

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
June 27, 2013
10:00 p.m.
495 West State Street
Trenton, New Jersey

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

Present were:

Commissioners:

John Bonanni
Paul Boudreau
John H. Eskilson
Paula B. Voos
Richard Wall

Also present were:

David Gambert, Deputy General Counsel
Mary E. Hennessy-Shotter, Deputy General Counsel
Don Horowitz, Deputy General Counsel
Christine Lucarelli-Carneiro, Deputy General Counsel
Martin R. Pachman, 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 13, 2012 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 June 24, 2013, 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 March 21, 2013 regular meeting. A motion to adopt the minutes was made by Commissioner Bonanni and seconded by Commissioner Boudreau. Commissioners Eskilson and Voos abstained because they were not present at this meeting. The motion to adopt the minutes was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Boudreau and Wall), and two abstentions (Commissioners Eskilson and Voos).

The next item for consideration was the minutes of the April 18, 2013 special meeting. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Bonanni. Commissioner Wall abstained because he was absent from this meeting and would have been recused from participation. The motion to adopt the minutes was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos), and one abstention (Commissioner Wall).

The next item for consideration was the minutes of the May 30, 2013 regular meeting. A motion to adopt the minutes was made by Chair Hatfield and seconded by Commissioner Eskilson. Commissioners Bonanni, Boudreau and Wall abstained because they were not present at this meeting. The motion to adopt the minutes was approved by a vote of three in favor (Chair Hatfield, Commissioners Eskilson and Voos), and three abstentions (Commissioners Bonanni, Boudreau and Wall).

The next item for consideration was the minutes of June 13, 2013 special meeting. A motion to adopt the minutes was made by Commissioner Bonanni and seconded by Commissioner Voos. Commissioner Wall abstained because he was absent from this meeting and would have been recused from participation. The motion to adopt the minutes was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos), and one abstention (Commissioner Wall).

The Counsel's Office distributed a monthly report.

Deputy General Counsel Don Horowitz reported that there were two decisions last month from the Appellate Division. The Court remanded to the interest arbitrator an award in the Burlington County Prosecutor's Office case. The Court felt that there was not enough discussion of the factors under §16(g) (6) and of the financial impact of the award on the County. The arbitrator's opinion focused on the County's ability to pay. The Court stated it was not enough to simply assert that the public entity can raise taxes to cover the costs of the interest arbitration award. It was remanded for an elaboration of how the nine factors identified in 16(g) figured into his decision. The County has filed a motion for reconsideration. They would like the case assigned to a different arbitrator.

The Court also affirmed a dismissal of unfair practice charges involving layoffs of county correction officers in Monmouth County in accordance with a plan that has been approved

by the Civil Service Commission. The Civil Service Commission's approval of the plan is also upheld by the Court.

The first case for consideration was the draft decision in City of Garfield and PBA Local 46, Docket No. CO-2011-397. Commissioner Voos moved the draft decision and Commissioner Boudreau seconded the motion. Commissioner Wall is recused from voting on this matter because of his affiliation with the PBA. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos).

The next case for consideration was the draft decision in Township of Edison and IAFF Local 1197, Docket No. SN-2012-041. Commissioner Bonanni moved the draft decision and Commissioner Voos seconded the motion.

Commissioner Eskilson stated that the Commission's designee granted interim relief and the draft decision goes in the opposite direction. He asked where did we differ from the designee's decision in this matter.

General Counsel Martin Pachman responded that the designee has followed precedent that allowed the Town to unilaterally make the reorganizations as a managerial prerogative. Mr. Pachman continued that he can not speak for the designee but it appears that the case before the designee was more of a scope case on the issue of the right to make the transfers/changes as opposed to

the right to receive payment for doing the work. You will note that there is some language in the draft that attempts to make it clear to any arbitrator as to what he can and can not do in the resolution of this case.

The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall).

The next case for consideration was the draft decision in New Jersey State Judiciary (Camden Vicinage) and Probation Association of New Jersey (Professional Supervisors Union), Docket No. SN-2012-051. Commissioner Eskilson moved the draft decision and Commissioner Boudreau seconded the motion.

