

P.E.R.C. NO. 2020-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Public Employer,

-and-

JERSEY CITY PUBLIC EMPLOYEES, INC.,
LOCAL 245,

Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS UNION,
LOCAL 641,

Intervenor.

Docket Nos. CU-2016-027
CU-2016-028
CO-2016-221
CO-2016-236

SYNOPSIS

The Public Employment Relations Commission denies Local 245's request for review of a Director of Representation decision dismissing Local 245's clarification of unit petitions and related unfair practice charges seeking to clarify its unit to include former Jersey City Incinerator Authority (JCIA) employees represented by Local 641 and now employed by the City. The Commission finds that Local 245 has not identified any clearly erroneous substantial factual issue in the Director's decision. The Commission further finds that the Director's determination that there were no changed circumstances necessitating a clarification of unit was supported by the facts and legal precedent, and that Local 245 has failed to demonstrate any compelling reason warranting review of the Director's determination.

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, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, Jr., of counsel)

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

For the Intervenor, Kroll, Heineman, Carton, LLC, attorneys (Seth B. Kennedy, of counsel)

DECISION

On October 11, 2019, Jersey City Public Employees, Inc., Local 245 (Local 245) filed a request for review of D.R. No. 2020-7, __ NJPER __ (§ 2019). In D.R. 2020-7, the Director of Representation dismissed two clarification of unit petitions filed by Local 245 seeking to clarify its collective negotiations unit to include former Jersey City Incinerator Authority (JCIA)

employees who were transferred to the City of Jersey City Department of Public Works (City or DPW) and continued to be represented by the International Brotherhood of Teamsters Union, Local 641 (Local 641), after the dissolution of the JCIA and transfer to the DPW. The Director also dismissed two unfair practice charges filed by Local 245 against the City. Local 245 alleged that the City unlawfully signed a memorandum of agreement (MOA) with Local 641 that recognized Local 641 as the exclusive representative of the unit of former JCIA blue-collar employees now employed by DPW and adopted and extended the terms of the collective negotiations agreement (CNA) that had been in effect between Local 641 and the JCIA.

In its request for review, Local 245 asserts that the Director should have held a hearing to resolve substantial and material factual issues. It alleges that the Director must hold a hearing to determine the meaning of the exclusivity clause in Article I of the CNA between Local 245 and the City and whether the City violated it. Local 245 argues that consolidation of former JCIA employees into Local 245 is appropriate, and that the Director erred by not interpreting Local 245's CNA as supporting a broad-based unit including all DPW employees. Local 245 contends that the Director erred by finding that the dissolution of JCIA was not a changed circumstance warranting a clarification of unit. It asserts that, even though there is no new facility

at DPW or intermingling among former JCIA employees and Local 245 represented employees, because the JCIA was a separate entity from the City, the former JCIA employees absorbed into the City's DPW were new appointments so a clarification of unit petition is appropriate. Local 245 argues that the Director erred by finding little community of interest between its unit members and the Local 641 unit members, as all are employees of the City's DPW and the Commission favors broad-based units.

The City responds that Local 245 has not met its burden to grant a request for review. Regarding the lack of a hearing, the City notes that the Director's investigation of appropriate unit need not include a hearing, and that here the Director requested that the parties answer and certify to questions concerning the appropriate unit. The City asserts that while the City and Local 641 filed certified answers with the Director, Local 245 failed to do so and therefore there are no material facts in dispute that would necessitate a hearing. It argues that Local 245 continues to ignore the provision in its recognition clause that excludes employees represented in other negotiations units. The City asserts that the proper mechanism by which Local 245 could seek to include former JCIA employees represented by Local 641, whose duties and terms and conditions of employment are so different from Local 245, is through a representation petition that gives the currently represented employees a choice.

Local 641, as intervenor and current majority representative of the group of employees Local 245 seeks to clarify into its unit, responds that Local 245 has not specifically identified which of the four grounds for review would warrant the Commission granting review. Local 641 argues that N.J.A.C. 19:11-2.6(e) specifically empowers the Director to render his conclusions in a representation matter based on an administrative investigation, and does not require a hearing. It contends that Local 245 did not submit any certifications during the investigation, that the City's and Local 641's certified facts were consistent with no substantive material conflicts, and that Local 245 has still not identified any contrary material facts warranting a hearing. Local 641 asserts that the language of Article I of Local 245's CNA is not in dispute and is included in the Director's decision. It argues that the Director properly found that consolidation of Local 641 and Local 245 would be inappropriate and there is little community of interest between the two units. Local 641 asserts that the Director appropriately found that JCIA's dissolution is not a "changed circumstance" that warrants consolidation because Local 641 members continue to perform the same job duties with the same employment conditions.

