

D.R. NO. 2020-2

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-2019-034

JERSEY CITY PUBLIC EMPLOYEES, INC.,
LOCAL 245,
Petitioner,

-and-

JERSEY CITY PUBLIC EMPLOYEES, INC.,
LOCAL 246,
Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition and amended petition filed by Jersey City Public Employees, Inc., Local 245 (Local 245), seeking to sever non-supervisory Parking Enforcement Division (PED) employees, including former Jersey City Parking Authority (JCPA) employees, from Jersey City Public Employees, Inc., Local 246's (Local 246) existing, broad-based unit of City of Jersey City (City) employees. Local 245 claimed that it was denied the right to intervene or represent the petitioned-for employees when they became City employees within the PED because they were simply "assigned" to Local 246 when the JCPA was dissolved; and that regardless, Local 246 has failed to represent former JCPA employees. The Director found that Local 246's existing, broad-based unit of City employees includes the petitioned-for employees. Specifically, the Director found that the City voluntarily recognized Local 246 as the majority representative of non-supervisory PED employees, including former JCPA employees, as early as January 2015; and that by virtue of the City's and Local 246's execution of their 2015-2018 collective negotiations agreement in February 2017, Local 246 was formally recognized as exclusive representative of civilian employees in the Department of Public Safety including PED employees. The Director also found that in the absence of a timely RE petition and/or any demonstration of a good faith doubt concerning Local 246's existing/continuing majority status from 2015-2017, the City was obligated to maintain the status quo with respect to unit members' terms and conditions of employment. The Director found that when Local 245 filed its representation petition and amended petition in December 2018, the petitioned-for employees had already been included in Local 246's existing, broad-based unit of City employees. Finally, the Director found that Local 245 failed to demonstrate any facts warranting a determination that the proposed severance should be granted given that Local 245 did not provide any evidence showing that Local 246 had a record of unstable labor-management relations or that Local 246 had provided irresponsible representation; and given that Local 246 did provide evidence demonstrating that it has represented the petitioned-for employees since 2015.

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Appearances:

For the Public Employer,
(Scott W. Carbone, Assistant Corporation Counsel)

For the Petitioner,
Castronovo & McKinney, LLC, attorneys
(Thomas A. McKinney, of counsel)

For the Intervenor,
Paul W. Mackey, Attorney-at-Law, attorneys
(Paul W. Mackey, of counsel)

DECISION

On December 14 and 20, 2018, Jersey City Public Employees, Inc., Local 245 (Local 245) filed a representation petition and amended petition seeking to represent "75 Parking Authority

members" employed by the City of Jersey City (City).^{1/} Jersey City Public Employees, Inc., Local 246 (Local 246) is identified in the petition as the current majority representative. It opposes the petition.

On December 28, 2018, we sent correspondence to the City, with a copy to Local 245, notifying them of the petition; scheduling an investigatory conference with a Commission staff agent; and requesting certain materials from the City.

On January 3, 2019, Local 246 filed a letter seeking to intervene on the petition based upon its recently expired collective negotiations agreement (CNA) with the City covering the petitioned-for employees. N.J.A.C. 19:11-2.7(b). Local 246 does not consent to an election and requests that the petition be dismissed, maintaining that severance of the petitioned-for employees from the existing unit is inappropriate.

Also on January 3, 2019, a Commission staff agent sent correspondence to the City, Local 245, and Local 246 requesting position statements by January 11, 2019.

On January 9, 2019, Local 246 filed a letter reiterating its opposition to the petition for the reasons set forth above.

^{1/} Initially, Local 245 sought certification by card check to represent "50 Parking Authority members" and the petition was accompanied by authorization cards. Local 245's amended petition seeks certification by election.

On January 11, 2019, the City filed a letter declining to take a specific position regarding whether an election should be held, but asserted generally that employees should determine which employee organization, if any, shall represent them for purposes of collective negotiations.

On January 14, 2019, a Commission staff agent issued a letter to the City, Local 245, and Local 246 requesting detailed facts about the dissolution of the Jersey City Parking Authority (JCPA); when the City became the public employer of JCPA employees; when the City voluntarily recognized Local 246 as the majority representative of the former JCPA employees and under what circumstances; the titles of all former JCPA employees that were subsequently included in negotiations units represented by either Local 245 or Local 246; whether Local 245 is seeking to "sever" the petitioned-for unit from the unit represented by Local 246, etc. The staff agent solicited certifications from persons with personal knowledge of the information sought, together with any exhibits.