Commissioner Voos referenced the Red Bank Bd. of Ed. case where in that case it was stated that workload limits are clearly mandatorily negotiable. Workload involves the amount of work done at a given time. Even though they are not working more hours they are being asked to do more work. She concluded by stating that she has trouble with the draft decision.

Mr. Horowitz responded that the Supreme Court held many years ago that promotions were not mandatorily negotiable. The criteria used to determine the most suitable candidate remains the prerogative of the employer. At the same time you can not make a promotion decision based on a discriminatory motive. Given the job description of these employees and their positions

as high level professionals, they are expected to adjust to the demands of the workload. The record does not adequately show that there was a severable compensation issue. In the Red Bank case that was referenced, there is a contractual definition of a workload ceiling, or a ceiling of beyond which a claim for additional compensation can be made.

Commissioner Voos stated she understands but still feels it is a scope case and workload limits are clearly mandatorily negotiable so the case should go to arbitration.

Mr. Horowitz stated that the draft finds that the severable compensation claim was not supported by adequate documentation in the record.

Commissioner Eskilson asked if the contractual language in this case differentiates the two cases.

Mr. Horowitz responded that the standard is that additional workload in the abstract can give rise to a severable compensation claim, but the draft finds that based on what was submitted to us in the record, we could not find that a severable compensation claim existed.

The motion to adopt the draft decision was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall), and one opposed (Commissioner Voos).

The next case for consideration was the draft decision in New Jersey State Judiciary (Monmouth Vicinage) and Probation Association of New Jersey (Professional Supervisors Union), Docket No. SN-2012-054. Commissioner Boudreau moved the draft decision and Commissioner Eskilson seconded the motion. The motion to adopt the draft decision was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall), and one opposed (Commissioner Voos).

The next case for consideration was the draft decision in Red Bank Regional Board of Education and Red Bank Regional Education Association, Docket No. SN-2012-068. Commissioner Voos moved the draft decision and Commissioner Wall seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Boudreau, Bonanni, Eskilson, Voos and Wall).

The next case for consideration was the draft decision in Northfield Board of Education and Northfield Education Association, Docket No. SN-2012-072. This case was pulled from the agenda because it has been settled.

The next case for consideration was the draft decision in Hopewell Valley Regional Board of Education and Hopewell Valley Education Association, Docket No. SN-2012-077. Commissioner Voos moved the draft decision and Commissioner Wall seconded the motion. The motion to adopt the draft decision was unanimously

approved (Chair Hatfield, Commissioners Boudreau, Bonanni, Eskilson, Voos and Wall).

The next case for consideration was the draft decision in Township of Bedminster and PBA Local 366, Docket No. SN-2013-003. Commissioner Voos moved the draft decision and Commissioner Boudreau seconded the motion. Commissioner Wall is recused from voting on this matter because of his affiliation with the PBA. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos).

The next case for consideration was the draft decision in Township of Jefferson and Office and Professional Employees International Union, Local 32, Blue Collar Unit, Docket No. SN-2013-006. Commissioner Bonanni moved the draft decision and Commissioner Boudreau seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall).

The next case for consideration was the draft decision in Freehold Regional High School District Board of Education and Freehold Regional High School Education Association, Docket No. SN-2013-012. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Wall is recused from this matter because it involves the Freehold Board of Education.

Commissioner Voos commented that to teach science you need an appropriate facility, which is mandatorily negotiable. She does not feel it is just a class size issue and this matter should go to arbitration.

Mr. Pachman responded that it is up to the Board to decide, in its exercise of its managerial prerogative, as to how to arrange for the education of the students. The draft decision is saying that the number of work stations that are in a classroom, and whether or not every student should have his own work station are managerial prerogatives, and the Board had a right to make that determination without it being negotiable.

The motion to adopt the draft decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson), and one opposed (Commissioner Voos).

The meeting was then adjourned.

The next regular meeting is scheduled to be held on Thursday, August 8, 2013.