

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY MEDICAL CENTER,

Public Employer,

-and-

INTERNATIONAL BROTHERHOOD OF  
LAW ENFORCEMENT AND SECURITY  
OFFICERS,

Docket No. RO-81-191

Petitioner,

-and-

COUNCIL 52, LOCAL 2254, AMERICAN  
FEDERATION OF STATE, COUNTY, AND  
MUNICIPAL EMPLOYEES, AFL-CIO,

Intervenor.

SYNOPSIS

In a representation case, the Chairman of the Commission, pursuant to authority delegated from the full Commission, denies a request for review of a decision of the Director of Representation. The Petitioner, the International Brotherhood of Law Enforcement and Security Officers, sought to sever from an existing collective negotiations unit, a unit comprised of security guards employed by the Jersey City Medical Center.

In agreement with the Director, the Chairman finds that the Petitioner failed to demonstrate that the existing relationship between the incumbent union and the employees involved in the instant petition was unstable or that representation of the employees in question by AFSCME had been inadequate. Accordingly, the Director's decision dismissing the Petition is upheld.

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Appearances:

For the Public Employer, John Doyle, Personnel Director

For the Petitioner, Arnold E. Brown, Esq.

For the Intervenor, Michael Lanni, Executive Director

DECISION ON REQUEST FOR REVIEW

On February 13, 1981, a Petition for Certification of Public Employee Representative was filed with the New Jersey Public Employment Relations Commission by the International Brotherhood of Law Enforcement and Security Officers (the "Petitioner") seeking a unit comprised of all regular full and part-time security guards employed by the Jersey City Medical Center (the "Medical Center").

Those employees which the Petitioner sought to represent are presently represented by Council 52, Local 2254, American Federation of State, County, and Municipal Employees, AFL-CIO ("AFSCME") in a collective negotiations unit of all blue and white

collar employees of the Medical Center. The Medical Center and AFSCME objected to the severance of the security guards from the existing unit and would not consent to an election for the petitioned for unit thus giving rise to the dispute.

The Director of Representative conducted an investigation into the dispute and allegations set forth in the Petition in order to determine the validity of the petition, pursuant to N.J.A.C. 19:11-2.6(a).<sup>1/</sup> AFSCME, the holder of the recently expired contract for a negotiations unit which included the petitioned for employees,<sup>2/</sup> was granted intervenor status in the petition pursuant to N.J.A.C. 19:11-2.7.<sup>3/</sup>

The Director issued his determination on April 15, 1981, In re Jersey City Medical Center, D.R. No. 81-36, 7 NJPER \_\_\_\_ (¶ \_\_\_\_ 1981), and found that the disposition of this matter was properly based upon his administrative investigation and that there appeared to be no substantial and material factual issues existing which could be more appropriately resolved at a hearing. The Director held that the Petitioner had not met its obligation pursuant to N.J.A.C. 19:11-2.6, to present documentary and other evidence in support of its position that the existing relationship between the incumbent union and employees involved in the instant

1/ N.J.A.C. 19:11-2.6(a) reads in part: "After a petition has been filed under this subchapter, if no agreement for consent election has been reached pursuant to N.J.A.C. 19:11-4.1, the director of representation shall conduct a further investigation of the matters and allegations set forth therein...."

2/ The contract includes "all employees employed within the classifications known as 'White Collar' and 'Blue Collar' employees."

3/ N.J.A.C. 19:11-2.7 permits intervention based upon a recently expired agreement covering petitioned for employees.

petition was unstable or that AFSCME had not provided responsible representation for the security guards in relation to other members of the unit.<sup>4/</sup> For these reasons, the petition was dismissed.

Pursuant to N.J.A.C. 19:11-8.1, the Petitioner, on May 7, 1981, filed a request for review of the Director's decision, alleging that, (a) a substantial question of law was raised concerning the interpretation or administration of the Act in not conducting a hearing, or further investigating evidence which the Petitioner claimed to be available to the Director, (b) the Director ignored the availability of testimony on issues concerning lack of proper representation, an unstable union/security guard relationship, and lack of responsible representation by the incumbent organization and that this prejudicially affected the Petitioner's rights, and (c) there existed compelling reasons for reconsideration of the Commission's policy on severance of certain unit members from the incumbent union into a different negotiating unit.

In its request for review, the Petitioner has merely argued that the Commission's grounds for granting a request for review as stipulated in N.J.A.C. 19:11-8.2<sup>5/</sup> have been met and has not supported these grounds other than by insisting that it

<sup>4/</sup> N.J.A.C. 19:11-2.6(c) reads in part: "...The Petitioner, the public employer, and any intervenor(s) shall present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in the petition."

<sup>5/</sup> N.J.A.C. 19:11-8.2 reads: "The commission shall grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds: (1) That a substantial question of law is raised concerning the interpretation or administration of the act or these rules; (2) That the director of representation's decision on a substantial factual issue is clearly erroneous on  
(continued)

has supporting evidence which it could disclose at a hearing.

