

D.R. NO. 95-24

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

In the Matter of

BOROUGH OF CARLSTADT,

Public Employer-Petitioner,

-and-

Docket No. CU-95-39

CARLSTADT POLICE SOA,

Employee Representative.

SYNOPSIS

The Director of Representation orders that a police superior officers negotiations unit be clarified to exclude the Chief of Police.

The Director determined, over the employer's objection, that the unit be clarified retroactively to the date on which the petition was filed.

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Appearances:

For the Public Employer-Petitioner
Dorf & Dorf, attorneys
(Gerald L. Dorf, of counsel)

For the Employee Representative
Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

DECISION

On January 9, 1995, the Borough of Carlstadt filed a petition for clarification of unit seeking to clarify its collective negotiations unit of the police chief, deputy chief and captain to exclude the Chief of Police. The Borough asserts that the Chief is a managerial executive within the meaning of N.J.S.A. 34:13A-5.3 and 34:13A-3(d). It requests that the exclusion be retroactive to either the date which N.J.S.A. 40A:14-118 was amended (August 24, 1981) or the date on which the Commission issued Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984).

On January 17, 1995, I requested a response to the petition from the Carlstadt Superior Officers Association, the purported

majority representative of the disputed title. It has not responded.^{1/}

The Borough's petition seeks to remove the position of Chief of Police from the superior officers' unit. The unit is clarified to exclude the Chief of Police. In Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984), the Commission found that the Legislature's broadening of powers and duties of municipal police chiefs (pursuant to an amended N.J.S.A. 40A:14-118) required the application of an "irrebuttable presumption" of managerial executive status to those employees. The Commission eschewed a case-by-case review of such matters.

In City of Jersey City, P.E.R.C. No. 86-12, 11 NJPER 459 (¶16163 1985), the Commission wrote that "all New Jersey police chiefs are managerial executives not covered by the New Jersey Employer-Employee Relations Act." It held that where employees occupying a position which have per se been determined to be outside the coverage of the Act "such cases should be effective the date the petition seeking the position removal was filed." The Commission noted that its holding "...does not prohibit a public employer from voluntarily recognizing a unit containing police chiefs and does not

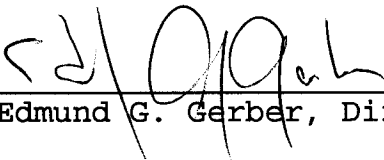
^{1/} On February 1, 1995, I received a letter from the attorney for Paul Occhiuzzo advising that his client retired as the Borough's Chief of Police on April 30, 1993, and until his retirement he was included in the superior officers unit. He also advised of a pending arbitration hearing concerning Occhiuzzo's compensation for unused vacation days, holidays and schedule days.

invalidate contractual arrangements made pursuant to such recognition." Id. fn. 3, p. 460. It would, therefore, be inappropriate to make a clarification determination effective before the date a petition was filed.

The Commission also determined that it lacked "jurisdiction to consider the propriety of an employee's unit inclusion until a unit clarification petition is filed." Id. "Moreover", the Commission wrote, "unit clarification proceedings, unlike unfair practice cases, determine an employee's present status rather than past conduct."

Accordingly, I order the negotiations unit be clarified to exclude the Chief of Police, effective January 9, 1995, the date the Borough's unit clarification petition was filed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: March 15, 1995
Trenton, New Jersey