

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF  
STATE OF CONNECTICUT  
OFFICE OF LABOR RELATIONS

DECISION NO. 4208

-AND-

FEBRUARY 16, 2007

CONNECTICUT STATE EMPLOYEES  
ASSOCIATION

Case No. SE-25,905

A P P E A R A N C E S:

Attorney Ellen M. Carter  
For the State

Attorney Robert J. Krzys  
For the Union

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

On February 17, 2006 the Connecticut State Employees Association (the Union) filed a petition with the Connecticut State Board of Labor Relations (the Labor Board) pursuant to the State Employee Relations Act (SERA or the Act) seeking certification as the exclusive bargaining representative of a bargaining unit of State Police lieutenants and captains employed in the Division of State Police, Department of Public Safety (the State or DPS).

On June 13, 2006 after the requisite preliminary steps had been taken, the Agent for the Labor Board ordered an election among the petitioned-for employees. On June 27, 2006 the State filed an Objection to the Order of Election and requested a hearing on the objection. On June 29, 2006 the Union filed a response to the Objection. A mail ballot election was conducted between July 5, 2006 and July 19, 2006. In the meantime, by notice dated July 11, 2006 the Labor Board ordered a hearing to take place on the State's objection.

The Labor Board opened and counted the ballots on July 19, 2006 and issued a Report Upon Secret Ballot. The Union prevailed in the election. Thereafter the parties

met with an agent of the Labor Board for a pre-trial conference and entered into a partial stipulation of facts and exhibits. Both parties appeared before the Labor Board for a hearing on August 3, September 7, September 21, October 5 and October 19, 2006. Both parties were represented at the hearing and allowed to present evidence, examine and cross-examine witnesses and make argument. Both parties filed post-hearing briefs the last of which was received by the Labor Board on November 9, 2006. Based on the entire record before us, we find the following facts and we certify the results of the election.

### **FINDINGS OF FACT**

1. The State is an employer pursuant to the Act.
2. The Union is an employee organization pursuant to the Act.
3. On February 17, 2006 the Union filed the instant petition seeking to represent a new bargaining unit to consist of employees in the job classifications of State Police lieutenant and State Police captain. (Ex. 1).
4. Section 5-273-77 of the Regulations of Connecticut State Agencies includes a bargaining unit entitled "State Police – uniformed and investigatory". This unit has been referenced by the Board's Regulations as the State Police or NP-1 unit.
5. The first petition for a State Police unit was filed with the Labor Board in 1975 (Case No. SE-3284) by the International Brotherhood of Police Officers (IBPO). The petition sought a bargaining unit of sworn State Police officers up to and including the rank of captain. (Ex. 4). The instant Union intervened in that petition. (Ex. 5). The agreement for election described the bargaining unit as including lieutenants but not captains. (Ex. 6). The Union was certified as the exclusive bargaining representative for that unit after an election. (Ex. 7).
6. In 1979, the Connecticut State Police Union (CSPU) filed a petition to represent the State Police (NP-1) unit (Case No. SE-5982). The unit described in the petition continued to include lieutenants but not captains. As a result of an election, the CSPU was certified as the representative on November 10, 1980. (Ex. 8).
7. In August, 1980 the State filed a petition to exclude the State Police lieutenants as managerial employees. (Case No. SEE-5995). A Labor Board hearing was held in March 1981. The petition was withdrawn in March 1982.
8. In negotiations for the NP-1 successor contract to be effective July 1, 1981, the State proposed that the State Police lieutenants be excluded from the bargaining unit. Thereafter, the State, the CSPU and the individual lieutenants all agreed to the exclusion of the rank of lieutenant from the bargaining unit and the certification was amended to reflect that exclusion. (Exs. 9, 10 and 11).

