

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
August 11, 2011
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:

John Bonanni
John H. Eskilson
David Jones
Sharon Krengel
Paula B. Voos
Richard Wall

Also present were:

Mary E. Hennessy-Shotter, Deputy General Counsel
Don Horowitz, Deputy General Counsel
Christine Lucarelli-Carneiro, Deputy 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 16, 2010 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 August 4, 2011, 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 June 30, 2011 meeting. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Bonanni. Commissioners Jones and Wall abstained. The motion to adopt the minutes was unanimously approved (Chair Hatfield, Commissioners Bonnani, Eskilson, Kregel and Voos).

The next item for consideration was the minutes of the July 19, 2011 special meeting. The new Commissioners David Jones and Richard Wall participated in the selection of the interest arbitrators. They abstained from participation in the North Arlington matter. Commissioner Jones recused himself on the advise of the Ethics Officer because this matter involved the Loccke law firm. Commissioner Jones also noted that he was seeking review with the State Ethics Commission on the issue. Commissioner Wall recused himself because of his affiliation with the PBA. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Voos. The motion to adopt the minutes was unanimously approved (Chair Hatfield, Commissioners Bonnani, Eskilson, Jones, Kregel, Voos and Wall).

Chair Hatfield welcomed the two new Commissioners David Jones and Richard Wall. She stated that resolutions will be prepared for the former Commissioners Adrienne Eaton and Patrick Colligan. The Chair reported that on June 28, 2011 the Governor signed a new Public Employee Pension and Health Benefit Reform

Law which makes changes to the public employee pension system and also health benefits programs. Part of the law established health benefits and pension committees charged with reviewing and modifying public employee health benefit and pension plans. The law also provides for the Commission to appoint Super Conciliators to resolve any impasses resulting from a committee's failure to render a decision on a matter before the committee. Staff is working on finalizing the proposed rules which will be sent to Commissioner prior to the meeting. The Chair asked the Commissioners to participate in a special telephone meeting on August 25, 2011 at 2:00 p.m., at which proposed rules will be presented.

Commissioner Jones noted that he sits on the Health Benefit Plan Design Committee and asked if it would be a conflict with him participating in the special telephone meeting.

Deputy General Counsel Don Horowitz responded that the only conflict may be when the time comes to approve a Panel of Super Conciliators.

The Counsel's Office distributed a monthly report.

Don Horowitz, Deputy General Counsel, reported that there were four Appellate decisions involving grievance arbitration awards. In every one of them the court upheld the decision of the grievance arbitrator under the reasonably debatable standard. In two of the four, lower courts had overturned the arbitration

award. The other case which is important, especially to public employers, is the Foglio case, which is a "rule of three" case. The Supreme Court has said that when you bypass someone for a promotion in a civil service town, you can not use a boilerplate reason even if discrimination is not alleged. There has to be a rational explanation as to why the higher-end candidate was not chosen. Before this decision, the only time you had to provide a detailed explanation was when there was an allegation of discrimination.

The first case for consideration was Saddle Brook Board of Education and Saddle Brook Education Association and Patricia Dolan and Theresa Martin, Docket Nos. CO-2010-137, TI-2010-001 & TI-2010-002. Commissioner Krengel moved the draft decision and Commissioner Voos seconded the motion. Commissioner Jones asked if all the facts have the same elements of retaliatory action that was originally found why was there no unfair practice violation found. Ms. Lucarelli-Carniero responded that the draft decision finds that because Dolan was transferred as a result of Martin being transferred for disciplinary reasons, then Dolan's complementary transfer was also disciplinary. Commissioner Jones asked if both employees were being transferred back. Ms. Lucarelli-Carniero responded that the order moves Martin back and there are no restrictions on the Board's power to decide where to assign Dolan. Commissioner Jones noted that the draft decision

on page 30 states, "We decline the request of the Association and Dolan that we prohibit the Board from transferring Dolan back to the middle school." Ms. Lucarelli-Carniero responded that Dolan was not transferred due to retaliation. A detailed discussion continued about Dolan being returned back to the middle school. The motion to adopt the draft decision was approved with a vote of six in favor (Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall), and one opposed (Commissioner Jones). Commissioner Jones was in concurrence with part of the order, but felt there should have been a finding that the prohibition against disciplinary transfers was violated as to both.

