

D.R. NO. 2013-1

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

In the Matter of

NEW JERSEY STATE
(DIVISION OF STATE POLICE),

Public Employer,

-and-

Docket No. RO-2006-087

NEW JERSEY STATE TROOPERS
CAPTAINS ASSOCIATION,

Petitioner.

SYNOPSIS

The Deputy Director of Representation issues a Certification of Representative naming the New Jersey State Troopers Captains Association as the exclusive representative of a collective negotiations unit of certain captains employed by the Division of State Police, following a determination that a majority of them signed recently-filed authorization cards. N.J.A.C. 19:10-1.1. The Division filed an updated list of employees in compliance with the Commission's determination on eligible titles set forth in State of New Jersey, P.E.R.C. No. 2012-71, 38 NJPER ____ (¶ ____ 2012), against which the signed cards were counted.

The Division objected that the Association could not demonstrate that a majority of "positions" were staffed by eligible captains because a majority of those were occupied by lieutenants in "acting [captain]" designations and others were unoccupied. The Deputy dismissed the objection, noting that Section 5.3 of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. provides that a "majority of employees in the unit" indicating a preference for a majority representative shall be the exclusive representative; lieutenants were specifically excluded from the unit in the Commission's decision; and that the employer's prerogative not to fill vacancies should not defeat the right of employees to "form, join or assist any employee organization or to refrain from such activity." Section 5.3.

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Appearances:

For the Public Employer
Ballard Spahr, attorneys
(Steven W. Suflas, of counsel)

For the Petitioner
Loccke, Correia, Limsy and Bukosky, attorneys
(Marcia J. Tapia, of counsel)

DECISION

On June 28, 2012, the Commission issued State of New Jersey, P.E.R.C. No. 2012-71, 38 NJPER ____ (¶____ 2012), remanding to me a representation petition for card check certification filed about six years ago by the New Jersey State Troopers Captains Association (Association) to determine whether a majority of the eligible employees in the defined appropriate unit wish to be

represented for purposes of collective negotiations.^{1/} The Association seeks to represent a unit of state police captains.

On July 17, 2012, we issued a letter to the State (Division) and the Association seeking respectively, an updated list of eligible unit employees conforming to the unit description set forth in the Commission's decision and updated authorization cards. N.J.A.C. 19:11-2.6; 19:10-1.1. (The Association was provided 30 days to file the cards after our anticipated receipt of the Division's eligibility list).

On July 30, the Association filed recently-signed authorization cards. On August 23, 2012, following renewed requests to the Division, we received an updated list of eligible employees together with a letter from the Division contesting our appropriate discretion to ". . . designate the Association as the representative of a majority of the employees in the designated negotiations unit." Specifically, the Division asserts that out of 53 captain positions eligible for inclusion in the unit set forth in the most recent Commission Order, 6 are vacant and 23

^{1/} This case's lengthy history owing in part to legislative amendments (effective in 2010) to and continuing litigation about the definitions of "confidential employee" and "managerial executive" for employees in the Executive Branch of State government in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., may be gleaned from the Commission's previous decision, P.E.R.C. No. 2010-13, 35 NJPER 335 (¶114 2009), a Director's decision, together with a Certification of Representative, D.R. No. 2010-9, 36 NJPER 15 (¶7 2010) and from pages 1, 2 and 27-28 of the Commission's recent decision.

are staffed by lieutenants in "acting [captain]" capacities. Noting that the lieutenants are represented in another negotiations unit and are ineligible to participate in this matter, the Division argues that ". . . the majority of positions within the unit are not staffed with personnel eligible for inclusion in the negotiations unit" and that the Commission cannot designate the Association as the representative of a "majority of the employees" in that unit.

On August 28, the Association filed a reply, asserting that it has submitted a sufficient number of signed authorization cards demonstrating that a majority of the employees (emphasis supplied) in the unit have signed cards. N.J.A.C. 19:11-2.6(b). The Association requests that its petition be processed.

