

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
December 16, 2010
10:00 a.m.
495 West State Street
Trenton, New Jersey

The meeting was called to order by Chair P. Kelly Hatfield.

Present were:

Commissioners:

Patrick V. Colligan
Adrienne E. Eaton
Cheryl G. Fuller
Sharon Krengel
Paula B. Voos
Matthew U. Watkins

Also present were:

Mary E. Hennessy-Shotter, Deputy General Counsel
Don Horowitz, Deputy General Counsel
Christine Lucarelli-Carneiro, Deputy General Counsel
Ira Mintz, General Counsel
Annette Thompson, who acted as Stenographer

At the commencement of the meeting, Chair Hatfield, pursuant to section 5 of the Open Public Meetings Act, entered this announcement into the minutes of the meeting:

Adequate notice has been provided by the dissemination of a written "Annual Notice of Meeting."

On December 17, 2009 a copy of such notice was:

(a) prominently posted in a public place at the offices of the Public Employment Relations Commission;

(b) sent to the business offices of the Trenton Times, the Bergen Record, and the Camden Courier Post, as well as to the State House press room addresses of 25 media outlets;

(c) mailed to the Secretary of State for filing; and

(d) posted on the agency's web site.

Furthermore on December 9, 2010, copies of an additional written "Notice of Meeting" were posted and sent in a similar manner.

The first item for consideration was the minutes of the November 23, 2010 meeting. A motion to adopt the minutes was made by Commissioner Fuller and seconded by Commissioner Watkins. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins).

The next item for consideration was the minutes of the executive session held on November 23, 2010. A motion to adopt the minutes was made by Commissioner Eaton and seconded by Commissioner Watkins. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins).

Oral argument was held in Bloomfield Township Board of Education and Bloomfield Education Association, Docket No. CO-2010-509. Stephen J. Edelstein, Esq. represented Bloomfield Township Board of Education and Gail Oxfeld Kanef, Esq. represented Bloomfield Education Association. These proceedings were recorded by a certified court reporter. This case may be considered at the January 2011 Commission meeting.

The first case for consideration was Town of Hammonton and Mainland PBA Local 77, Docket No. SN-2010-076. Commissioner Watkins moved the draft decision and Commissioner Fuller seconded the motion. Commissioner Colligan recused himself because of his affiliation with the PBA. Chair Hatfield stated that the Chief

was responsible for the assignment of the officer's duties and professional assignments, based on his assessment of the officer's qualifications or lack of qualifications. The decision to assign an officer to a special after-school assignment was left to the Chief's discretion, which is management's prerogative. Commissioner Fuller stated that some of the comments in the record were troubling. She felt "qualifications" was a bad choice of words because it was not whether or not the officer was qualified or not, it was a decision on the part of the Chief. The General Counsel responded that the function of squeezing an unusual set of facts into a body of case law, that says these kind of assignments are negotiable, unless there is an issue of qualifications, is why the word "qualifications" was used. The word "qualifications" is not being used in the sense that he can not carry a gun, but under the particular circumstances of this duty assignment, in this particular place, namely the school, the Chief did not feel he was appropriately qualified. Commissioner Watkins commented that the Chief had the discretion to say if the officer was appropriate or qualified and that it was management's prerogative, but he does understand Commissioner Fuller's concerns. Commissioner Kregel stated she appreciates the new language in the rewritten decision, but it doesn't quite work for her. She referred back to the record and stated there was a judgment call, but what the judgment was based

on is not clear. She said obviously there is information that is not available but wanted to know if there were other opportunities or work for this officer. The General Counsel responded that the Chief said there were other work opportunities and the union doesn't dispute that. Commissioner Fuller stated that she understands Commissioner Krenzel's concerns, but as managers you sometimes have to make judgment decisions every day, and as a manager you have to look beyond the circumstances and preempt any potential for future problem(s) which is a manager's right, and that was the Chief's right in this decision based on all the facts. The General Counsel responded that the record does not reflect all the facts. The vote was approved by a vote of three in favor (Chair Hatfield, Commissioners Fuller and Watkins), and two opposed (Commissioners Krenzel and Voos). Commissioner Eaton abstained.

The next case for consideration was Bridgewater-Raritan Regional Board of Education and Stan J. Serafin, Docket No. CI-2009-045 and Bridgewater-Raritan Transportation Association and Stan J. Serafin, Docket No. CI-2009-046. Commissioner Watkins moved the draft decision and Commissioner Voos seconded the motion. Commissioner Colligan recused himself because he is acquainted with one of the parties. The motion was unanimously approved (Chair Hatfield, Commissioners Eaton, Fuller, Krenzel, Voos and Watkins).

