

P.E.R.C. NO. 2019-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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 Public Employment Relations Commission denies the Jersey City Public Employees, Inc., Local 246's request for review of a Director of Representation decision certifying Local 245 as the exclusive representative of non-supervisory school traffic guards (STGs) employed by the City. Finding no compelling reason warranting review of the Director's determination, the Commission notes that the STG's did not accrete into Local 246 based on its recognition clause because STGs had been represented in a stand-alone unit since 1974, and Local 246's request to intervene failed because it did not submit the requisite showing of interest.

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 Public Employer, Scott W. Carbone, Assistant
Corporation Counsel

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

DECISION

On August 7, 2018, Jersey City Public Employees, Inc., Local 246 (Local 246) filed a request for review of D.R. No. 2019-2, 45 NJPER 146 (¶13 2018). In that decision, the Acting Director of Representation (Acting Director) ordered that Jersey City Public Employees, Inc., Local 245 (Local 245) be certified as the exclusive representative of all regularly employed, non-supervisory school traffic guards (STGs) employed by the City of Jersey City (City) based upon Local 245's submission of a sufficient number of authorization cards. The Acting Director determined that Local 245 was the only representative seeking to be the majority representative of the petitioned-for unit given

that the current majority representative, Jersey City School Traffic Guards Association (Association), and Local 246 failed to properly intervene. Local 245 has not filed a response to the request for review.^{1/}

Prior to Local 245 being certified as the representative of STGs, the Association represented all STGs employed by the City. The City and the Association were parties to an expired collective negotiations agreement (CNA) effective from January 1, 2012 through December 31, 2015.

Local 245 and Local 246 belong to the same parent union, Jersey City Public Employees, Inc. Local 245 and the City are parties to an expired CNA effective from July 1, 2011 through December 31, 2014 and a successor memorandum of agreement (MOA) in effect from the date of the parties' ratification/final approval through December 31, 2019. The recognition clause of the CNA provides that Local 245 is the exclusive representative of employees of three of the City's Departments (Department of Public Works, Department of Water, and Department of Recreation). Local 246 and the City are parties to a CNA in effect from January 1, 2015 through December 31, 2018. The recognition clause provides that Local 246 is the exclusive representative of

^{1/} On September 4, 2018, the City filed a request to stay implementation of D.R. No. 2019-2 pending disposition of Local 246's request for review. On September 11, the Commission Chair denied the City's request.

employees of seven of the City's Departments (Department of Administration/Finance/Mayor's Office, Department of Law (non-professional employees), Department of Public Safety (non uniformed employees), Department of Health and Human Services (except Rodent Control), Department of Housing, Economic Development, and Commerce, Office of the City Clerk, and Office of the Tax Assessor). Section B of both Local 245's and Local 246's recognition clause excludes, inter alia, employees represented by other bargaining units. Section C of both Local 245's and Local 246's recognition clause provides 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 employee in the department or division into which the employee has been reassigned."

On June 27, 2018, Local 245 filed the underlying card check petition, supported by the required number of authorization cards, seeking to represent all STGs employed by the City.^{2/} Local 245 identified the Association as the current majority representative for all school traffic guards.

On July 12, 2018, the Acting Director sent a letter to the City advising of Local 245's card check petition, soliciting

^{2/} On July 18, 2018, Local 245 submitted 25 additional authorization cards.

certain information, and requesting a certification of posting for an enclosed Notice to Employees. See N.J.A.C. 19:11-2.4. On July 19, the City filed a response indicating that Local 246 claimed an interest in representing the STGs. The City also opposed the proposed negotiations unit and objected to certification by card check.

On July 12, 2018, the Acting Director also sent a letter to the Association advising of Local 245's card check petition, soliciting certain information, and requesting that the Association submit a written application to intervene if it had an interest in representing the petitioned-for employees. See N.J.A.C. 19:11-2.7. In a letter dated July 18, the Association indicated that a petition by card check showed its willingness to have Local 245 become its representative going forward.