Authorization cards signed by a ". . . majority of employees in the unit" indicating a preference for a majority representative shall be the exclusive representative for collective negotiations. N.J.S.A. 34:13A-5.3. I have compared the names signed on the recently-filed authorization cards with the names of captains provided on the Division's list and determine that a majority of unit employees have indicated their preference to be represented by the Association.

I take administrative notice that state police lieutenants working "out-of-title" or in an "acting capacity" are compensated under terms set forth in the collective negotiations agreement

signed by the State and the State Troopers Superior Officers Association of N.J., Inc., (for the unit consisting of lieutenant of the Division of State Police). Lieutenants are also specifically excluded from the captains unit in the Commission's Order in this case. Although a public employer has a managerial prerogative not to promote an employee to fill a vacancy, the exercise of that prerogative should not defeat the right of these captains ". . . to form, join and assist any employee organization or to refrain from such activity." Section 5.3; Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981). For all these reasons, I dismiss the Division's objection.

ORDER

The Association is entitled to certification based upon its submission of signed authorization cards in this collective negotiations unit:

Included: All captains employed by the Division of State Police, including, but not limited to the captains in the Identification and Information Technology Section (Administration Branch), Intelligence Services Section (Investigations Branch), Investigations Section (Investigations Branch), Field Operations Section, Troops A, B, C, D and E, Homeland Security Branch, and executive officers in the Identification and Information Technology Section, Intelligence Section, Special Investigations Section, Field Operations Section, Emergency Management Section, Special operations Section, and captains in the Bureaus of

Fiscal Control, Budget Operations, Grants Administration and Logistics.

Excluded: Managerial Executives, confidential employees, non-supervisory employees, non-police civilian employees, captains in the following offices and bureaus: Office of Strategic Initiatives, Office of State Police Affairs, Office of Public Information, Operation Cease Fire, Regional Operations and Intelligence Center Task Force, Office of Recruiting and EEO, Internal Affairs Investigations Bureau (OPS), Internal Affairs Intake and Adjudication Bureau (OPS), Human Resources Management Bureau, Employee Services Bureau, employees represented in other negotiations units, lieutenants, sergeants first class, sergeants, detectives, and all troopers.

The formal certification is attached.


Jonathan Roth
Deputy Director of Representation

DATED: September 5, 2012
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by September 18, 2012.

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**CERTIFICATION OF REPRESENTATIVE
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

NEW JERSEY STATE TROOPERS CAPTAINS ASSOCIATION

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All captains employed by the Division of State Police, including, but not limited to the captains in the Identification and Information Technology Section (Administration Branch), Intelligence Services Section (Investigations Branch), Investigations Section (Investigations Branch), Field Operations Section, Troops A, B, C, D and E, Homeland Security Branch, and executive officers in the Identification and Information Technology Section, Intelligence Section, Special Investigations Section, Field Operations Section, Emergency Management Section, and captains in the Bureaus of Fiscal Control, Budget Operations, Grants Administration and Logistics.

Excluded: Managerial executives, confidential employees, non-supervisory employees, non-police civilian employees, captains in the following offices and bureaus: Office of Strategic Initiatives, Office of State Police Affairs, Office of Public Information, Operation Cease Fire, Regional Operations and Intelligence Center Task Force, Office of Recruiting and EEO, Internal Affairs Investigations Bureau (OPS), Internal Affairs Intake and Adjudication Bureau (OPS), Human Resources Management Bureau, Employee Services Bureau, employees represented in other negotiations units, lieutenants, sergeants first class, sergeants, detectives, and all troopers.

DATED: September 5, 2012
Trenton, New Jersey



Jonathan Roth, Deputy Director of
Representation

Attachment:

Certification of Representative dated: September 5, 2012

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-and-

NEW JERSEY STATE TROOPERS CAPTAINS ASSOCIATION

Docket No. RO-2006-087

Service on the following:

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