

D.R. NO. 2023-8

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

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 Director of Representation clarifies a collective negotiations unit of employees of the New Jersey Sports and Exposition Authority ("NJSEA") to include part time people ambulance drivers at the Meadowlands Sports Complex. The petition was filed by the NJSEA and sought to clarify whether the employees were properly included in the bargaining unit represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, Local No 560 ("Local 560"), or the Fire and EMT Local Union No. 1412 ("Local 1412"). The Director determined 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 Local 1412's CNA. The Director further determined that Local 560 and the NJSEA agreed to include the subject employees as part of the Local 560 unit.

D.R. NO. 2023-8

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

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.

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)

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

DECISION

On April 4, 2022, the New Jersey Sports and Exposition
Authority ("NJSEA") filed a clarification of unit petition
("petition") seeking to clarify whether people ambulance drivers

("PADs") at the East Rutherford Sports Complex ("Sports Complex" or "Meadowlands") belong to one of two units: the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, Local No. 560 ("Local 560"), or the Fire and EMT Local Union No. 1412 ("Local 1412"). The petition explains that the NJSEA is a party to collective negotiations agreements ("CNA's") with Local 560 and Local 1412. The petition asserts that changes at the Sports Complex, including the opening of American Dream^{1/} and subsequent negotiation sessions between the Unions and NJSEA, have resulted in Local 560 and Local 1412 claiming rights to exclusive representation of the Sports Complex's PADs. The petition seeks to clarify whether the PADs belong to Local 1412's or Local 560's unit.

On May 27, 2022, the NJSEA filed a position statement. It explains that "[f]or 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. NJSEA asserts that it has historically assigned Local 560 ambulance drivers for "paid live events" at the Meadowlands, and has assigned Local 1412 ambulance drivers at all other times. The issue "came to a head" during the latest round of negotiations with Local 560, when Local 560 asserted

^{1/} American Dream is a retail and entertainment complex in the Meadowlands Sports Complex.

that (pursuant to its CNA) it should be the exclusive representative of PADs at the Sports Complex. NJSEA states that, through negotiations, it "struck a compromise" with Local 560 ". . . wherein the parties agreed to guarantee at least four part-time Local 560 EMT ambulance drivers, each of whom would be guaranteed a minimum of 16 hours of work per week, with the intent being that they would be assigned to drive ambulances at the American Dream, which Local 560 argues is a paid live event."^{2/} NJSEA asserts that, prior to reaching this agreement with Local 560, it consulted with Local 1412, which did not object to additional hiring or hours for Local 560 members. However, the NJSEA states that it ultimately refrained from reassigning any work at the Sports Complex after Local 1412 filed a grievance and unfair practice charge regarding the work at issue.^{3/} NJSEA emphasizes that it has no preference between Local 560 and Local 1412, but rather seeks a determination as to which union is appropriate concerning the employees at issue.

On May 27, 2022, Local 560 filed a position statement. Local 560 explains that it ratified a new CNA with the NJSEA in

^{2/} NJSEA states that individuals must pay a fee to enter the water park and amusement park located within American Dream.

^{3/} Local 1412's unfair practice charge, filed on March 4, 2022 (docketed as CO-2022-186), alleges that the NJSEA unilaterally altered terms and conditions of employment, including by transferring work to employees represented by a different labor union.

February of 2022 which governs terms and conditions of employment for unit members for the period of December 1, 2020 through November 30, 2023. In the new CNA, the recognition clause (Article 1) was modified to make clear that Local 560 represents “. . . all Authority employees who are engaged in the operation of . . . people ambulances at the East Rutherford Sports Complex on a part-time basis, as further provided in Article 3, Section 5” Article 3, Section 5 of the CNA guarantees that NJSEA will maintain at least of four part-time Local 560 PADs, each of whom is guaranteed a minimum of 16 hours of work per week. Local 560 asserts 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.

