**To: Commission**

**From: Laura C. Tharney**

**Re: *State, Div. of State Police v. New Jersey State Trooper Captains Ass’n –* Are State Police Captains Managerial Executives?**

**Date: September 8, 2015**

**M E M O R A N D U M**

**Executive Summary**

 In *State, Div. of State Police, v. New Jersey State Trooper Captains Ass’n[[1]](#footnote-1)*, the Appellate Division addressed the question of whether the Public Employment Relations Commission (PERC) acted arbitrarily in establishing a case-by-case approach to determine that most State Police Captains were not “managerial executives” and resultantly able to join collective negotiation units.[[2]](#footnote-2) The Court determined that although “the proper application of the statute” in issue could “not be gleaned from the plain language of the statute itself,” given the “legislative intent to expand the participation of public employees in collective negotiations, PERC’s individualized assessment of public employees advances that goal.”[[3]](#footnote-3)

**Background**

 The State Division of State Police is part of the Department of Law and Public Safety, one of fifteen principal departments falling within the Executive Branch of the State of New Jersey.[[4]](#footnote-4) The Division of State Police (Division) is a paramilitary organization with a strict hierarchical structure.[[5]](#footnote-5) The Division is comprised of five branches, each led by one of two lieutenant colonels and three deputy superintendents.[[6]](#footnote-6) The branches are divided into sections supervised by majors, and those sections are divided into bureaus and offices supervised by captains.[[7]](#footnote-7) Some captains are designated as “executive officers” and function as section supervisors, but the responsibilities of the majority of captains are limited by the chain of command, and they are “expected to communicate only with their immediate supervisors” and subordinates in “carrying out their police functions.”[[8]](#footnote-8) In 2008, the Division had 4400 employees, civilian and police.[[9]](#footnote-9) Forty-nine of those were captains and nine of those served as executive officers.[[10]](#footnote-10)

The New Jersey State Troopers Captains Association filed a petition with PERC in 2006 seeking to represent a collective negotiations unit of State Police captains, and the Division opposed the petition, maintaining that the captains were managerial executives or confidential employees ineligible for inclusion in a negotiations unit pursuant to the New Jersey Employer-Employee Relations Act, N.J.S. 34:13A-1 *et seq*.[[11]](#footnote-11)

 The hearing officer ultimately determined that the captains, generally speaking, were not included in either category, and were thus eligible to participate in an appropriate negotiations unit.[[12]](#footnote-12)

The hearing officer concluded that deciding whether captains were “managerial executives” under the statute required consideration of two factors, whether the captains: 1) were at or above the level of assistant commissioners; and 2) formulated policy. Applying that test to the record, she reaffirmed the exclusion of a limited number of captains, but concluded that the majority of Division captains were not “managerial executives” as the amendment defined the term, and that their limited participation in the strategic planning process did not constitute “formulating policy.”[[13]](#footnote-13)

PERC adopted the hearing officer’s report, with certain modifications. The Division appealed, but subsequently moved for a remand of the matter to PERC after the Legislature amended N.J.S. 34:13A-3(f) in 2010.[[14]](#footnote-14) The hearing officer held additional days of hearings and again recommended that most captains are eligible for representation because their roles and responsibilities within the Division placed them below the threshold that would bar them from participating in a negotiations unit pursuant to the statute as amended.[[15]](#footnote-15)

**N.J.S. 34:13-3**

 Public employees are constitutionally entitled to engage in collective negotiations, and their representative organization is permitted to negotiate “terms and conditions of employment”.[[16]](#footnote-16) “Managerial executives,” however, are excluded from participation in collective negotiations.[[17]](#footnote-17) Originally undefined in the statute, the Legislature defined “managerial executive” in 1974 and modified its definition in 2010.[[18]](#footnote-18)

 After the 2010 amendments, the statute defined “managerial executives” as follows:

“Managerial executives” of a public employer, in the case of the State of New Jersey, means persons who formulate management policies and practices, but shall not mean persons who are charged with the responsibility of directing the effectuation of such management policies and practices, *except that, in the case of the Executive Branch of the State of New Jersey, “managerial executive” shall include only personnel at or above the level of assistant commissioner.*

[[*N.J.S.A.* 34:13A–3(f)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST34%3a13A-3&originatingDoc=Ib051ddc40dcd11e5b4bafa136b480ad2&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_ae0d0000c5150) (emphasis added).][[19]](#footnote-19)

As the Court explained, the

problem in applying the statutory exception in the case before us arises because the Division does not utilize the title of “assistant commissioner,” and further, there is an obvious difficulty in comparing the role of an assistant commissioner in a primarily civilian regulatory agency with the role of a State police captain in a paramilitary organization involved in all aspects of law enforcement.[[20]](#footnote-20)

 As noted above, the Court found that the “proper application of the statute…cannot be gleaned from the plain language of the statute itself, given the unique structure of the Division as a paramilitary organization and the absence of the title of ‘assistant commissioner’ in its organizational hierarchy.”[[21]](#footnote-21) The Court turned to extrinsic evidence for assistance in determining the intent of the Legislature, suggesting that “it was very clear that the intent of the amendment was to broaden the categories of public employees eligible to participate in collective negotiations.”[[22]](#footnote-22)

 The Court explained that

[c]ategorically excluding an entire group of employees, without regard to the variations that exist among the positions, would most often reduce the number of public employees eligible to participate in collective negotiations. Indeed, such a result is perfectly illustrated in the case before us in that most Division captains undertake the duties of line supervisors. It is illogical to deprive those captains of the right to collective negotiations simply because they share the same title with a smaller subset of captains tasked with duties akin to those of managerial executives. It is unlikely that the Legislature intended such a result.[[23]](#footnote-23)

**Conclusion**

 Staff seeks Commission authorization to conduct additional research and outreach in this area in order to determine whether proposing revised statutory language might be of assistance in addressing the issue raised by this case.

1. *State, Div. of State Police, v. New Jersey State Trooper Captains Ass’n*, 411 N.J. Super. (App. Div. 2015). [↑](#footnote-ref-1)
2. *Id*. at 56. [↑](#footnote-ref-2)
3. *Id.* at 68. [↑](#footnote-ref-3)
4. *Id.* at 57. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id*. at 59. [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id*. at 56. [↑](#footnote-ref-11)
12. *Id.* at 57. [↑](#footnote-ref-12)
13. *Id*. at 60. [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id*. [↑](#footnote-ref-15)
16. *Id.*at 63-64. [↑](#footnote-ref-16)
17. *Id*. at 64. [↑](#footnote-ref-17)
18. *Id*. [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *Id*. at 65. [↑](#footnote-ref-21)
22. *Id*. [↑](#footnote-ref-22)
23. *Id*. at 68. [↑](#footnote-ref-23)