Pursuant to N.J.A.C. 19:11-8.2(a), "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.

Local 245 has not identified any "substantial factual issue" decided by the Director that could be considered "clearly erroneous" or that would have required him to convene an evidentiary hearing. The Director's administrative investigation requested information, supported by certifications or sworn affidavits, regarding the negotiations histories of the two units and the terms and conditions of employment of their employees. The City and Local 641 filed certifications, but Local 245 did not file a certification or affidavit. D.R. at 3. Therefore, as the factual record supplied by the respondent and intervenor did not contain any disputed material facts, and Local 245 failed to submit any certified facts disputing that record, no evidentiary hearing was necessary. N.J.A.C. 19:11-2.6(e)-(f); D.R. at 4. The alleged factual issue raised by Local 245 in its request for review is actually a request for a different legal interpretation of its CNA's recognition clause, which it alleges includes Local

641 members. The Director fully considered Local 245's recognition clause, finding that Article I, Section B specifically excludes employees "represented in other bargaining units." D.R. at 5-6. The Director thus found that as the petitioned for employees were already represented by Local 641, and the City was the funding source for the JCIA, the CNA's exclusionary language renders the clarification of unit petition inappropriate independent of other legal justifications for dismissal. D.R. at 6, 15; See Wayne Tp. Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980).

Next, the Director's determination that there were no changed circumstances necessitating a clarification of unit was supported by the facts and consistent with precedent. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). The Director found:

Here, no circumstances have changed because no title's job functions have changed; no new facility has opened and no new operation has been created. Former JCIA employees have continued uninterruptedly to perform (as City employees) their unchanged job duties, without overlap or intermingling of work with Local 245 unit employees.

[D.R. at 10.]

Furthermore, the Director analyzed the facts concerning all of the differences in job requirements, duties, and other terms of conditions of employment between Local 245 and Local 641 unit members to determine that even if the dissolution of the JCIA

were to be considered a "changed circumstance," the consolidation of those units would be inappropriate because little or no community of interest exists beyond both groups being employed by the City. D.R. at 11-12.

The Director also applied pertinent Commission precedent supporting the determination that, where separate negotiations units with distinct identities have long and stable negotiations histories, they will not normally be disturbed absent agreement by the incumbent representative (here, Local 641) to consolidate into another unit (i.e., Local 245). D.R. at 12-14; Passaic County, P.E.R.C. No. 87-123, 13 NJPER 298 (¶18125 1987) (County had to continue to recognize separate unit of employees who had been employed by abolished bridge department; unit was not appropriate for consolidation into broad public works unit); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981); Sussex Cty., D.R. No. 91-11, 16 NJPER 572 (¶21251 1990) (unit of employees from abolished Welfare Board maintained separately from existing County-wide unit); and Gloucester Cty., D.R. No. 2007-10, 33 NJPER 45 (¶18 2007) (employees from abolished Board of Social Services could continue as unit separate from established County units). In this case, Local 641 had represented about 80 JCIA employees in about 15 titles since 1980 until the 2016 dissolution, neither Local 641 nor the City consent to the proposed consolidation, and no facts suggest that maintaining separate units interferes with the City' ability to effectively operate. D.R. at 6, 14.

Finally, the Director appropriately dismissed Local 245's related unfair practice charges contesting the City's signing of MOAs with Local 641 that recognized Local 641 as the majority representative of former JCIA employees. He reiterated that the City's CNA with Local 245 excludes employees represented by other units, and also noted that the City may have been obligated to continue to recognize Local 641 if considered a successor employer to the JCIA that it absorbed. D.R. at 15. Local 245 did not allege facts beyond the parameters of the clarification of unit determination in this case that implicate any unfair practice section set forth in its charges. D.R. at 15.

Based on the foregoing, we find that Local 245 has failed to demonstrate any compelling reason warranting review of the Director's determination.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: November 26, 2019

Trenton, New Jersey