On January 15, 2019, the City filed a certification of Mary F. Paretti (Paretti), Director of the City's Parking Enforcement Division (PED) and prior Chief Executive Officer of the Jersey City Parking Authority (JCPA).

Also on January 15th, Local 246 filed copies of "New Hire and Governmental Transfer" forms submitted to the Civil Service

Commission by the City in January, 2015 for PED employees who previously worked for JCPA; and copies of dues authorization cards that were signed on March 13, 2015 by PED employees that previously worked for JCPA indicating their desire to be represented by Local 246.

On January 18th, we granted Local 246's request to intervene in this matter. N.J.A.C. 19:11-2.7(b).

Also on January 18th, the Commission staff agent solicited additional facts and certifications from the City, Local 245, and Local 246 regarding the represented/unrepresented status of the petitioned-for employees upon becoming City employees; the inclusion of those employees in a unit represented by Local 246, including facts showing that Local 246 negotiated provision(s) in a collective negotiations agreement regarding the petitioned-for employees and instances in which that agreement was administered to those employees with respect to wages, benefits, discipline, etc.

On January 22, 2019, in response to the second request for information, Local 246 filed a letter together with exhibits and the certification of its President, Julio Cordero, Jr. (Cordero).

On the same date, the Commission staff agent provided the parties several Commission cases regarding the matter of "severance" of a negotiations unit; Jefferson Tp. Bd. of Ed.,

P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971); Fair Lawn Bor., D.R. No. 2013-4, 39 NJPER 235 (¶81 2012), aff'd P.E.R.C. No. 2013-50, 39 NJPER 300 (¶100 2013); and Camden Cty., D.R. No. 81-3, 6 NJPER 415 (¶11209 1980).

On January 30, 2019, in response to the second request for information, Local 245 filed a letter asserting that it was denied the right to intervene or represent former JCPA employees when they became City employees because they were simply "assigned" to Local 246; and that regardless, Local 246 has failed to represent former JCPA employees.

Also on January 30th, the City filed a letter referencing its previously-filed position statement, Paretti's Certification, and Cordero's Certification.

On January 31, 2019, Local 246 filed a letter, asserting that it has represented former JCPA employees in grievances, Civil Service appeals, Office of Administrative Law (OAL) and disciplinary matters, and labor contract enforcement and administration.

Also on January 31, 2019, Local 245 filed an email offering to provide supplemental certifications about Local 246's failure to represent former JCPA employees.

We have conducted an administrative investigation into this matter to determine the facts. The disposition of the petition is properly based upon our administrative investigation. No

substantial and disputed material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2, -2.6. I find the following facts.

On February 27, 2014, representatives of Local 245 and the City signed a collective negotiations agreement (CNA) effective from July 1, 2011 through December 31, 2014. On February 14, 2018, the City's governing body approved a successor memorandum of agreement (MOA) extending from January 1, 2015 through December 31, 2019. Article 1 of Local 245's expired CNA, entitled "Recognition," provides:

A. The City hereby recognizes the Union as the exclusive representative on behalf of the following employees in the City's employ, in accordance with the designated jurisdiction of the said Union.

1. Department of Public Works; all Divisions;
2. Department of Water, but excluding the Division of Billing and Collections;
3. Department of Recreation; all divisions;

B. Excluded from this unit shall be employees statutorily excluded by the New Jersey Employer/Employee Relations Act, those represented in other bargaining units, and all employees working less than twenty (20) hours per week.

C. It is agreed that employees who are transferred into departments or divisions for which Local 245 is not the exclusive representative shall cease to be members of Local 245 and shall become members of that union, if any, covering the employee in the department or division into which the employee has been reassigned.

Local 245's broad-based unit does not include the petitioned-for employees.

On April 9, 2014, the State of New Jersey, Department of Community Affairs, Local Finance Board approved the City's application to dissolve the Jersey City Parking Authority (JCPA). On November 12, 2014, the City's governing body voted to dissolve the JCPA and consolidate its functions within the City's Department of Public Safety (Ordinance 14-017).