On July 20, 2018, Local 246 sent a letter to the Acting Director seeking leave to intervene in Local 245's card check petition; however, the letter did not include a showing of interest. See N.J.A.C. 19:11-2.7(c)^{3/}. Local 246 asserted that it was the incumbent employee organization entitled to represent

3/ N.J.A.C. 19:11-2.7(c) provides that "[a]n employee organization other than the incumbent representative seeking to intervene in a proceeding initiated by a petition for certification must submit a showing of interest of not less than 10 percent of the employees in the petitioned-for unit or not less than 30 percent of the employees in the unit it claims to be appropriate if it seeks to represent a unit different from that sought by the petitioner."

STGs along with all other civilian employees in the City's Department of Public Safety under a currently effective contract and that the proposed unit was not an appropriate unit from a community of interest perspective.

On July 23, 2018, Local 245 sent a letter to the Acting Director noting that Local 245 and Local 246 had recognition clauses in their respective CNAs that excluded employees represented in other units and that STGs were represented by another unit and wished to be represented by Local 245.

On July 30, 2018, the Acting Director issued D.R. No. 2019-2 granting Local 245's card check petition.

Local 246 makes numerous arguments, many of which flow from its assertion that the STGs should have accreted to its unit pursuant to the recognition clause in its CNA with the City that provides that it is the exclusive representative of Department of Public Works employees. It also asserts that it should have been permitted to intervene in this matter, and questions the conduct of Local 245 in obtaining authorization cards. It also argues that the Acting Director's decision raises issues as to its jurisdiction versus Local 245's jurisdiction.

Pursuant to N.J.A.C. 19:11-8.2, "[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.

We find no compelling reason warranting review of the Acting Director's determination. However, we will briefly address Local 246's arguments.

We reject Local 246's assertion that the STGs should have accreted into its existing unit by virtue of the recognition clause in its CNA with the City which provides that it is the exclusive representative of Department of Public Works employees.^{4/} The CNA's recognition clause excludes employees represented in other bargaining units. The STGs have been represented in another bargaining unit since 1974.^{5/} Local 245's certification as the exclusive representative of the STGs did not change the unit's status as a stand-alone unit. The STGs have existed as a stand-alone unit for over forty years, and remain a stand-alone unit under Local 245's representation. Local 245 was

4/ The City raises a similar argument in its September 4, 2018 submission.

5/ As noted by the Acting Director, the City and the Association are parties to a series of CNAs that originated in 1974 and continued through 2015. See D.R. at 5.

certified as the exclusive representative of a unit that includes the City's STGs only. See D.R. at 7-8. We further find that Local 246's accretion arguments run antithetical to public employees' right to freely choose their own representative. N.J. Constitution, Art. I, Para. 19; N.J.S.A. 34:13A-5.3; see also N.J.A.C. 19:11-3.1. Thus, the STGs were not accreted to Local 246's existing unit pursuant to the recognition clause in its CNA with the City.

With respect to Local 246's request to intervene, we agree with the Acting Director's determination that Local 246 failed to submit the required showing of interest. See D.R. at 5-7. In order to intervene in a representation petition seeking certification, an employee organization other than the incumbent representative must submit a showing of interest. N.J.A.C. 19:11-2.7(a-c). The Association, having served as the majority representative for the STGs since 1974, was the presumptive incumbent employee organization when the underlying card check petition was filed in 2018. As such, Local 246 was required to submit a showing of interest in order to properly intervene and it failed to do so.

Moreover, Local 246 has not provided any evidence that calls into question the validity of the authorization cards. "Absent the submission of substantial, reliable evidence that raises a legitimate and substantial doubt, executed authorization cards

are presumed valid.” N.J.A.C. 19:11-2.6(b); accord International Academy of Trenton Charter School, D.R. No. 2017-2, 43 NJPER 152 (¶46 2016), adopted P.E.R.C. No. 2017-24, 43 NJPER 175 (¶54 2016).

Finally, with respect to Local 246’s arguments as to its jurisdiction versus Local 245’s jurisdiction, we do not have the authority to resolve internal union matters and note that no evidence has been presented that Local 246 has made application to the parent union with regard to its jurisdictional claims.

Local 246’s request for review is denied as it has failed to meet the standards of N.J.A.C. 19:11-8.2.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: October 25, 2018

Trenton, New Jersey