

D.U.P. NO. 88-1

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF LAMBERTVILLE,

Respondent,

-and-

Docket No. CI-87-87

JACK VENETTONE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declined to issue a complaint in a matter initiated by the Lambertville Chief of Police alleging the employer failed to negotiate a contract between the Charging Party and the City of Lambertville.

The (a)(5) allegation was dismissed pursuant to the Commission's findings in Egg Harbor Township and Gauntt v. Mayor and Council of the City of Bridgeton, wherein the police chiefs were determined to be managerial executives within the meaning of N.J.S.A. 34:13A-3(f).

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Appearances:

For the Respondent  
Savage and Serio, Esqs.  
(Thomas J. Savage, of counsel)

For the Charging Party  
Reed, Strauss & Tauriello  
(Robert B. Reed, of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 22, 1987, an unfair practice charge was filed on behalf of Mr. Jack Venettone, Chief of Police ("Chief") of Lambertville against the City of Lambertville ("City") alleging violation of subsection 5.4(a)(5) of the New Jersey Employer-Employee Relations Act in that the employer failed to negotiate in good faith regarding a contract between the City of Lambertville and the Chief.

The charge further indicated that, by reason of past practice and prior agreement, the Chief is entitled to negotiations with the City.

N.J.S.A. 34:13A-5.4(c) provides that the Commission shall have the power to prevent anyone from engaging in any unfair practice and that it has the authority to issue a complaint stating the unfair practice charge.<sup>1/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.<sup>2/</sup> The Commission rules provide that I may decline to issue a complaint.<sup>3/</sup>

It appears that the Commission's complaint issuance standards have not been met as to the alleged (a)(5) violation.

In Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984), the Commission held that powers conveyed by statute to municipal chiefs of police in N.J.S.A. 40A:14-118 created a statutory command<sup>4/</sup> that without exception makes police chiefs

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<sup>1/</sup> N.J.S.A. 34:13A-5.4(c) provides in part: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearings before the commission or any designated agent thereof...."

<sup>2/</sup> N.J.A.C. 19:14-2.1.

<sup>3/</sup> N.J.A.C. 19:14-2.3.

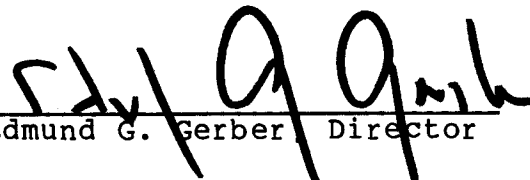
<sup>4/</sup> See Gauntt v. Mayor & Council of the City of Bridgeton, 194 N.J. Super. 468 (App. Div. 1984)

managerial executives within the meaning of N.J.S.A. 34:13A-3(f).<sup>5/</sup>  
Managerial executives are not public employees within the meaning of the Act and, therefore, are not afforded the protections of the Act, including the right to negotiate collectively.

On July 13, 1987, we advised the parties that we were inclined to refuse to issue a complaint on this charge and invited them to present additional statements of position and/or additional factual information which would warrant the issuance of a complaint. Neither party submitted any additional materials.

Accordingly, we have determined that the Commission's complaint issuance standard has not been met and refuse to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber Director

DATED: August 12, 1987  
Trenton, New Jersey

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5/ Managerial executives are defined as follows:

Person(s) who formulate management policies and practices and persons who are charged with the responsibility of directing the effectuation of such management policies and practices ..."  
N.J.S.A. 34:13A-3(f)