

P.E.R.C. NO. 2024-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CU-2022-007

JNESO DISTRICT COUNCIL 1
IUOE, AFL-CIO,

Petitioner.

SYNOPSIS

The Commission denies the request of JNESO District Council 1 for review of the Director of Representation's dismissal of JNESO's clarification of unit petition seeking to include employees of the City of Newark who hold the title of Senior Practical Nurse (SPN) in JNESO's collective negotiations unit. The Commission finds JNESO raises no substantial questions of law or factual errors, and otherwise fails to establish grounds to review the Director's determinations that: (1) SPNs, as non-professional employees, cannot be included in JNESO's existing unit of professional employees unless a majority of the professionals vote to include the non-professionals; (2) the Workplace Democracy Enhancement Act did not eliminate the professional option requirement of our Act for proposed mixed units; and (3) in the event a majority of the professional employees in JNESO's unit vote to include the non-professional SPNs, JNESO may then file a representation petition seeking to add the SPNs to the unit to form a mixed unit.

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.

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Appearances:

For the Respondent, Kenyatta K. Stewart, Corporation Counsel (Chané M. Jones, Assistant Corporation Counsel)
For the Petitioner, Kroll, Heineman, Ptasiwicz & Parsons, attorneys (Seth B. Kennedy, of counsel)

DECISION

On September 11, 2023, JNESO District Council 1, IUOE, AFL-CIO (JNESO), filed a request for review of D.R. No. 2024-3. In that decision, issued August 30, 2023, the Director of Representation dismissed JNESO's clarification of unit (CU) petition seeking to include in JNESO's collective negotiations unit^{1/} employees of the City of Newark, Department of Health and Community Wellness (City) who hold the titles of Senior Practical Nurse (SPN) and Supervisor of Clinic Nurses (SCN). The CU

^{1/} JNESO's existing unit consists of City employees holding the titles of Public Health Nurse, Clinic Nurse, Public Health Nurse Pediatrics, Pediatric Nurse Practitioner, Nurse Practitioner of Sexually Transmitted Diseases, Head Clinic Nurse, and Public Health Nurse Supervisor.

petition, as filed, listed the following titles to be included: Supervisor of Clinic Nurses, Practical Nurse, and Senior Practical Nurse. In his decision, the Director noted that "JNESO withdrew its petition with respect to Practical Nurse." D.R. at 1, n.1.

The Director found the record presented no substantial, material factual disputes requiring an evidentiary hearing.^{2/} D.R. at 3. Based on that record, the Director determined that SPNs, as non-professional employees, cannot be included in JNESO's existing unit of professional employees unless a majority of the professionals vote to include the non-professionals.^{3/} In reaching that conclusion the Director made the following pertinent findings of fact and law, summarized below:

- Five employees with SPN titles are at issue in JNESO's CU petition. D.R. at 3.
- SPNs share a general community of interest with NJESO unit members. D.R. at 8-9, 10.

2/ The record includes, among other things, the City's certifications with exhibits from Alexandria Massey (AM Cert.), the Director of Nurses for the Newark Department of Health and Community Wellness, and Chané Jones (CJ Cert.), Assistant Corporation Counsel for the City; and JNESO's certification with exhibits from Roselyn Goodwin (RG Cert.), a now-retired registered nurse who served as a PHNS, HCN, and CN for the City.

3/ In its request for review, JNESO does not challenge the Director's other determination, that SCN titles, although professional, cannot be included because they possess disciplinary authority over unit members. (JNESO Br. at 1.) As such, we do not address it here.

- SPNs perform unit work despite those titles not previously being listed in the CNA's unit recognition clause. Id. at 9.
- JNESO's unit currently consists only of Registered Nurses (RNs). Id. at 4.
- SPNs are not RNs. They are Licensed Practical Nurses (LPNs). Id.
- RNs and LPNs have a number of similar or overlapping skills and duties, but LPNs (including the SPN titles at issue) do not have the skills to engage in triage and are not licensed to do so (unlike RNs, including all existing unit employees). Id.
- RNs are considered professional employees under the Act and LPNs are considered non-professional employees. Id. at 10.
- Thus, the existing unit is currently inappropriate for inclusion of the SPNs until a majority of the professionals vote to include non-professionals in the unit. N.J.S.A. 34:13A-6(d). Id.
- The provisions of the Workplace Democracy Enhancement Act (WDEA) allowing accretion on the basis of the performance of unit work (N.J.S.A. 34:13A-5.11(a) and (b)) did not eliminate the professional option requirement of our Act for proposed mixed units. Id. at 10-11.
- As no evidence has been presented in this case showing that a professional option vote has occurred, JNESO's petition with respect to the SPNs is dismissed on this basis. This does not preclude JNESO from filing a representation petition seeking to add the SPNs to the unit after the professionals have opted to form a mixed unit. Id. at 11-12.