In an earlier Commission decision, In re Housing Authority of the City of Jersey City, P.E.R.C. No. 45 (1970), the Commission refused to consider a petitioner's exceptions to a Hearing Officer's Report because they did not comply with Section 19:11-7.3 of the Rules requiring that the exceptions specify the precise question of procedure, fact, law, or policy to which exceptions are taken, and identify that portion of the report to which objections were found. Similarly, I find the Petitioner's request for review to be equally defective. Section 19:11-8.3(a) and (b) of the Rules establish what is required as to the contents of a request for review. These contents do not exist in this instant matter. That Section states:

(a) A request for review must be a self-contained document enabling the commission to rule on the basis of its contents.

(b) With respect to grounds...(for granting a request for review), and other grounds where appropriate, said requests must contain a summary of all evidence and rulings bearing on the issues, together with page citations from the official transcript and a summary of argument. (emphasis supplied)

The instant request for review before the Commission is not a self-contained document which would enable the Commission to rule on its contents alone. There is no summary of all evidence and

5/ (Continued) the record and such error prejudicially affects the rights of the party seeking review; (3) That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or (4) That there are compelling reasons for reconsideration of an important commission rule or policy."

rulings bearing on the issues and there is no summary of argument upon which the Commission could base a decision.

In its request for review, the Petition primarily concerns itself with the Director of Representation's alleged failure to investigate evidence proffered by the Petitioner in support of its claim to have a hearing and the Director's failure to conduct a hearing on its claim of available testimony.<sup>6/</sup> Careful consideration has been given to all of the facts and issues raised herein and the Commission is satisfied with the Director of Representation's decision to dismiss the petition.

The Director's decision was based on standards established by the Commission which must be satisfied before an existing negotiating relationship can be disturbed involving employees in an appropriate collective negotiations unit. In In re Jefferson Township Board of Education, P.E.R.C. No. 61 (1971), the Commission stated:

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 re-definition simply on a showing

<sup>6/</sup> Presumably this testimony would only be available at a scheduled hearing and no evidence supporting the claims would be offered prior thereto.

that one sub-category 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.

On February 25, 1981, the Petitioner was advised by the Director that in the face of a longstanding history in the existing unit it had not offered evidence that the existing collective negotiations relationship was either unstable or that AFSCME had not provided responsible representation to the security guards. The Petitioner was provided an opportunity to submit documentary and other evidence, as well as a statement of position to establish any claim under the Jefferson Township standard. The Petitioner submitted a letter on March 2, 1981 merely restating in bald terms that the relationship was unstable and that AFSCME had not provided responsible representation and had discriminated against the guards. These statements were prefaced by a declaration stating that a hearing was required to determine these claims. There was no documentary and/or other evidence submitted to bolster these claims as was required by the Director in his February 25, 1981 communication other than an undocumented claim that:

The members of the security guard unit of employees have been attempting for nine years to secure a separate bargaining unit, It is prima facie proof that the relationship between the security guards and AFSCME is unstable and that the security guards are not satisfied with the type and quality of representation, if any, that AFSCME is providing.

The Director, in his decision, found this evidentiary proffer to be an insufficient basis to support a claim that the guards should be severed from the facially appropriate unit. The requirement to submit evidence in support of the petitioner's claim is a reasonable precondition to the further processing of its petition. The record shows that the Commission's rule was properly applied by the Director.

I agree with the decision of the Director on the grounds that the Petitioner simply has failed to satisfy the standards established to disturb a unit with an established bargaining history and although given the chance to on more than one occasion, it has chosen not to submit documentary and other evidence which would establish a claim under the Jefferson standard. The Petitioner's request for review also lacks the sufficient content upon which the Commission could rule in its favor.

Regarding the request for a hearing, the Director properly based his disposition of this matter upon the administrative investigation, it appearing that no substantial and material factual issues existed which could have more appropriately been resolved at a hearing. The Petitioner's reluctance to provide the Director with any evidence supporting its claim after being served adequate notice and opportunity, dictated that the matter be resolved upon the administrative investigation.

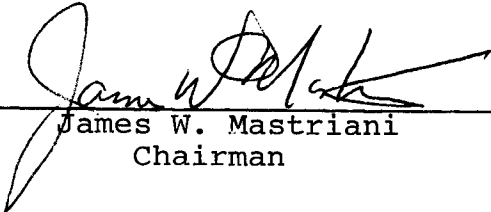
Having reviewed the Director's decision and the issues raised in the request for review, I find that no new questions of



law have been raised, that the Director's factual conclusions are supported by the record, that no prejudicial error has occurred, and, that there are no compelling reasons for a reconsideration of any rules or policies raised herein.

Accordingly, based upon the foregoing discussion, and in the absence of grounds as set forth in N.J.A.C. 19:11-8.2(a), I hereby deny the Request for Review, acting under authority delegated to the undersigned by the full Commission.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

DATED: June 24, 1981  
Trenton, New Jersey