Mary F. Paretto (Paretto), Director of the City's Parking Enforcement Division (PED) and prior Chief Executive Officer of the JCPA, certifies that "the vast majority of non-management, non-supervisory [JCPA] employees . . . were hired by the City [as PED employees] on or about January 1, 2015." Paretto also certifies that "PED employees . . . became members of Local 246 on or about January 1, 2015."^{2/} According to Paretto, "[the] City voluntarily chose to recognize the new non-management, non-supervisory PED employees as members of Local 246 because in January 2015 . . . the recognition clause in . . . Local 246's [CNA] with [the] City included all civilian members of the City's Public Safety Department and it was the City's understanding that

^{2/} Paretto certifies that "upon dissolution, former non-management employees of the JCPA became members of either . . . Local 246 or . . . Jersey City Supervisors Association;" "no former employees of the JCPA became members of Local 245." According to Paretto, "[the] City voluntarily recognized these unions and no elections were held."

these employees desired to be represented by Local 246 at that time." Paretti certifies that "not all of the current PED employees identified in Article 35 were former JCPA employees." According to Paretti, "currently 34 former JCPA employees are now employed in the PED and would fall under Article 35"; "36 current non-management, non-supervisory PED employees were previously employed by the JCPA in a similar position and would likewise fall under Article 35."

Julio Cordero, Jr. (Cordero), President of Local 246, certifies that Local 246 is a "broad based unit of . . . approximately 620 employees in total." According to Cordero, "[i]n March of 2015, upon notification from the Business Administrator Robert Kakoleski and the Personnel Department at the time, Local 246 responded . . . to have the [PED] employees sign dues check off cards for Local 246 to become members of same as their bargaining agent and representative as a Union." Cordero certifies that "[a]ll 54 newly hired employees at the time signed cards."

On February 2, 2017, representatives of Local 246 and the City signed a CNA extending from January 1, 2015 through December 31, 2018. Article 1 of Local 246's expired CNA, entitled "Recognition," provides:

A. The City hereby recognizes Local 246 as the exclusive representative on behalf of the following non-management employees in the following departments in the City's employ in

accordance with the designated jurisdiction of the said Union.

- (1) Department of Administration/Finance/Mayor's Office;
- (2) Department of Law (non-professional employees only);
- (3) Department of Public Safety (non-uniformed employees only);
- (4) Department of Health and Human Services (except Rodent Control);
- (5) Department of Housing, Economic Development and Commerce;
- (6) Office of the City Clerk;
- (7) Office of the Tax Assessor.

B. Excluded from this unit shall be employees statutorily excluded by the New Jersey Employer-Employee Relations Act, those represented in other bargaining units, and all employees working less than twenty (20) hours per week.

C. It is agreed that employees who are transferred into departments or divisions for which Local 246 is not the exclusive representative shall cease to be members of Local 246 and shall become members of that union, if any, covering the employees in the department or division into which the employee has been reassigned.

Article 35 of Local 246's expired CNA, entitled "Parking Enforcement Division Employees," provides certain terms and conditions of employment specifically applicable to PED employees.^{3/} Cordero certifies that "[i]n addition to the unique

^{3/} Paretti certifies that "current PED employees identified in Article 35 of the [CNA] between the City and Local 246 were previously represented by the following unions while employees of JCPA:" Amalgamated Local 1931, AFL-CIO Affl., I.U.A.N. & P.W., as successor to Production Workers Union, Local 148 or United Industrial, Service, Transportation,
(continued...)

working conditions and scheduling issues only applicable to [PED] employees under Article 35 . . . , the contract negotiated by Local 246 provided for wage increases for all employees in the broad based Local 246 unit, including [PED] employees," as follows:

- \$1,125.00 effective and retroactive to January 1, 2015 the date of hire of [PED] employees;

- \$1,125.00 effective January 1, 2016 and applied to the base rate of the employees earned on December 31, 2015;

- \$1,400.00 effective January 1, 2017 and applied to the base rate of the employees earned on December 31, 2016;

- \$1,500.00 effective January 1, 2018 applied to the base rate of the employees earned on December 31, 2017.

Cordero also certifies:

[I]n addition to the wage increases negotiated by Local 246 for [PED] employees, as part of their inclusion in the broad based unit of Local 246, the details of the terms and conditions of employment for medical and prescription coverage with newly established co-pays and maximum co-pay amounts, sick and vacation leave, unpaid leaves of absence, longevity, bereavement leave, minor discipline only for just cause, personal days, and the inclusion of [PED] employees in an incentive system, were all negotiated for

3/ (...continued)

Professional and Government Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Water District/NMU (AFL-CIO). According to Paretti, "Any labor agreements between these unions and the JCPA expired on December 31, 2014."

with the City on behalf of employees in the [PED] and all other employees included in the broad-based unit of Local 246.