JNESO (somewhat confusingly) requests review as to "Senior Clinic Nurse" job titles (NJESO Br. at 1), but otherwise refers in its brief to the "Senior Practical Nurse" (SPN) title,^{4/} in

^{4/} Because the substance of NJESO's request for review is focused on the Director's findings about the "Senior
(continued...)

pertinent part as follows (emphases added):

Having reviewed the Director's Decision, JNESO is now in the process of scheduling a special meeting for the purpose of conducting a vote for the Registered Nurses in its collective negotiations unit to decide whether to exercise their option to form a mixed unit including the Licensed Practical Nurses in the Senior Practical Nurse job classification (Meredith Larson Cert. at ¶ 4-5^[5/]) JNESO respectfully requests that the Commission reconsider the Director's dismissal of the instant Petition once such vote has been taken.

* * *

The Director expressly stated that the sole basis on which the petition was dismissed as to the Senior Practical Nurses was the lack of a membership vote. While NJESO maintains that, under N.J.S.A. 34:13A-5.1(a) and (b) of the Workplace Democracy Enhancement Act, the LPNs should be accreted into the unit absent such a vote, even under the Decision as written, an affirmative vote by the RNs in the unit should cure any possible defect in the Petition. If the RNs vote to include the LPNs, then, JNESO will provide proof of same to the Public Employment Relations Commission, and will request that the Director's Decision be reversed accordingly.

The City argues that NJESO has failed to establish a compelling reason to grant review, as it is based upon "facts not

4/ (...continued)
Practical Nurse" (SPN) title and the Director made no findings with respect to a "Senior Clinic Nurse" title, we will assume NJESO's initial reference to the latter in its brief is a typographical error.

5/ In ¶ 5 of this certification submitted in support of NJESO's request for review, NJESO's Labor Representative states that this vote will take place "before the end of September 2023," and that "JNESO will promptly notify the Commission of the outcome of such vote once complete." To date, the Commission has received no such notice.

in existence" or in the record, namely, "future actions" that NJESO "intends to take that may result in a mixed unit if the employees vote in favor of such a decision." (City's Br. at 4, emphases by City.) This, the City argues, is not an appropriate reason to stay or reverse the Director's decision. We agree.

N.J.A.C. 19:11-8.2(a) states that 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.

N.J.A.C. 19:11-8.3(c) states that a request for review:

may not raise any issue or allege any facts not timely presented to the Director of Representation or the hearing officer, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

We deny NJESO's request for review as it has advanced no compelling reasons to review the Director's findings or conclusions. We find that the above four grounds for review are not met by NJESO's stated, and to the Commission's knowledge, as

yet unrealized, intention to hold a vote in order to “cure any possible defect” in the petition dismissed by the Director.

Moreover, such an intention was not presented to the Director.

NJESO does not explain why it could not with reasonable diligence have done so. NJESO’s submission otherwise raises no substantial questions of law or factual errors concerning the Director’s determination, nor does it compel a review of the conduct of a hearing or reconsideration of a Commission policy. NJESO cites no authority in support of its contention about the Workplace Democracy Enhancement Act, and offers no argument about the Commission precedent relied upon by the Director^{6/} in concluding that the WDEA did not eliminate the professional option requirement of our Act for proposed mixed units.

As the Director made clear in his decision, in the event a majority of the professional employees in NJESO’s unit vote to include the non-professional SPNs, NJESO may file a representation petition seeking to add the SPNs to the unit to form a mixed unit. That petition, if filed, will be decided on its merits. It will not require the Commission’s review or reversal of the Director’s decision in this matter.

^{6/} D.R. No. 2024-3 at 10-11 (citing Jefferson Tp. Bd. of Ed., P.E.R.C. No. 2019-11, 45 NJPER 149 (¶38 2018) (“[T]he WDEA’s unit work provisions (N.J.S.A. 34:13A-5.11(a) and (b)) neither explicitly nor implicitly repealed N.J.S.A. 34:13A-6(d) of our Act.”), aff’g D.R. No. 2019-1, 45 NJPER 39 (¶11 2018).

ORDER

JNESO's request for review is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Higgins, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford was not present.

ISSUED: November 21, 2023

Trenton, New Jersey