The next case for consideration was West Windsor-Plainsboro Regional Board of Education and West Windsor-Plainsboro Foremen's Association, Docket No. SN-2010-015. This case has been settled and was withdrawn from the agenda.

The next case for consideration was County of Burlington and PBA Local #249, Docket No. SN-2010-066. Commissioner Eaton moved the draft decision and Commissioner Voos seconded the motion. Commissioner Colligan recused himself because of his affiliation with the PBA. The motion was unanimously approved (Chair Hatfield, Commissioners Eaton, Fuller, Krengel, Voos and Watkins).

The next case for consideration was City of Newark and FOP Lodge 12, Docket No. SN-2010-086. Commissioner Colligan moved the draft decision and Commissioner Eaton seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins).

The next item for consideration was Adoption of the Annual Notice of Regularly Scheduled Meetings for 2011. Commissioner Voos moved that the Annual Notice of Meeting be approved and Commissioner Eaton seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins).

Chair Hatfield addressed the Commissioners and informed them that the Legislature had passed an interest arbitration bill that contained amendments from the original legislation that had been introduced. Under the bill the arbitrator would have to limit the police and fire officials salary increases to 2% aggregate over the life of the contract. The cap will apply to new contracts that expire between January 1, 2011 to April 1, 2014. Pension and healthcare costs, as in the bill that was passed this summer, are excluded from the 2% cap.

Besides the 2% cap, another driving force behind this legislation is to have interest arbitration awards issued and any appeals completed within strict time lines. The entire arbitration process is being contracted. Arbitrators are to be randomly selected within a day after an interest arbitration petition is filed. They will have 45 days to make a ruling. Arbitrators will be financially penalized \$1,000 a day if they do not adhere to that time period. The period to appeal an interest arbitration award to the Commission has been reduced from 14 days to 7 days. The Commission must make a decision within 30 days. Both interest arbitration awards and Commission decisions reviewing them must contain certifications that the parties, the arbitrator and the Commission took the local property tax levy into account.

Many of the Commission interest arbitration rules will be superceded by this new statute. A set of frequently asked questions relating to the new arbitration law will be added to the Commission's web site.

The Chair asked the Commission to approve the convening of a special telephone meeting for the following week to consider suspending some of the agency's current rules in order to make adjustments needed to properly administer the new interest arbitration law.

The General Counsel explained the purpose for the special meeting would be to discuss temporarily suspending certain procedures, particularly regarding scope of negotiations petitions that are related to interest arbitration cases. Under the current interest arbitration system, if a scope of negotiations petition has been filed, the arbitrator can not issue a ruling on any issues identified in the scope petition until the Commission issues a ruling. Under the new statute the arbitrator has 45 days from appointment to issue an award. Because a scope of negotiations decision can not be issued within that time frame, the special meeting will consider whether to suspend our current procedures and resolve the scope petition as part of an appeal to the Commission of the interest arbitration award. The Commission can engage rulemaking in 2011 to adopt regulations that will meet the requirements of the new interest

arbitration law. It was agreed that a special telephone meeting would be held on Wednesday, December 22, 2010 at 10:00 a.m.

Several Commissioners asked questions about the new statute including: how the two per cent cap affects contracts that expire on December 31, 2011; the impact of the law's sunset provisions; what events trigger the law's time limits; how the law will affect the use of mediation to resolve impasses; the availability of interest arbitrators who are willing to take assignments under the new law. A general discussion ensued during which Chair Hatfield and the General Counsel responded to these inquiries.

The General Counsel next discussed his monthly and supplemental reports. He stated that there were four new appeals of Commission cases since the last meeting. The Mt. Laurel decision was appealed, which is the second one of the two cases, which deals with negotiability of the furloughs and temporary layoffs and civil service jurisdiction, so now Belmar and Mt. Laurel are in the Appellate Division. The Probation Association of New Jersey (PANJ) has filed an appeal. PANJ had claimed there was a settlement of a discrimination case requiring the State to promote a certain number of people to Master Probation Officer title. The Commission said that the question was not arbitrable and they had to seek enforcement somewhere else. The union has filed an appeal in that matter.

