

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
October 20, 2016
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
David Jones
Paula Voos
Richard Wall

Also present were:

Robin T. McMahon, General Counsel
Don Horowitz, Senior Deputy General Counsel
Joseph Blaney, Deputy General Counsel
David Gambert, Deputy General Counsel
Frank Kanther, Deputy General Counsel
Christine Lucarelli-Carneiro, Deputy General Counsel
Kellie Hullfish, 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, 2015 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 and the Courier Post, as well as to the State House press row addresses of 25 media outlets;
- (c) copies e-mailed to the Secretary of State for filing; and
- (d) posted on the agency's web site.

Furthermore on October 13, 2016, copies of an additional written "Notice of Meeting" were posted and sent in a similar manner.

Chair Hatfield reported that the minutes of the August 18, 2016 meeting have been revised to correct an administrative error. Specifically, the draft minutes initially reflected that Commissioner Wall voted on P.E.R.C. No. 2017-8, Middlesex County Sheriff's Office, Docket No. CI-2015-042. However, due to his affiliation with the PBA, Commissioner Wall had recused himself from voting on that matter. Therefore, the decision itself will be corrected, and the parties to the case will be notified of the correction. The recusal has no bearing on the outcome of the decision. The motion to adopt the corrected minutes was made by Commissioner Voos and seconded by Commissioner Wall and was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Voos and Wall) and one opposed (Commissioner Jones).

The next item for consideration was the minutes of the September 8, 2016 special meeting. That meeting was conducted by telephone and convened to consider the draft decision in City of Orange Tp., P.E.R.C. No. 2017-013, which concerned interest arbitration awards in Docket Nos. IA 2010-101 and IA 2011-024. A motion to adopt the minutes of the special meeting was made by Commissioner Bonanni and seconded by Chair Hatfield. Commissioner Wall was recused from voting on the decision due to

his affiliation with the PBA and therefore he did not participate in the telephone meeting. The motion to adopt the minutes was approved by a vote of three in favor (Chair Hatfield, Commissioners Bonanni and Voos) and one opposed (Commissioner Jones).

The Minutes of the September 22, 2016 regular meeting are being held over to the next agenda and revised to include information that was inadvertently omitted from them with regard to New Brunswick Municipal Employees Ass'n, Docket No. SN-2016-080 (that the matter was being held over to the next agenda) and Township of Morris, Docket No. CO-2015-227 (regarding recusals).

Chair Hatfield motioned for a five-minute recess to call Commissioner Eskilson who had not yet arrived to the meeting. Commissioner Jones moved the motion and Chair Hatfield seconded it. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Jones, Voos and Wall).

Chair Hatfield called the meeting to order.

Chair Hatfield stated she was happy to announce that the 2016 PERC Symposium was a great success. Our professional staff did an outstanding job. The Symposium was completely booked within two weeks of the initial announcement on our website. It was very well received; I think there was a good mix of people there from both the labor and management communities.

Commissioner Eskilson called to say he would not make the meeting today.

The Counsel's Office distributed a monthly report.

The Chair turned the meeting over to Deputy General Counsel Lucarelli-Carneiro to address the Commissioner recusal list. Ms. Lucarelli-Carneiro explained that the recusal list is a list that she maintains which identifies those Commissioners who have recusals and the reason for each recusal. She asked the Commissioners to review the list and to see her after the meeting if there are any corrections, additions, or deletions that need to be made to it. She added that if she did not hear from a Commissioner, her understanding will be that list is correct with regard to that Commissioner.

The next item for consideration was the draft decision in New Brunswick Municipal Employees Association and City of New Brunswick, Docket No. SN-2016-080. This case was held from the September 22, 2016 regular meeting because of questions at that meeting about its subject matter. Commissioner Bonanni moved the draft decision and Chair Hatfield seconded the motion. The motion to adopt the draft decision was approved by a vote of three in favor (Chair Hatfield, Commissioners Bonanni and Voos) and two opposed (Commissioners Jones and Wall).

The next item for consideration was the draft decision in New Jersey Transit and Theodore Warfield, Docket No. CI-2015-004.

Commissioner Jones moved the draft decision and Commissioner Wall seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Jones, Voos and Wall).

The next item for consideration was the draft decision in Township of Hillside and Firemen's Mutual Benevolent Association Local 35, Docket No. CO-2014-027. Commissioner Bonanni moved the draft decision and Commissioner Wall seconded the motion.

Commissioner Bonanni stated he had a question and asked: on page 5 of the first paragraph, next to the last line, is training coordinator the same as fire prevention bureau, and then "worked 10 hour days Monday through Friday." "Am I reading something wrong?"

