

D.R. NO. 91-29

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

In the Matter of

CITY OF GLOUCESTER,

Public Employer,

-and-

Docket No. CU-91-36

P.B.A. LOCAL 40,

Petitioner/Employee Representative.

SYNOPSIS

The Director of Representation removes a Police Chief from a unit of police officers.

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Appearances:

For the Public Employer
Maley & Hayden, attorneys
(Maurice J. Maley, Jr., of counsel)

For the Petitioner
Mitnick, Vogelsson, Josselson & DePersia, attorneys
(Craig R. Mitnick of counsel)

DECISION

On February 19, 1991, Policemen's Benevolent Association Local 40 ("Local 40") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). Local 40 seeks to remove Chief of Police Theodore Nowarth from a unit of police officers employed by Gloucester City ("City"). The City agrees that the Chief should not be included in the unit represented by Local 40.^{1/}

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act") states:

1/ The City adds that it has never considered the Chief to be a member of the Local 40 unit for collective negotiations purposes.


...public employees shall have...the right...to form, join and assist any employee organization...provided, however, that this right shall not extend to...managerial executives....
N.J.S.A. 34:13A-5.3.

N.J.S.A. 34:13A-3(d) excludes managerial executives from the definition of public employees. Accordingly, if Chief Nowarth is a managerial executive, he is precluded from membership in the negotiations unit represented by Local 40.

A police chief is a managerial executive and, therefore, not covered by the New Jersey Employer-Employee Relations Act. Accordingly, the chief, by operation of law, cannot be included in a collective negotiations unit. Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984); City of Jersey City, P.E.R.C. No. 86-12, 11 NJPER 459 (¶16163 1985).

Accordingly, I find that Chief Nowarth is a managerial executive and is excluded from the unit represented by Local 40.^{2/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber
Director of Unfair Practices

DATED: April 11, 1991
Trenton, New Jersey

^{2/} We do not here address any rights which the Chief may have regarding fraternal organization membership.