9. The DPS consists of approximately 1740 employees of which 1233 are sworn police officers and 507 are civilian employees.
10. The DPS has a State Police Division of about 1500 employees in which almost all of the sworn police officers are assigned, as well as a Division of Scientific Services (about 60 employees,), a Division of Fire, Emergency & Building Services (about 120 employees) and a Bureau of Management Support (about 50 employees) and certain specialized units that report to the Commissioner's Office. On or about the time that the petition was filed, there were approximately 15 captains, 27 lieutenants, 14 master sergeants, 172 sergeants and 1,015 troopers or troopers first class. (Exs. 20-A to 20-F).
11. The DPS also has higher sworn police officials: 7 majors and 2 lieutenant colonels and 1 deputy commissioner for State Police. Pursuant to Public Act 99-163, the majors were made unclassified appointments, in addition to the lieutenant colonels with the entitlement to return to their former rank at the end of their appointment. (Conn. Gen. Stat. §§ 29-1b and 29-4; Public Act 2006-51 changes the maximum number of lieutenant colonels from 2 to 3 and the maximum number of majors from 8 to 7). (Exs. 21, 22 and 23).
12. There are three districts within the State Police field operations. Each district is commanded by a major. A captain serves as the executive officer in each district, reporting to the major. There are four Troops within each district as well as a Major Crime Unit. With one exception, the Troops and Major Crime Units are commanded by lieutenants. There is also a Bureau of Criminal Investigations with specialized subdivisions within the unit. The Bureau is commanded by a captain. Captains serve as DMR Liaison Officer and Commander of Stadium Operations (Rentschler Field). A lieutenant serves as Chief of Staff. (Ex. 20D).
13. The State Police Office of Administrative Services is directed by the lieutenant colonel. Reporting to her, captains and lieutenants serve as commanding officers of the main subdivisions. (Ex. 70).
14. Pursuant to Conn. Gen. Stat. § 5-200, the Department of Administrative Services (DAS) began Objective Job Evaluation (OJE) studies of the various State job classifications in each executive branch classified bargaining unit. The related managerial titles were also studied by DAS.
15. Each OJE study included the collection of employee job questionnaires designed for the OJE process. A Master Evaluation Committee consisting of management and union members conducted the evaluations of the titles based upon the Willis Job Evaluation System. The Master Evaluation Committee primarily considered representative employee questionnaire(s) selected by DAS in their evaluation although organizational charts and job audit interview reports were also often provided to the MEC.

16. The representative questionnaire responses for State Police captain (Exs. 24-A, 24-B and 24-C) indicate a wide range of duties for the classification of captain including supervising subordinate members of various teams, allocating assignments within teams, conducting inspections of personnel, equipment and buildings, evaluating the effectiveness of subordinate personnel, recommending improvements to operations to superiors, compiling productivity data and statistical information for use in projecting needs of divisions, determining training needs of team members, preparing regular reports for superiors, processing crime scenes, assisting in formulation of policy and developing protocols, evaluating systems within a particular division for reports to administration members, acting as commanding officer in the absence of a major and active participation in field operations.

17. The representative questionnaire responses for State Police lieutenant (Exs. 24-D and 24-E) indicate a wide range of duties for the classification of lieutenant including performing as commanding officer of Troop, daily consultation with superiors for instructions, devising plans and programs for problems in Troop area, counseling subordinates, including discipline, assigning personnel, review of reports and contact with court personnel.

18. State executive branch managerial employees are covered by the Performance Assessment and Recognition System (PARS) established by the DAS. (Ex. 25). The process involves setting goals and objectives for the year, regular progress reviews and the annual review. The State Police captains and lieutenants are included in the PARS program. (Exs. 26-a to 26-G). For all lieutenants and captains, at least one of the annual PARS goals is determined by a superior. In many cases, one or some of the other goals is also determined by a superior. In at least some instances, all the goals are determined by a superior. Within each goal, the individual works to achieve the objectives set forth.

19. The lieutenants and captains in the field districts were assigned to develop Management Baseline Profiles for their current positions, which would describe their duties and responsibilities and provide information about a variety of aspects about the troop or unit, including the number and type of staff, the community activities, the geographic area served, etc. Excerpts from selected Management Baseline Profiles (Exs. 27-A to 27-H) show the same wide range of duties as described above.

20. A lieutenant serves as commanding officer of the Governor's Security Unit. The lieutenant supervises two sergeants, eight troopers first class and one trooper in the unit. The members of the unit provide security at the Governor's office, in and around the official residence, around her personal home and they drive the Governor in her official car. The commanding lieutenant rarely performs actual security work in the unit. He oversees the members of the unit from an office in Waterbury. The lieutenant is bound by the A & O Manual for performance of the unit, providing clarification when needed on certain rules and regulations. He assigns shifts and duties and generally oversees the unit's work. The lieutenant has never been privy to confidential collective bargaining information while working in the unit. The troopers and sergeants working in the unit are included in the state police union bargaining unit.

21. Captains and lieutenants in charge of divisions such as the Troops and certain specialized sub-units are responsible for the day to day operations of their units in accordance with the rules set forth in the A & O Manual and instructions from superior officers at the level of major and above. They supervise, schedule, assign and oversee the work of as many as 70 subordinate employees. They are responsible for prioritizing work and assignments in accordance with established policy and instruction from superiors and must respond to emergencies effectively and quickly, including making instant decisions about deployment of personnel.