Cordero also certifies that "[s]ince January 1, 2015, [he has] been involved with Mary Paretti, Director of the Parking Enforcement Division, in resolving issues with Local 246 members before discipline is issued, explaining scheduling when employees were asked to work overtime when needed, and generally negotiating and implementing Article 35 for the [PED] employees." According to Cordero, he has represented PED employees in various matters since January 2015, including disciplinary actions and terminations, grievance arbitrations, Civil Service appeals, departmental hearings and hearings at OAL, human resource matters regarding training and proper use of equipment, labor disputes filed with the Public Employment Relations Commission, and retirement disputes filed with the Public Employees Retirement System.^{4/} Cordero also certifies that with respect to PED employees, he has answered questions during union meetings, provided help when they needed to utilize the Employee Assistance Program or when they were assaulted on the job, and assisted when

^{4/} The City represents that Local 246 "represented a City employee in defense of disciplinary charges brought under the New Jersey Administrative Code in the matter of City of Jersey City v. Khan, OAL Dkt. No. CSV-04385-2016N . . . [which] was a removal action that resulted in a negotiated settlement."

they were involved in motor vehicle accidents. According to Cordero, Local 246 has

. . . represented [PED] employees on issues that directly impact their terms and conditions of employment, such as changes in City policy eliminating health and prescription benefits for employees in a no pay status after 30 days . . . , lack of immediate reinstatement to employment upon the downgrade of a criminal charge to a disorderly persons offense, failure of the City to follow Civil Service Commission regulations, failure of the City to follow negotiated disciplinary procedures, and numerous other miscellaneous constant ongoing issues with the City that directly impact the [PED] employees, just not exclusively.

Cordero certifies that "[b]efore the filing of the [instant] representation petition, Local 246 had commenced the process of negotiating a successor contract to cover the period January 1, 2019 to December 31, 2022 and the City had agreed to reopen the existing labor agreement for this purpose as the current agreement contains a continuation provision unless the parties agree to reopen."

ANALYSIS

Voluntary Recognition

N.J.A.C. 19:11-3.1, entitled "Recognition as exclusive representative," provides "a mechanism by which a public employer may recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiations unit without Commission intervention."

Fair Lawn Bor., D.R. No. 2013-4, 39 NJPER 235 (¶81 2012), aff'd P.E.R.C. No. 2013-50, 39 NJPER 300 (¶100 2013) (citing N.J.A.C. 19:11-3.1(a)^{5/}). The Commission has observed that although “[p]arties may best ensure the protections of the Act by utilizing [our] certification or recognition procedures to achieve status as the majority representative of a collective negotiations unit . . . nothing in the Act requires parties to use those procedures.” Gloucester Cty., P.E.R.C. No. 2011-69, 37 NJPER 141, 143 (¶42 2011) (accretion of EMTs into existing, County-wide, broad-based unit was appropriate; by virtue of the County and CWA signing the collective negotiations agreement on November 15, 2007 with the EMT title included in the contractual recognition clause, the parties achieved voluntary recognition of the EMTs as members of the County-wide, broad-based unit.)

In early 2015, the City voluntarily recognized Local 246 as the majority representative of non-supervisory PED employees, including former JCPA employees. The facts also permit an inference that the newly-employed PED group was recognized to have been included in Local 246's broad-based unit. Later, by virtue of the City's and Local 246's execution of their 2015-2018

5/ N.J.A.C. 19:11-3.1(a) provides that “[w]henver a public employer has been requested to recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiations unit, the public employer and the employee organization may resolve such matters without the intervention of the Commission.”

collective negotiations agreement in February, 2017, Local 246 was formally recognized as exclusive representative of civilian employees in the Department of Public Safety (Article 1) and it negotiated (in Article 35) terms and conditions of employment for PED employees, specifically. Under these circumstances, I find that Local 246 became the majority representative of non-supervisory PED employees included in its broad-based unit.