On May 17, 2022, Local 1412 filed a position statement. Local 1412 asserts that, prior to NJSEA’s ratification of a new CNA with Local 560, Local 560 unit members only drove ambulances during paid events at the Sports Complex. Local 1412 denies being consulted prior to NJSEA’s ratification of the new Local 560 CNA. Rather, Local 1412 states that it filed an unfair practice charge upon learning that the NJSEA assigned Local 560 members to operate ambulances outside the “paid events” schedule. Local 1412 also asserts that the assignment of Local 560 members to additional routes occurred three days before Local 1412 and NJSEA were scheduled to meet for negotiations for a successor

CNA, and therefore, it believes NJSEA acted “. . . to intimidate [Local 1412] into accepting a below market contract offer” Local 1412 also argues that Local 560's recognition clause, which specifically identifies operators of people ambulances, is wrongfully “premised upon a distinction between EMTs who drive ambulances,” and those who do not in violation of the state regulations defining ambulance operator duties. Local 1412's recognition clause, it asserts, “. . . simply covers all EMT's employed by the authority”

On September 7, 2022, the Commission 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.

Based on our review of the parties' submissions, no substantial or material factual issues require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.6. Based on these submissions, I make the following:

FINDINGS OF FACT

NJSEA is a party to CNA's with both Local 1412 and Local 560. The recognition clause (Article 1) of Local 1412's CNA

(covering the term of February 1, 2016 through January 31, 2021)^{4/} provides:

The Employer hereby recognizes and acknowledges that the Union is the exclusive 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 CNA (covering the term of December 1, 2020 through November 30, 2023) provides:

The Employer hereby recognizes and acknowledges that the Union is the exclusive and authorized collective bargaining representative for all 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].

^{4/} NJSEA states that it is currently in negotiations with Local 1412 for a successor CNA.

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"

The language in Local 560's CNA specifically identifying the part-time PADs did not appear in prior contracts between the parties. The recognition clause contained in Local 560's 2015-20 CNA with NJSEA states, in part, that Local 560 is the exclusive representative for all ". . . employees employed by the Authority who are engaged in the operation of . . . people ambulances"

Local 560's unit includes approximately 3-4 PADs, while the Local 1412 unit is comprised of approximately 7 full time and 40 part time EMTs, as well as various other titles in the Fire and EMT Department, including Firefighters, EMT Intake Specialists, and EMT Field Medics. While NJSEA asserts that duties performed by Local 1412 and Local 560 members are the same, Local 1412 maintains that "Local 560 Teamster EMTs only drive ambulances, and rarely participate in patient care."

ANALYSIS

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 clause 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) ("Clearview"). Clarification proceedings "resolve questions concerning the composition of a unit by interpreting the language which defines the existing unit in order to determine whether particular titles are includable or should be excluded from a unit whose representational status is already established." Clearview, 3 NJPER at 250. In Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984), the Director explained that "[t]he Commission's clarification of unit procedure is for the purpose of identifying unit employees whom the parties have intended to be encompassed by the unit definition."

Where the parties agree to include only specific titles in a unit, we have denied requests seeking to add unidentified titles to the unit by means of a unit clarification petition. Passaic Cty. Bd. of Social Services, D.R. No. 98-1, 23 NJPER 438 (¶28201 1997) (Director declines to include professional employees in a unit defined by a recognition clause that did not set forth generic language encompassing professional employees, but instead listed represented titles that did not include petitioned-for titles); East Orange Bd. of Ed., D.R. No. 80-25, 6 NJPER 114 (¶11061 1980) (Director declines to add summer school teachers to a unit defined by a recognition clause that specifically

identified included job titles and rejected union's argument that the identified job category of "classroom teachers" included summer school teachers). We have reached this conclusion even in cases where petitioned-for employees perform the same work as unit employees. Newark Housing Authority, D.R. No. 95-22, 21 NJPER 132, 133 (¶26082 1995). In Mercer Cty. Special Services Bd. of Ed. ("Mercer Cty."), the Director explained:

[I]f the parties have negotiated a contract that includes without reservation certain persons or titles, the Commission must assume that the written agreement is the result of good faith negotiations in which the parties have imparted finality to their give and take. A party to the agreement should not be permitted to gain additional profit from resort to the Commission's processes after the contract is executed. [D.R. No. 2000-3, 29 NJPER 331, 333 (¶102 1999), quoting Clearview, 3 NJPER at 215-252].