22. Captains and lieutenants do not have authority to hire or fire personnel or to transfer personnel either within a unit or inter-unit. Captains may discipline subordinates up to thirty-day suspension but only with approval of superiors and the State Police Office of Labor Relations. A Captain may not impose such discipline unilaterally and cannot override a discipline decision with which he disagrees. A lieutenant may impose discipline up to a five-day suspension but with the same restrictions. Master Sergeants may also inspect the level of discipline. (Ex. 30). Resident Troopers, who provide Police services in local communities, are selected by a panel set up by the Commanding Officer of the Troop. The Panel makes a recommendation to superiors, up to and including the lieutenant colonel, for selection of Resident Troopers. The final selection for Resident Troopers is made at a level above the commanding officer of the Troop. Captains and lieutenants do not have authority to initiate an Internal Affairs investigation.

23. Captains and lieutenants do not play a role in collective bargaining unless they are assigned to the Office of Labor Relations. They do not serve as a step in the grievance process.

24. Captains and lieutenants may not order or purchase equipment without approval. Commanding officers of Troops may authorize emergency repairs from approved vendors and are allowed a certain amount of petty cash to purchase minor supplies for their facilities. The commanding officer of Fleet Operations cannot purchase or otherwise unilaterally make decisions about the number or types of vehicles to be bought or disposed of.

25. There exists a legislative liaison who reports to the Commissioner. This person does not participate in formulating policy decisions concerning legislation. That position tracks pending legislation and acts in accordance with policy instructions from the top ranks of the administration.

26. Captains and lieutenants are expected to respond quickly and with authority to emergency and critical situations, including catastrophes, accidents and criminal activity that occur within their area. In those instances, a captain or lieutenant would be called upon to quickly assess the situation, provide immediate instructions for deployment of personnel and maintain control of the situation until a superior became involved.

27. Captains and lieutenants can be involved in developing plans and strategy for dealing with anticipated situations, such as Spring Weekend at the University of

Connecticut. In those and similar situations in which the activity is anticipated, captains and lieutenants can be involved in drafting the plan of action and determining the number and type of personnel needed and the deployment of personnel. All such plans must be approved by superiors above the rank of captain and no such plans can be altered by a captain or lieutenant without approval by a superior. When implementing such plans, captains and lieutenants serve as ground supervisors, instructing subordinate employees according to the approved plan and reporting to a superior who is ultimately in charge of the operation.

28. Captains and lieutenants do not participate in formulating agency policy. Like troopers and sergeants, they are sometimes asked for suggestions on operations and can make recommendations to their superiors for improvements and changes. Captains and lieutenants cannot promulgate orders concerning the operation of their divisions except for directives involving such minor things as temporary parking at a facility. The captains who serve as executive officers in the Divisions do not participate in formulating policy; they carry out the directives of the majors to whom they report and act in accordance with instructions in the majors' absence.

### **DISCUSSION**

The State objects to the instant petition on the following grounds. First, it claims that the Labor Board's regulations only provide for one State Police bargaining unit and therefore, the present petition is inconsistent with the Board's regulations. Next the State argues that the prior agreement between the State, the CSPU and the Lieutenants, which designated the Lieutenants as managerial employees, precludes the inclusion of the Lieutenants in any collective bargaining unit. Next the State argues that the legislature intended for the Act to recognize a managerial level of employees and the current petition is in conflict with that intent. In keeping with that argument the State also argues that the lieutenants and captains are managerial employees pursuant to §5-270 of the Act and as such, are excluded from collective bargaining. We take up each of the State's objections in turn.

First, we find that the regulations of the Labor Board do not preclude this petition. Section 5-273-77 (c)(2) provides: "The units defined by these regulations are not intended to exclude:...other units determined by the Board in response to individual petitions which deviate from the models for good cause shown." Thus, not only do the regulations specifically provide for the establishment of units different than those listed in the regulations, but also make clear that the units described are "models" and not absolutes. As such, this Board is empowered to certify the petitioned-for unit if such is appropriate.

We also reject the argument that the prior agreement between the State, the CSPU and the individual lieutenants precludes this petition. First, the petitioner in this case was not a party to that agreement. Although the individual lieutenants agreed, in 1982, to their exclusion from collective bargaining, their agreement cannot extinguish the

statutory collective bargaining rights of the current lieutenants. The CSPU agreement is more than 20 years old and it would be contrary to the provisions of the Act to find that a prior agreement between totally different parties can preclude employees from exercising their statutory right to collective bargaining.

We now turn to the State's most substantive argument; that the lieutenants and captains are managerial employees and as such, are excluded from collective bargaining by § 5-270(b) and (g) of the Act. Section 5-270(g) defines managerial employees as follows:

Managerial employee means any individual in a position in which the principal functions are characterized by not fewer than two of the following, provided for any position in any unit of the system of higher education, one of such two functions shall be as specified in subdivision (4) of this subsection: (1) Responsibility for direction of a subunit or facility of a major division of an agency or assignment to an agency head's staff; (2) development, implementation and evaluation of goals and objectives consistent with agency mission and policy; (3) participation in the formulation of agency policy; or (4) a major role in the administration of collective bargaining agreements or major personnel decisions, or both, including staffing, hiring, firing, evaluation, promotion and training of employees.

