

D.R. NO. 85-22

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

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

DOCKET NOS. CU-84-8  
CU-84-9

JERSEY CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Director of Representation grants the employer's Motion for Summary Judgment with respect to its Petition seeking to clarify the title Chief of Police out of the unit representing police superior officers. The Director determines that under In re Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (Para 15304 1984), the Chief of Police is a managerial executive within the meaning of N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-3(f). Accordingly, the Director determined that the Chief is not a public employee within the meaning of the Act, and hereby clarifies the unit of police superior officers to exclude the Chief of Police. This determination is effective immediately, and is prospective only. In re Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

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Appearances:

For the Petitioner  
Pachman & Glickman, P. A.  
(Martin R. Pachman, of counsel)

For the Respondent  
Loccke & Correia, P.A.  
(Manuel A. Correia, of counsel)

DECISION ON MOTION FOR SUMMARY JUDGMENT

On August 4, 1983, the City of Jersey City ("City") filed two Petitions for Clarification of Unit with the Public Employment Relations Commission ("Commission"). The first Petition, Docket No. CU-84-8, sought to remove the title of Chief of Police from the existing unit of police superior officers represented by the Jersey City Police Superior Officers Association ("Association"). The second Petition, Docket No. CU-84-9, sought to remove the title

Deputy Chiefs of Police from the existing unit of police superior officers represented by the Association.

Following the filing of the two above-referenced Petitions, the parties engaged in settlement discussions concerning the issues raised by the Petitions and by mutual request of the parties, the Commission took no further action on the Petitions. By letter dated April 4, 1984, Petitioner requested the reactivation of the two above-referenced Petitions, indicating that settlement discussions had proven fruitless, and that formal proceedings would be necessary to resolve these matters. Accordingly, the Administrator of Representation reopened the instant matters and on October 1, 1984, issued an Order Consolidating Cases and a Notice of Hearing. The Respondent Association requested a stay of the hearing proceedings in contemplation of its submission of a Motion to Dismiss. Thereafter, Respondent filed a Motion to Dismiss. On February 13, 1985, I denied said Motion. I concluded that substantial and material factual issues exist which would more appropriately be resolved following an evidentiary hearing in the matter. See, N.J.A.C. 19:11-1.6.

On February 19, 1985, the designated Hearing Officer again scheduled hearing dates during the months of March and April 1985.

Thereafter, Petitioner City filed the instant Motion for Summary Judgment in CU-84-8 regarding the title Chief of Police. The Petitioner contends that it is entitled to summary judgment because under the law, the Chief of Police is a managerial executive within the meaning of the Act, and hence, under the New Jersey

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), does not possess the right of collective representation. Further, the Petitioner argues that the determination that the Chief of Police is a managerial executive must be made retroactive to August, 1981.

The Respondent filed a brief in opposition to the instant motion and argued that the Chief historically has been included in the extant unit and should remain so.

A motion for summary judgment may be granted if it appears from the pleadings, together with briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant is entitled to its requested relief as a matter of law. A motion for summary judgment, however, is to be granted with extreme caution. The moving papers are to be considered in the light most favorable to the party opposing the motion; all doubts are to be resolved against the movant and the summary judgment procedure is not to be used as a substitute for plenary trial. Baer v. Sorbello, 177 N.J. Super 182, 185 (App. Div. 1981); In re Essex Cty. Educational Services Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (Para 14009 1982).

Under the Act, public employees are endowed with the rights to select a representative for purposes of collective negotiations, to have that representative negotiate with a public employer and enter into labor agreements on their behalf (see, N.J.S.A. 34:13A-5.3) and, for representatives of employees in public police departments, to participate in the procedures for interest

arbitration established by N.J.S.A. 34:13A-14, 15 and 16. All of the aforementioned rights are granted to "public employees" within the meaning of the Act. However, exempted from the definition of public employees are those employees described by Section 3(f) of the Act as "managerial executives." While endowing "public employees" with the above-enumerated rights, the Act specifically states, "provided, however, that this right shall not extend to ... managerial executives." (See N.J.S.A. 34:13A-5.3). Managerial executives are defined as "persons who formulate management policies and practices, and persons who are charged with responsibility of directing the effectuation of such management policies and practices...." [See, N.J.S.A. 34:13A-3(f)] Thus, a person employed as a managerial executive does not have the rights set forth in the statute to organize, negotiate, to go to interest arbitration, or to have representatives do so on his or her behalf.

