 49 NJPER 135 (¶30 2022), request for rev. denied, P.E.R.C. No. 2023-25, 49 NJPER 353 (¶84 2023). Competent evidence includes certifications or affidavits from individuals with personal knowledge of the duties performed by the petitioned-for employees and relevant unit employees, and it may also include specific work samples or examples of work supported by certifications demonstrating the duties actually performed by unit or petitioned-for employees. Ibid. (internal citations omitted). “Neither public employers nor public employee representatives have an absolute right to a hearing” in representation cases. County of Somerset, P.E.R.C. No. 2014-88, 41 NJPER 55, 56 (¶15 2014). The Commission has “. . . a consistent policy of resolving representation questions after

administrative investigations unless substantial and material facts are in dispute.” Id. at 56; N.J.A.C. 19:11-2.6(f).

“Hearings under this section [Representation Procedures] of these rules are considered investigatory and not adversarial. Their purpose is to develop a complete factual record upon which the Director of Representation or the Commission may discharge the duties under N.J.S.A. 34:13A-6.” N.J.A.C. 19:11-6.2(c).

Here, we grant Local 1412's request for review and remand the CU petition to the Director for an evidentiary hearing to develop a complete factual record because there exist substantial and material factual disputes which were not sufficiently resolved by the parties, and therefore, not adequately addressed in the Director's decision. As a threshold matter, we also find that the NJSEA's CU petition was appropriate because changed circumstances and a new facility, the American Dream, created a conflict in negotiating and assigning work to NJSEA's EMTs in both locals. See Clearview, supra.

The Director's decision was primarily based on his analysis of the parties' respective CNA recognition clauses. However, the Director's decision did not address the above-cited factors for determining which unit was most appropriate under the “community of interests” standard. The Director expressly requested that the parties address the “community of interest” standard in his

September 7, 2022 request for information.^{4/} Both NJSEA and Local 1412 provided responses, and Local 560 did not provide any response. Local 1412's response to the Director's inquiries 6 and 7 states, in pertinent part:

The EMT who drives the ambulance should not be represented by a separate drivers' union and earn a Meadowlands Teamster's driver's wage, which is significantly higher in this case, just as police officers or firefighters who operate emergency vehicles should not be in a separate union by virtue of driving a piece of equipment. New Jersey law requires

^{4/} The Director's September 7, 2022 request for information specifically asked the parties' for the following:

(6) In deciding which unit is "most appropriate" for the petitioned-for employees, the Commission must give "due regard for the community of interest" between the petitioned-for employees and proposed unit. N.J.S.A. 34:13A-5.3; State v. Professional Ass'n of New Jersey Dept. of Education, 64 N.J. 231, 243 (1974). With this standard in mind, please provide a detailed explanation whether Local 1412 or Local 560 is the "most appropriate unit" under the community of interest factors the Commission has applied in unit placement determinations. See Rancocas Bd. Of Ed., E.D. No. 76-39, 41 NJPER 150, 152 (¶151 1976); Somerset Cty., D.R. No. 2014-14, 40 NJPER 527 (¶172 2014), request for review denied at P.E.R.C. No. 2014-88, 41 NJPER 55 (¶15 2014).

(7) The unit definitions, as set forth in the recognition clauses of the parties' current collective negotiations agreements, differ as to how the units are defined. Local 560's unit specifically identifies the petitioned-for employees as falling within the scope of its unit. Local 1412's recognition clause includes generic or broader language than Local 560's unit which may encompass or cover the petitioned-for employees. I am requesting the parties submit briefs addressing which unit definition should cover the petitioned-for employees, with citations to relevant statutory, regulatory, and decisional law. Your brief may also address any and all other legal issues arising from the previous questions in this letter.

a BLS ambulance be staffed with two certified EMT-Bs. See N.J. Admin. Code § 8:40-6.3. The Code does not contain any additional requirements for drivers of ambulances that members of Local 560 uniquely possess.

These emergency service workers' common interest in collective bargaining and organization should not be divided and undermined because some emergency workers are assigned to driving positions. Workers with the same title, who work for the same employer, should enjoy the same compensation and be expected to perform the same work their title entails.

The factors weigh in favor of a determination Local 1412 is the most appropriate unit to represent all of the EMTs employed by the Authority.

Conversely, nothing in the law or common sense justifies a determination that Local 560 could be the best unit to represent the EMTs here. Local 1412 has represented the overwhelming majority of the EMTs employed by the Authority for 40 years, while Local 560 has only represented some, who only drive the ambulances.

* * *

Local 1412's unit definition should be adopted because Local 1412 already represents nearly all EMTs working on Authority property and has done so for approximately forty years. Further, no distinction exists between EMT crewmembers on ambulances who drive and those who do not, according to the law, nullifying Local 560's justification for its representation of EMTs who drive Authority ambulances. There may have been a time in the past when it was appropriate for drivers of ambulances to be in separate bargaining units from EMTs who provided emergency medical services for the Authority. According to the law, that era no longer exists and EMTs employed by the NJSEA should be in one unit,

whether they are ambulance crewmembers or assigned to a different post within the property. Further, the majority representative, Local 1412, should be the exclusive representative for all EMTs on Authority property.

The many factual assertions in Local 1412's response to the Director's inquiries, addressing the "community of interest" factors, require further establishment and development through certifications or testimony. See State of New Jersey (Office of Employee Relations), supra. Indeed, the record does not contain any certifications, affidavits, or sworn testimony from individuals with personal knowledge supporting the facts and information asserted in the parties' various submissions to the Director.

Additionally, based on the parties' admitted past practice, a critical distinction between Local 560 PADs and Local 1412 EMTs is their work regarding "paid live events," where Local 560 PADs only work paid live events and Local 1412 EMTs work (including driving ambulances) at all other times. The Director's decision did not address how this distinction between the two units involving paid live events was altered as a result of American Dream and whether that change affects the units' definition or "community of interest." This presents a substantial and material factual issue that requires further resolution through an evidentiary hearing. Further, the Director's decision did not address the import of the legal requirement that all ambulance

drivers be EMTs and whether that requirement placed the Local 560 EMTs within the ambit of Local 1412's exclusive representation of all NJSEA's EMTs.

Accordingly, we grant Local 1412's request for review and remand the CU Petition to the Director for an evidentiary hearing.

ORDER

Fire and EMT Local Union No. 1412's request for review is granted. The Director's decision is reversed and remanded for an evidentiary hearing pursuant to N.J.A.C. 19:11-2.6.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: March 30, 2023

Trenton, New Jersey