



NEW JERSEY LAW REVISION COMMISSION

Final Report Relating to Police Captains as Managerial Executives

March 21, 2019

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.
Please consult the New Jersey statutes in order to determine the law of the State.

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Introduction

In *State, Div. of State Police v. New Jersey State Trooper Captains Ass'n*, 441 N.J. Super. 55 (App. Div. 2015), the Appellate Division addressed the question of whether the Public Employment Relations Commission (PERC) acted arbitrarily in utilizing a case-by-case approach before concluding that most State Police Captains were not “managerial executives” and thus able to join collective negotiation units.¹ This project was first presented to the Commission in September 2015, when it was recommended to conduct outreach in order to determine whether modification was appropriate.

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.² The Division of State Police (Division) is a paramilitary organization with a strict hierarchical structure.³ The Division is comprised of five branches, each led by one of two lieutenant colonels and three deputy superintendents.⁴ The branches are divided into sections supervised by majors, and those sections are divided into bureaus and offices supervised by captains.⁵ 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.”⁶ In 2008, the Division had 4400 employees, civilian and police.⁷ Forty-nine of those were captains and nine of those served as executive officers.⁸

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. 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.*⁹

The hearing officer utilized two factors in her assessment: one, were the captains at or above the level of assistant commissioners and two, did they formulate 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

¹ *Id.* at 56.

² *Id.* at 57.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 59.

⁸ *Id.*

⁹ *Id.* at 56.

term, and that their limited participation in the strategic planning process did not constitute “formulating policy.”¹⁰

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 2010.¹¹ 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.¹² PERC adopted the hearing officer’s report and recommendations, with certain exceptions, and the case was appealed.

The New Jersey Employer-Employee Relations Act, 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”.¹³ “Managerial executives,” however, are excluded from participation in collective negotiations.¹⁴ Originally undefined in the statute, the Legislature defined “managerial executive” in 1974 and modified its definition in 2010.¹⁵

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) (emphasis added).]¹⁶

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.”¹⁷ It turned to extrinsic evidence for assistance in determining the intent of the

¹⁰ *Id.* at 60.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 63-64.

¹⁴ *Id.* at 64.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 65.

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.”¹⁸

The Court affirmed PERC’s decision, writing that given the “legislative intent to expand the participation of public employees in collective negotiations, PERC’s individualized assessment of public employees advances that goal.” It also noted that “[t]he Legislature could have elected to exclude the Division captains from the process, but chose not to do so.”¹⁹

Outreach

As per the Commission’s authorization, input was solicited from people who previously or currently serve on PERC, as well as practicing attorneys. The individuals who responded felt strongly that no revision was necessary. One stated that “this aspect of the statute is good as it stands” and termed it “one of the better aspects of N[ew] J[ersey] public sector labor law.” Another noted that any amendment “could be an over-correction” and discussed the oftentimes dual nature of police captains (they patrol and perform executive duties), which he said “is not seen in other traditional positions in the public sector.”

Conclusion

Based on the feedback received, the Commission does not recommend modifications to the statute at this time.

¹⁸ *Id.*

¹⁹ *Id.* at 68.