In 1981, N.J.S.A. 40A:14-118 was amended to specify the powers of municipal police chiefs. Among the powers mandated by the amended statute were that the chief "shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficient and routine day-to-day operations thereof;" that he "shall administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel;" that he shall "have, exercise, and discharge the functions, powers and duties of the force," and finally, that he shall "prescribe the duties and assignments of all subordinates and other personnel." (See, N.J.S.A. 40A:14-118).

In In re Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (Para 15304 1984), the Commission, recognizing the statutory authority vested in chiefs of police by N.J.S.A. 40A:14-118, stated that:

since our 1980 Montvale decision, [In re Borough of Montvale, P.E.R.C. No. 81-51, 6 NJPER 507 (Para 11259 1980)] the legislature has amended N.J.S.A. 40A:14-118 to broaden the powers and duties of municipal police chiefs and to limit correspondingly the ability of governing bodies to intervene in the chief's operation of the police department. This change in the law makes inappropriate continued case by case inquiries into whether municipal police chiefs are managerial executives under our Act. Instead, we believe this change warrants converting Montvale's rebuttable presumption of managerial executive status into an irrebuttable one. Accordingly, we hold that the Township Police Chief is a managerial executive.

In a footnote, the Commission added that in light of this analysis, its Hearing Officer's analysis of the facts in Egg Harbor Tp. need not be addressed. Thus, it is apparent from the foregoing that municipal chiefs of police are managerial executives and are therefore excluded from coverage under the Act. See also, Gauntt v. Mayor and Council of the City of Bridgeton, 194 N.J. Super 468 (App. Div. 1984), where the Appellate Division reviewed the legislative history of the amendment to N.J.S.A. 40A:14-118, and concluded that while municipal governing bodies retain the authority to fix policy and formulate fundamental principals and broad guidelines, chiefs of police now have responsibility for effectuating those principals through their responsibility for the efficient and routine day-to-day operation of their police departments.

The Petitioner further argues that the determination that the chief of police is a managerial executive must be retroactive to August 1981. The Commission has always considered that the determinations in clarification of unit petitions are prospective only. See, In re Clearview Reg. H/S Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). This is so even when managerial executives who are not public employees within the meaning of the Act are the subject of such petitions.

The Commission's reluctance to make its determination retroactive stems from the recognition of the need for both stability and predictability in the collective negotiations process -- both during the life of a contract and during the negotiations process. <sup>1/</sup>

In consideration of the foregoing, I find that the Chief of Police of the City of Jersey City is a managerial executive

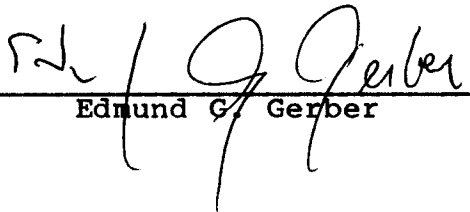
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<sup>1/</sup> The City recognized that normally it may, at its peril, unilaterally remove an employee from a unit pursuant to In re Passaic Cty. Reg. H/S Dist. Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976). However, it argues that in a police unit -- which is subject to interest arbitration -- such a tactic may not be useful if the Association includes the removed position in its submission to the Arbitrator. I note that while this issue (that the Chief is not included in the unit) could be presented to an arbitrator, the arbitrator would be unable to properly rule upon same. The Act provides that, "Arbitration shall be limited to those subjects that are within the required scope of collective negotiations..." See, N.J.S.A. 34:13A-16(f)(4). Thus, an arbitrator would exceed his/her authority if the arbitrator renders an award concerning an employment position which has been removed from the unit by an employer or if the arbitrator renders a determination within the award concerning a unit composition dispute. [See generally, N.J.S.A. 34:13A-2, 14, 15, 16(g) (5) & (8)]

within the meaning of the Act. Accordingly, the extant collective negotiations unit comprised of police superior officers employed by the City of Jersey City is hereby clarified to exclude the position of Chief of Police.

Accordingly, this order shall be effective immediately.

BY ORDER OF THE DIRECTOR

  
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Edmund G. Gerber

Date: April 22, 1985  
Trenton, New Jersey