If, for some reason, the City had a good faith doubt concerning Local 246's existing/continuing majority status at any time from 2015 until February, 2017, it could have filed a timely petition for certification of public employee representative (RE) or, in response to a legal challenge, demonstrated a basis for such doubt through objective considerations. See N.J.A.C. 19:11-1.1(a)2^{6/}; N.J.A.C. 19:11-1.4(a)2^{7/}. Similarly, Local 245

6/ N.J.A.C. 19:11-1.1, entitled "Petitions," provides in a pertinent part:

(a). . .2. A petition for certification of public employee representative (RE) may be filed by a public employer alleging that one or more public employees, group of public employees, individuals or employee organizations have presented to such employer a claim to be recognized or continue to be recognized as the exclusive representative and the public employer has a good faith doubt concerning the majority status of the representative of its employees.

7/ N.J.A.C. 19:11-1.4, entitled "Petition for certification filed by a public employer," provides in a pertinent part:

(continued...)

doesn't contend or provide any documents showing that it raised a concern about the petitioned-for employees with the City regarding Local 246's existing/continuing majority status at any time beginning in 2015. Local 245 did not file its representation petition and amended petition until December, 2018. In the absence of a timely RE petition and/or any demonstration of a good faith doubt concerning Local 246's existing/continuing majority status from 2015-2017, the City was obligated to maintain the status quo with respect to unit members' terms and conditions of employment. See N.J.S.A. 34:13A-5.3 ("[p]roposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established"); Essex Cty., D.U.P. No. 2003-7, 29 NJPER 77 (¶21 2003) (holding that "terms and conditions of employment of the employees remain in effect until the new [majority] representative negotiates a successor contract . . . or obtains one through interest arbitration, if applicable").

7/ (...continued)

(a) A petition for certification of public employee representative filed by a public employer shall state that a claim for representation or continued representation has been made by one or more public employees, groups of public employees, individuals or employee organizations and that the public employer has a good faith doubt concerning the majority status of the representative of its employees.

Accordingly, I find that Local 246's existing, broad-based unit of City employees includes the petitioned-for employees.

Severance

The Commission has held that "severance of a group or groups of employees from a broad-based unit may occur under very limited circumstances." City of Jersey City, D.R. No. 2013-11, 40 NJPER 14 (¶7 2013). "Severance is appropriate only where there is a record of unstable labor-management relations, or where the majority representative has not responsibly represented its unit employee." Somerville Bor., D.R. No. 2005-2, 30 NJPER 382 (¶121 2004). In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248, 249 (¶61 1971), the Commission explained:

The underlying question is a policy one: Assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to redefinition simply on a showing that one subcategory of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

The Commission has found "unit instability where the existing unit includes employees supervising other unit

employees, creating a conflict of interest." Somerville Bor., (citing Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987)). "A claim of irresponsible representation, which could result in a dramatic change in the negotiations relationship between the employer and employees, will be carefully scrutinized in the context of the entire relationship rather than isolated occurrences." Cape May Cty. (Sheriff), D.R. No. 99-16, 25 NJPER 349, 352 (¶30148 1999) (citing Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18026 1986)). For example, "[a]n organization which fails to advise employees of the reasons for refusing to submit grievances to arbitration is acting in an arbitrary manner and is not affording responsible representation." Camden Cty., D.R. No. 81-3, 6 NJPER 415, 417 (¶11209 1980).

When Local 245 filed its representation petition and amended petition in December 2018, the petitioned-for employees had already been included in Local 246's existing, broad-based unit of City employees from as early as January, 2015 and not later than February, 2017 (when the CNA was signed). Despite the Commission staff agent's requests for information (i.e., January 14 and 18, 2019) and provision of legal authority regarding severance (i.e., January 22, 2019), Local 245 did not provide any evidence showing that Local 246 has a record of unstable labor-management relations or that Local 246 has provided irresponsible

representation. Conversely, Local 246 has provided evidence demonstrating that it has represented the petitioned-for employees since 2015 (e.g., negotiating a CNA with certain terms and conditions of employment specifically applicable to PED employees; representing unit members in a variety of disciplinary, grievance, and Civil Service matters; initiating negotiations for a successor agreement; etc.).

Accordingly, I find that Local 245 has failed to demonstrate any facts warranting a determination that the proposed severance should be granted. See City of Jersey City, D.R. No. 2013-11, 40 NJPER 14 (¶7 2013).

ORDER

The petition and amended petition are dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: July 18, 2019
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 July 29, 2019.