

D.R. NO. 2019-2

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

In the Matter of

CITY OF JERSEY CITY,

Public Employer,

-and-

Docket No. RO-2018-042

JERSEY CITY PUBLIC EMPLOYEES, INC.,
LOCAL 245,

Petitioner.

SYNOPSIS

The Acting Director of Representation issues a Certification of Representative, based on a timely card check representation petition that was accompanied by authorization cards signed by a majority of employees in the petitioned-for and longstanding unit comprised of school traffic guards.

The incumbent representative and a majority representative of other municipal employees separately failed to intervene on the petition, pursuant to N.J.A.C. 19:11-2.7. After comparing the public employer's list of eligible employees with the authorization cards provided, the Acting Director determined that the petitioner was entitled to certification, despite the public employer's general refusal to sign a Stipulation of Appropriate Unit agreement.

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Appearances:

For the Public Employer
Scott Carbone, Esq., Assistant Corporation Counsel

For the Petitioner
Castronova and McKinney, LLC, attorneys
(Thomas A. McKinney, Esq.)

DECISION

On June 27, 2018, Jersey City Public Employees, Inc., Local 245 (Local 245) filed a petition for certification of public employee representative seeking to represent "all crossing guards" (traffic guards) employed by the City of Jersey City (City). The petition seeks certification by card check and is accompanied by authorization cards signed by a majority of employees in the petitioned-for unit. On July 19, 2018, Local 245 filed additional authorization cards. The Jersey City School Traffic Guards Association (Association) was identified in the

petition and is the current majority representative for all school traffic guards. On July 20, 2018, Jersey City Public Employees, Inc., Local 246 (Local 246) (not identified in the petition) filed a request to intervene.

On July 12, 2018, I issued a letter to the City, together with a copy of the petition, a Notice to Employees for posting by the City and a Certification of Posting that it fully signed and returned to us. The letter advises that Local 245 filed its petition for card check certification, ". . . in the collective negotiation unit described in the enclosed petition." The letter also solicits, among other items, an alphabetical list of employees in the proposed unit and the City's statement of position. The enclosed Notice advises employees that Local 245 is seeking certification as "the exclusive representative of the unit of employees" described as including "all crossing guards employed by the City" and excluding "all other employees." The Notice has been posted for the requisite period. N.J.A.C. 19:11-2.4(c).

Also on July 12th, I sent a letter to Mary Cook, Acting President of the Association, together with a copy of the petition. The letter advises that if her organization has an interest in representing the petitioned-for employees, it must provide us with a written request to intervene, in accordance with the requirements set forth in N.J.A.C. 19:11-2.7. The

letter requests Cook to advise the City, Local 245 and us if the Association does not claim a representation interest regarding the employees in its unit. The letter advises that if the Association fails to inform us of its wish to intervene, I will assume that it has no interest in the proceeding.

In a phone conversation with the Association Acting President, the assigned staff agent learned of the organization's interest in disclaiming interest in further representation of the unit. She was invited to file a letter on behalf of the Association disclaiming its interest. On July 19, 2018, the staff agent received a letter signed by Ms. Cook, dated July 18th. The letter provides:

The School Traffic Guards Association in June of 2018 has made a request to have Jersey City Public Employees Local 245 become its representati[ve] going forward. A petition by cards have been collected to show the willingness of the members of this Association to have Santo DellaMonica and his union (Local 245) represent us in good faith.

On July 23, 2018, Ms. Cook submitted another letter to the staff agent, writing: "I Mary Cook a member and acting president of the Jersey City School Traffic Guard Unit am solely interested in the representation of Local 245."

On July 19, 2019, the City filed its response to the information requested in our letter, including a list of employees in the petitioned-for unit. The City also provided a copy of an expired collective negotiations agreement it signed

with the Jersey City School Traffic Guards Association extending from January 1, 2012 through December 31, 2015 and an executed Certification of Posting of our Notice to Employees. The Notice provides that any employee organization having an interest in representing any of these employees shall advise us in writing as soon as possible, in accordance with the requirements of N.J.A.C. 19:11-2.7. The City also wrote that it ". . . does not agree to the proposed negotiations unit set forth in the Petition and objects to certification by card check." It did not otherwise explain or elaborate. The City separately advised that it will not sign a Stipulation of Appropriate Unit.