The two 1.5 percent cases, Township of South Orange Village and Township of Edison, have been appealed. The Commission held that the question of contract duration is for the arbitrator to decide because it is a question of contract interpretation.

Commissioner Krengel asked about further discussion in the Bloomfield case. The General Counsel responded that it would be on the agenda for the January meeting, but if the Commissioner wanted to have further discussion it was not precluded.

Commissioner Fuller stated she had a question on Bloomfield concerning law versus policy. She noted that there is a Supreme Court decision and there is a statute. The General Counsel responded that the Supreme Court decision interprets an education law statute, the 18A statute. It is not preemptive of this case. The Supreme Court decision says that the 18A statute preempted the question of payment of increments after the expiration of a three year contract. The General Counsel referred to Mr. Edelstein's statement that the education law statute says you can only have a one, two or three year salary guide, and if you pay the increment after the expiration of a three year salary guide, because of tenure law, which precludes the rescission, you have effectively created a fourth year and that contravenes the statute that says you can only have a one, two or three year salary guide. Since the statute says you can have a one, two or three year salary guide then that statute would not prohibit

paying increments after one year or after two years. This case asks the question, should labor law policy be that you pay after a one or a two. The labor law of this Commission, since 1976 or so, has been that paying increments in those situations is part of the status quo doctrine. You must maintain terms and conditions of employment after the expiration of a collective bargaining agreement. The question is whether it is dynamic or status. Increments are part of that and historically you pay your 2% increment, you then settle the contract at 4% or 5% and the teachers who already received the 2% would not get the remaining 2% or 3%. The question before the Commission is really a policy question. As Mr. Edelstein stated, the question is one of law which the Commission has the right to revisit. There is no statute that commands a result in this case, and the question is whether it is good or correct labor relations policy to require the payment of increments after the expiration of a one or two year contract, one year in this case, which the school board and union could not negotiate away because of the operation of tenure law. The General Counsel continued by stating that the Commission is being asked to revisit a 35 year old policy that the agency has had that has been affirmed in different court case and contracts, specifically because of the operation of tenure law and the economic times, and what is on the table now is less than the increments. The Commission has never directly addressed

a situation where a party feels they should not be paying increments when those increments are more than what the party might settle for. There is no statute that answers this question, which is a question of labor relations policy. Commissioner Colligan stated that a segment of the timeline is being looked at and if the Commission is going to continue making decisions based on past labor decisions does it have to be financially driven because we do not know how two years from now will be. He continued by asking do we go back and contradict this rule, contradict this decision, that is his concern. He ended by stating that it appears that Mr. Edelstein is basing his decision purely on economics right now. Commissioner Voos stated that decisions may have been more favorable for the unions in good times. Commissioner Colligan stated we are in a bad time right now, but we were in a great time three years ago. The General Counsel responded that there is tension in this case, the longstanding policy is that we maintain the status quo because otherwise you are putting undo pressure on the union. If you do not pay the increments then you are putting pressure on the teachers to quickly settle on the board's terms so they can get their increments. That has been viewed as the undo pressure "chilling effect" on the collective negotiations process. There is an external law that is kind of artificially acting on this system, and that is tenure, because in every other context if you

pay increments in a police department after the expiration of a contract, and then you negotiate for a salary increase, you can recoup it. It may be difficult but it can be done. Commissioner Fuller responded that any type of recoupment is very difficult. The General Counsel stated that by operation of tenure law, which is not labor law, it is another statutory scheme over which this agency has no control, the Commissioner of Education has ruled and the Supreme Court has recognized, that once you pay those increments you can not rescind them. It is not just the economic times that have changed, the question is, given the change in the economic circumstances and the operation of tenure law, does that warrant revisiting this doctrine. Commissioner Colligan asked how much effort went into negotiating which was not mentioned in the record. The General Counsel stated the parties entered into a three year agreement and then entered into a one year. Ms. Kanef stated they could have sought to negotiate not paying increases and Mr. Edelstein stated they would have never agreed to that, but that never happened, it was never put on the table. There are contracts that do not have automatic increases that terminate at the end of a collective negotiations agreement. The General Counsel concluded by stating that the answers to the questions presented to both counsel during oral argument, and a copy of the transcript of the proceedings will be forwarded to the Commissioners.

Commissioner Colligan made a motion to adjourn the meeting and Commissioner Krengel seconded the motion. The motion was unanimously approved. The meeting was then adjourned.

The next meeting is scheduled to be held on Thursday, January 27, 2011 at 10:00 a.m.