We must analyze the information presented by the parties against these statutory criteria to determine if these employees are excluded from collective bargaining. We find, and the Union does not strenuously argue otherwise, that most of the petitioned-for employees meet criterion #1. In this regard, many if not all the lieutenants and captains have at least some responsibility for directing a subunit or facility of the state police. This is certainly true of the Troop commanders and those in charge of specialized units. Thus, we find that the petitioned-for employees do meet the first statutory criterion.

Turning to the other elements, we easily find that none of the petitioned-for employees meet criterion #4, a major role in collective bargaining or major personnel decisions. While the lieutenants and captains are responsible for evaluating employees within their supervision, there is no record evidence that any have authority over staffing, hiring, firing, discipline or promotion of employees. To the contrary, the record evidence establishes that captains and lieutenants have very little authority in these areas. There is no question that none of the petitioned-for employees has any role in the administration of collective bargaining agreements.<sup>1</sup>

Likewise we find that these employees do not participate in any meaningful way in the formulation of agency policy. Although the State's witnesses indicated that opinions are always welcome, no evidence or testimony established that these employees

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<sup>1</sup> The record indicates that the personnel assigned to the State Police Office of Labor Relations have always been considered excluded from collective bargaining as confidential employees.

are involved in any way, other than the occasional suggestion, in the formulation of agency policy. As such, none of the employees fit criterion #3.

The more difficult question concerns criterion #2 of the statute. Much testimony and evidence was presented regarding the State Police mission and structure and the roles of individuals within that structure. Captains and Lieutenants occupy a variety of titles and functions within that structure. In field operations, captains and lieutenants do not serve in the highest ranks of the districts or bureaus (with the exception of Rentschler Field) but serve as commanding officers of individual troops and special investigation sub-units under the general command of majors. In these positions, the captains and lieutenants are expected and indeed do act quickly and with great knowledge of law enforcement in performing their daily responsibilities. In this regard, the troop commanders supervise the activities and duties of the troopers and sergeants who report to them, make day-to-day decisions about personnel assignments and operations issues connected to special events and must respond decisively to mobilize personnel in the event of emergencies. In doing so, the evidence reveals they are highly trained in protocol and law enforcement techniques and standards. The evidence equally reveals however, that the captains and lieutenants have very little autonomy or authority over major decisions that effect their operations. Specifically, troop commanders serve essentially as administrative officers who carry out the policy and commands of the higher ranks. Troop commanders cannot make changes or implement orders, with the exception of short term issues such as parking or ordering minor repairs to the barracks, without clearance from a major or above. While captains and lieutenants participate in developing traffic and security plans for large events, all plans are reviewed and subject to change by majors or above. The record reveals that the captains and lieutenants involved in implementation of such plans then act as part of the ground troops during the operation. The evidence regarding certain other units and sub-units reveal a similar structure and operation. The evidence concerning the administrative side of the operation reveals a similar lack of real authority.

Considering all the evidence presented, we find that the petitioned-for employees do not meet criterion #2 of the statute. The evidence clearly supports a conclusion that the responsibility for the development, implementation and evaluation of goals and objectives consistent with the Agency's mission is placed at a level above that of captain. While these employees may be asked for their opinions and in select cases, individual majors and other superiors may rely heavily on them, they simply do not have and cannot exercise the level of independent judgment and involvement necessary to meet this criterion. Although we do not disregard the State's argument concerning the lack of a "middle management" structure, we cannot analyze that argument outside the dictates of the statute. In this case, the petitioned-for employees do not meet the definition of managerial employee contained in the Act.

Finally, we find no reason to refuse to certify this bargaining on the basis that a bargaining unit of troopers and sergeants already exists. The testimony revealed a general acceptance of the gap between the ranks of sergeant and lieutenant, with the lieutenants and captains occupying an acknowledged higher level of supervisory function

than the subordinate ranks. Given the structure of the agency and its mission, we find there is good cause to certify this separate unit.

**ORDER**

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the State Employee Relations Act, it is hereby

**CERTIFIED**, that the Connecticut State Employees Association, SEIU, Local 2001 has been designated as the representative for purposes of collective bargaining by the majority of all lieutenants and captains employed by the Connecticut Department of Public Safety and that said Connecticut State Employees Association, SEIU, Local 2001 is the exclusive bargaining representative of all said lieutenants and captains employed by the Connecticut Department of Public Safety for the purposes of collective bargaining with respect to wages, hours and other conditions of employment.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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John W. Moore, Jr.

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Patricia V. Low

Board Member

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Wendella A. Battey

Board Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing was mailed postage prepaid this 16<sup>th</sup> day of February, 2007 to the following:

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