The next case for consideration was State Operated School District of the City of Paterson and Paterson Education Association, Docket No. CO-2011-073. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Voos stated that she has trouble agreeing that the District established there were extraordinary circumstances warranting reconsideration. Commissioner Krengel stated she was having difficulty with the numbers in regard to the budget. She continued by referencing the latest Supreme court decision and noted that in the Abbott cases that Paterson is one of the districts that has been made completely whole. Ms. Lucarelli-Carneiro responded that this case came to the agency with the

filing of an unfair practice charge and accompanying the charge was an application for interim relief. In this case interim relief was granted and the Board now comes to the Commission seeking reconsideration of the interim relief order. The draft decision states that the Commission is not going to order the Board to pay the increment immediately. That may be the result once (and if) the unfair practice charge is fully litigated. The Chair responded that the problem is there is a tenure law that says if you have anything less than a three-year contract, if you pay salary increases to tenured staff, those raises are unretrievable. Commissioner Eskilson stated that he is uncomfortable with relying on matters not in the record as a basis for perhaps not moving this decision forward. Even with that being part of the record that if we do not do this that it becomes part of the decision. Commissioner Voos stated that she understands the Bloomfield decision as a factor in part of the dynamics. She continued by stating she does not feel it is right to issue a decision like this one that no longer reflects the actual conditions. Ms. Lucarelli-Carneiro responded that we are constrained by the record before us. A detailed discussion continued concerning the numbers reflected in the District's budget. The motion to adopt the draft decision was approved with a vote of four in favor (Chair Hatfield, Commissioners Bonanni,

Eskilson and Wall), and three opposed (Commissioners Jones, Krengel and Voos).

The next case for consideration was Borough of North Arlington and Police Benevolent Association Local 95, Docket No. IA-2011-050. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Jones recused himself on the advise of the Ethics Officer because this matter involved the Loccke law firm. Commissioner Wall recused himself because of his affiliation with the PBA. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos).

The next case for consideration was Montville Township Board of Education and Montville Township Education Association, Docket No. RO-2011-022. Commissioner Voos moved the draft decision and Commissioner Eskilson seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel, Voos and Wall).

The next case for consideration was New Jersey Turnpike Authority and IFPTE Local 196, Docket No. SN-2010-103. Commissioner Bonanni moved the draft decision and Commissioner Wall seconded the motion. Commissioner Eskilson recused himself because counsel for IFPTE represents employees that he negotiates with. Commissioner Jones stated this is not a Worker's Compensation issue. He feels that the union clearly demonstrated

and the language of the contract shows the dispute is about sick leave or related leave. Ms. Hennessy-Shotter responded that this is a very narrow decision based upon unusual circumstances. In order to get supplementary Worker's Compensation benefits you need a baseline. An appeal of a decision on whether there was a compensable injury has to go to Worker's Compensation court. A detailed discussion continued. The motion to adopt the draft decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Krengel and Wall), and two opposed (Commissioners Jones and Voos).

The next case for consideration was City of Newark and Newark Firefighters Union, Docket No. SN-2011-002. Commissioner Eskilson moved the draft decision and Commissioner Wall seconded the motion. Commissioner Bonanni recused himself because of a potential conflict with counsel for the NFU. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Eskilson, Jones, Krengel, Voos and Wall).

The next case for consideration was Township of Millburn and PBA Local 34, Docket No. SN-2011-006. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Wall recused himself because of this affiliation with the PBA. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners, Bonanni, Eskilson, Jones, Krengel and Voos).

The next case for consideration was Mount Laurel Board of Fire Commissioners District No. 1 and International Association of Fire Fighters, Local 4408 & 4408-O, Docket No. SN-2011-045. This case was pulled from the agenda. The parties settled their dispute.

The last case for consideration was County of Essex and Essex County Department of Corrections and Fraternal Order of Police Lodge 106, Docket No. SN-2011-041. Commissioner Bonanni moved the draft decision and Commissioner Eskilson seconded the motion. Commissioner Jones commented that this case was good law/bad law. On the initial part of the order he reluctantly concurs. On the second part, the determination of what "base salary" means is arguable. He continued that the arbitrator should be able to review the contract and calculate base salary in line with what is the law and Division on Pension guidelines. Mr. Horowitz clarified that what Commissioner Jones is saying is that whether or not this employer has been applying 1.5% to base salary as compensated by the statute, is in dispute, and you believe that an arbitrator should resolve that dispute. This issue was raised by the FOP. Commissioner Jones' point is that there is a second issue in this case and that is whether this employer has properly determined what base salary is for the purpose of applying 1.5%. This draft restrains that issue as well. The motion to adopt the draft decision was approved by a

vote of six in favor (Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall), and one opposed (Commissioner Jones).

The next item for consideration was Readoption with Amendments of PERC Regulations Governing Scope of Negotiations Proceedings. Commissioner Wall moved to readopt the rules and Commissioner Voos seconded. The motion the readopt the rules was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel, Voos and Wall).

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

The next meeting is scheduled to be held on Thursday, September 22, 2011 at 10:00 a.m.