On July 20, 2018, Counsel for Local 246 filed a letter requesting to intervene on the petition. The letter was not accompanied by any showing of interest. Local 246 contends that by virtue of its contractual recognition provision defining its unit to be comprised (in pertinent part) of "non-uniformed employees of the Department of Public Safety," it is "entitled" to represent the petitioned-for employees. The same recognition provision specifically excludes from Local 246's unit, "[employees] represented in other bargaining units."

On July 23, 2018, Counsel for Local 245 filed a letter opposing Local 246's request to intervene.

I have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. The disposition of the

petition is properly based upon our administrative investigation. No substantial or disputed material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I add the following facts:

The recognition article of most recent collective negotiations agreement signed by the City and the Association, extending from January 1, 2012 through December 31, 2015 provides that the negotiations unit is comprised of "all school traffic guards employed by the City." The agreement includes numerous other articles covering salaries, hours, hospitalization, holidays, sick leave, grievance procedure, uniforms, etc. The two parties executed many predecessor collective negotiations agreements, generally of three-year durations, commencing in 1974.

The City's and Local 245's most recent and expired collective negotiations agreement includes a recognition article (Article 1) identifying its unit as including employees in the department of public works, the department of water (excluding the division of billing and collection) and the department of recreation. Excluded from the unit, among others, are employees, ". . . represented in other bargaining units."

ANALYSIS

N.J.A.C. 19:11-2.7 requires any party seeking to intervene in a representation proceeding to file a written request with the

Director. An incumbent employee organization seeking to intervene in a proceeding initiated by a petition for certification must submit either evidence that it is currently certified or recognized as the exclusive representative of any of the petitioned-for employees or a current or recently expired collective negotiations agreement covering any of the petitioned-for employees (emphasis added). 2.7(b)1 and 2.

Neither letter filed by the Association expresses its intent to disclaim further interest in representing unit employees. Nor has the Association filed or referenced a collective negotiations agreement covering any of the petitioned-for employees. I find that the Association has not intervened on Local 245's petition. Section 2.2.

N.J.A.C. 19:11-2.7(c) requires "an employee organization seeking to intervene in a proceeding initiated by a petition for certification" to file a "showing of interest of not less than 10 percent of employees in the petitioned-for unit or not less than 30 percent of employees in the unit it claims to be appropriate . . ."

Local 246 has not filed a showing of interest. Having failed to comply with our regulation, Local 246 has not intervened on Local 245's representation petition. Inasmuch as neither the Association nor Local 246 has properly intervened on

the petition, I find that Local 245 is the only representative seeking to be majority representative of the petitioned-for unit.

In comparing the City-provided list of unit employees with the number of valid authorization cards filed by Local 245, I have determined that a majority of petitioned-for employees have designated Local 245 as their representative for purposes of collective negotiations. N.J.A.C. 19:11-2.6(b). Local 245 is entitled to certification, despite the City's refusal to sign a Stipulation of Appropriate Unit agreement. See City of Perth Amboy, D.R. No. 2010-2, 35 NJPER 243 (¶87 2009).

Accordingly, I find that the following unit is appropriate for collective negotiations:

Included: All regularly employed non-supervisory school traffic guards employed by the City of Jersey City.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police, casual employees and all other employees employed by the City of Jersey City.

ORDER

Local 245 has met the requirements of the Act, and it is entitled to certification based upon the authorization cards from a majority of the employees in the petitioned-for unit.

I certify the Jersey City Public Employees, Inc., Local 245 as the exclusive representative of the unit described above based upon its authorization cards.^{1/}

By Order of the Acting
Director of Representation

/s/Jonathan Roth
Jonathan Roth
Acting Director of Representation

DATED: July 30, 2018
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 August 9, 2018.

^{1/} A Certification of Representative is attached.