General Counsel McMahon replied that with regard to the second question, she did not believe anything was missing from the sentence.

Commissioner Bonanni responded, "or is it four of the five days, it could be that as well, I just didn't know if I was reading something wrong."

General Counsel McMahon replied that if there was a question regarding the sentence, the decision could be held for another meeting. Commissioner Bonanni responded that that was not necessary. Chair Hatfield replied that the sentence meant that

the employee works any four days between Monday and Friday. The Chair asked if there were any other questions.

Commissioner Jones stated that he disagreed with the hearing examiner's recommended report: that the action in dispute was an attempt to circumvent duties belonging to one group, and there was no managerial prerogative. He added that there was a long history and that history shows just the opposite of the conclusion reached by the hearing examiner.

Chair Hatfield asked if there were more comments, and hearing none, asked for a vote. The motion to adopt the draft decision failed by a vote of two in favor (Chair Hatfield and Commissioner Bonanni) and three opposed (Commissioners Jones, Voos, and Wall). Deputy General Counsel Horowitz said, "So the draft is not adopted."

Commissioner Voos responded, "Before we do that, I would like to know what it means the fact that the hearing examiner found that there was not an unfair labor practice, so now does that mean that we will rewrite the decision?"

General Counsel McMahon replied "yes," that is what will be done. Commissioner Voos responded, "Ok."

The next case for consideration was the draft decision in Hackettstown Board of Education and Hackettstown Education Association, Docket No. CO-2015-260. Chair Hatfield stated that

this case would be held because the parties advised that they are in settlement negotiations.

The next case for consideration was the draft decision in International Academy of Trenton Charter School and Int'l Academy of Trenton Charter School Ed. Ass'n, Docket No. RO-2016-045. Commissioner Jones moved the draft decision and Commissioner Voos seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Jones, Voos and Wall).

The next case for consideration was the draft decision in West Morris Regional High School Bd. of Ed. and West Morris Regional Ed. Ass'n, Docket No. SN-2016-081. Chair Hatfield stated that the order in the decision as presented to the Commission required modification to the following language:

The language "shall be employed from September 1st through June 30th" from Article 2, Section A of the collective negotiations agreement between the West Morris Regional High School Board of Education and the West Morris Regional Education Association is not mandatorily negotiable.

Commissioner Bonanni is recused from this case because the Cleary, Giacobbe, Alfieri & Jacobs law firm serves as counsel to Morris County. As a result of the recusal and absences, a quorum of Commissioner's was not present to act on this item. This case will be considered at a future meeting.

The next case for consideration was the draft decision in City of Perth Amboy and Perth Amboy Police Benevolent Association Local 13, Docket No. CO-2015-059. Commissioner Bonanni is recused from voting on this decision because the law firm DeCotiis, Fitzpatrick and Cole represents Morris County in negotiations with the State over a land deal. Commissioner Wall is recused from all PBA cases. Accordingly, as a result of recusals and absences, a quorum of Commission members was not present to act on this item. This case will be considered at a future meeting.

Commissioner Bonanni asked Deputy General Counsel Lucarelli-Carneiro if he would continue to be recused once the land agreement is signed and adopted. She responded that he would need to go through the one-year cleansing period before the recusal would end.

The final item for consideration was the Proposed Readoption with Amendments - Interest Arbitration in Public Police and Fire Departments: N.J.A.C. 19:16. Commissioner Jones stated that he did not think we should further enhance or delineate the statute, that "we are not empowered to do that."

Chair Hatfield explained that the amendment simply codifies some of the decisions rendered in the past involving interest arbitration awards. She stated that the Commission had been criticized by a party in the Atlantic County decision for not

incorporating the policy at issue there into a regulation. She asked if the Commissioners recalled the case where the employer did not provide the arbitrator information that he needed to show that the award complied with the statute. These rules are intended to address that problem as well.

Commissioner Voos stated that she respectfully disagreed with Commissioner Jones. She added that it would have been better to have fewer remands in interest arbitration cases, that it is important that the employer who has the information be required to provide that information to the union and to the arbitrator and ultimately to us, and that she thinks these rules are okay and that the law can still be changed despite their adoption.

At Commissioner Bonanni's request, the Commission agreed to hold the rule amendment until the next meeting given the absence of two Commissioners from today's meeting.

Commissioner Jones moved to adjourn the meeting and Commissioner Voos seconded the motion. The motion was unanimously approved. The meeting was adjourned.

The next regular meeting is scheduled to be held on Thursday, November 17, 2016.