In this case, the relevant recognition clause language supports the determination that the petitioned-for employees are properly included in the Local 560 bargaining unit. While Local 560's recognition clause specifically identifies employees engaged in operating "people ambulances at the [Sports Complex] on a part time basis," Local 1412's recognition clause contains more generic language, identifying "all the employees employed by the Employer in its Fire and EMT Department" Indeed, there is no dispute that Local 1412's clause covers non-EMT employees of NJSEA, such as Firefighters. Though Local 1412's

generic recognition language encompasses EMTs, Local 560's language is more specific in identifying the employees subject to the instant petition. As noted above, "if the parties have negotiated a contract that includes without reservation certain persons or titles, the Commission must assume that the written agreement is the result of good faith negotiations" Mercer Cty., 29 NJPER 333, quoting Clearview, 3 NJPER at 215-252. Here, the specific language identifying the petitioned-for employees as part of Local 560's unit must be given priority over the general language in Local 1412's CNA encompassing similar employees.^{5/}

It is undisputed that Local 560 and NJSEA ratified a contract in February of 2022 covering terms and conditions of employment for Local 560 members from December 1, 2020 through November 30, 2023. During negotiations for the new CNA, the parties "struck a compromise" and "agreed to guarantee at least four part-time Local 560 EMT ambulance drivers, each of whom

^{5/} The preference for specific over general language when the two conflict is consistent with canons of statutory construction followed by the New Jersey Supreme Court in contexts outside of labor relations. See Kingsley v. Wes Outdoor Adver. Co., 55 N.J. 336, 339 (1970) ("When there is a conflict between a general and a specific act on the same subject, the latter shall prevail."); New Jersey Transit Corp. V. Borough of Somerville, 139 N.J. 582, 591 (1995) ("It is a well established precept of statutory construction that when two statutes conflict, the more specific controls the more general.").

would be guaranteed a minimum of 16 hours per week, with the intent being that they would be assigned to drive ambulances at the American Dream." As a result, the parties agreed to amend the recognition clause of the new CNA.^{6/} The Commission is required to assume that the CNA resulting from those negotiations, including the language guaranteeing a minimum number of Local 560 ambulance drivers and working hours, "is the result of good faith negotiations in which the parties have imparted finality to their give and take."^{7/} Mercer Cty., 29 NJPER 331, 333 (¶102 1999), quoting Clearview, 3 NJPER at 215-

^{6/} As noted above, Local 560's 2020-23 CNA provides that Local 560 represents ". . . all Authority employees who are engaged in the operation of . . . people ambulances at the East Rutherford Sports Complex on a part-time basis, as further provided in Article 3, Section 5" The recognition clause contained in Local 560's prior CNA (covering the term of December 1, 2011 through November 30, 2015) states, in part, that Local 560 represents all ". . . employees employed by the Authority who are engaged in the operation of . . . people ambulances"

^{7/} Local 560's representational status for PADs at the Sports Complex is also well established. There is no dispute that "for decades" Local 560 members have driven ambulances during paid live events at the Sports Complex, and that part of the underlying dispute concerns whether assigned routes at American Dream constitute paid live events. NJSEA states that attendees of American Dream must pay a fee to enter the water park and amusement park, and Local 560 maintains that such routes, therefore, are paid live events. During negotiations for the 2020-23 CNA, NJSEA apparently agreed with Local 560's position, since it guaranteed to maintain a minimum number of Local 560 drivers and working hours, again, ". . . with the intent being that [Local 560 members] would be assigned to drive ambulances at the American Dream."

252; see also Newark School District, D.R. No. 2016-9, 43 NJPER 19 (¶6 2016), req. for rev. denied at P.E.R.C. No. 2017-16, 43 NJPER 115 (¶34 2016).

In the context of a CU petition, we are constrained to recognize those titles the parties expressly agreed to as part of their negotiations unit. Here, Local 560 and NJSEA did just that by expressly agreeing to include the part time PADS in their unit.

For these reasons, Local 560's unit is clarified to include the PADS in Local 560's unit, and Local 1412's position that the PADS are part of its unit is rejected.

ORDER

Local 560's unit is clarified to include people ambulance drivers at the Sports Complex.

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

DATE: January 12, 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 January 24, 2023.