

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
August 8, 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
John H. Eskilson
David Jones
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 August 1, 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 June 27, 2013 regular meeting. A motion to adopt the minutes was made by Commissioner Bonanni and seconded by Commissioner Eskilson. Commissioner Jones abstained because he was not present at this meeting. The motion to adopt the minutes was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Eskilson, Voos and Wall), and one abstention (Commissioner Jones).

Chair Hatfield informed the Commissioners that an informal meeting with the interest arbitrators is scheduled to be held on August 21, 2013.

The Counsel's Office distributed a monthly report.

Deputy General Counsel Don Horowitz reported that there were new appeals: Borough of Tenafly and Township of Montclair.

Mr. Horowitz noted that in a case involving Jersey City, the employer tried to have a trial court, rather than the Commission, issue a negotiability determination. The court and the Appellate Division have both quashed that effort.

Mr. Horowitz reported on Gelber v. Heck, an Open Public Records Act case involving a request made to the City of Hackensack for copies of collective negotiations agreements. Our Act has always required employers to file copies of contracts with us. However, when the interest arbitration law was amended it mandated that new contracts be filed with the Commission

within 15 days after execution. That requirement is for all contracts, not just those covered by interest arbitration. A public employer must also prepare and file a certification summarizing the financial terms of the contract. In this case a trial judge ordered that Hackensack pay \$12,000 in attorney fees to the requestor when it failed to properly satisfy an OPRA request for a contract between Hackensack and its employees, pursuant to the Open Public Records Act.

The first case for consideration was the draft decision in Passaic County Superintendent of Elections and Communications Workers of America AFL-CIO Local 1032, Docket No. CO-2009-493. Commissioner Jones moved the draft decision and Commissioner Voos seconded the motion.

Commissioner Bonanni asked if the Superintendent of Elections acts independently of County government.

Mr. Horowitz responded that they are considered a separate public employer.

Mr. Bonanni asked if the cost is going to be borne by the County.

Martin Pachman, General Counsel, responded yes.

Mr. Horowitz responded that we do not know what the precise cost is going to be. Any offer of reinstatement with back pay is subject to mitigation. If any of the people have been working since they were terminated, those earnings, plus unemployment

compensation, are deducted from any back pay award. And, back pay is only available if they accept the offer of reinstatement.

Commissioner Bonanni stated that his concern is that the liability is going to be borne by the County and, in fact, it should not be because it was not their issue. The Superintendent is appointed by the State and the Superintendent did something that was not appropriate so the State should bear the cost, not the County.

Commissioner Eskilson responded that it is a dysfunctional table of organization.

Mr. Pachman responded that there was an original order by the Hearing Officer reinstating those people. There was no stay requested for that, so therefore the amount of back pay should be mitigated assuming the Superintendent of Elections complied with the order, which they should have. Secondly, the issue that Commissioner Bonanni is raising is a very valid one, but frankly I am not sure that it is within our ability to control. It is a matter of governmental authority between the County Board of Elections and the County government itself. Based on your question the answer would be for the County to file some action in the Superior Court to say who is responsible for paying this back pay to these employees. I do not know enough about the County Superintendent of Elections or the Board of Elections to know where that independent funding would come from, if anywhere.

Mr. Horowitz responded that the attorney for the Superintendent of Elections, whose firm also represents the County, did not raise this as an issue in exceptions.

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

The next case for consideration was the draft decision in North Hudson Regional Fire & Rescue and North Hudson Firefighters Association, Docket No. CO-2011-153. Commissioner Voos moved the draft decision and Commissioner Jones seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Voos and Wall).

The next case for consideration was the draft decision in City of Atlantic City and Atlantic City Police Benevolent Association Local 24, Docket No. IA-2013-016. Commissioner Voos moved the draft decision and Commissioner Bonanni 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, Eskilson, Jones and Voos).

The next case for consideration was the draft decision in Borough of Union Beach and PBA Local 291, Docket No. IA-2013-026. Commissioner Bonanni moved the draft decision and Commissioner

Jones 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, Eskilson, Jones and Voos).

Mr. Horowitz noted that in a document he is preparing to be filed in the Appellate Division, he advises that between January 1, 2012 and June 30, 2013 the Commission held 17 regular meetings and also held 17 special meetings to consider interest arbitration awards to satisfy the review deadlines.

The next case for consideration was the draft decision in Ocean County Library and Ocean County Library Employees Association (Non-Supervisors) and Government Workers Union, Docket No. RO-2013-032 and Ocean County Library and Ocean County Library Employees Association (Supervisors) and Government Workers Union Supervisors' Council 10, Docket No. RO-2013-037. This case has been settled and was removed from the agenda.

The next case for consideration was the draft decision in Branchburg Township Board of Education and Branchburg Township Education Association, Docket No. SN-2012-057. Commissioner Eskilson moved the draft decision and Commissioner Wall seconded the motion. Commissioner Jones abstained from voting. Commissioner Voos stated she is not saying the letter should be removed from the file, but she feels the letter is considered

disciplinary. She also feels the case should go to arbitration. The motion to adopt the minutes was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Eskilson and Wall), one opposed (Commissioner Voos), and one abstention (Commissioner Jones).

The next case for consideration was the draft decision in Roselle Park Board of Education and Roselle Park Education Association, Docket No. SN-2012-075. 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 Bonanni, Eskilson, Jones, Voos and Wall).

The next case for consideration was the draft decision in Winslow Township Board of Education and Winslow Township Education Association, Docket No. SN-2013-009. Commissioner Eskilson moved the draft decision and Commissioner Wall seconded the motion.

Commissioner Jones responded that what we are talking about here is certainly negotiable. The number of hours an employee works, employee compensation and fringe benefits are all mandatorily negotiable items under conditions of employment. If a public employer seeks to change those working conditions they must do so through negotiations with the majority representative.

Deputy General Counsel Christine Lucarelli-Carneiro responded that in schools that did not have their own guidance counselor one was hired for each school. The other important thing about the record, what was not in it, which was we did not have anything from the union. There was no certification stating there was a measurable increase in the work hours or the work loads of the positions that absorbed the duties.

Commissioner Jones asked if there was a certification from the employer.

Ms. Lucarelli-Carneiro responded we do have a certification from the Director of Human Resources Maureen Miller.

Commissioner Voos commented that the union may have not filed the legal things correctly. The unit work is obvious.

The motion to adopt the decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Eskilson and Wall), two opposed (Commissioners Jones and Voos).

The last item for consideration was the Proposal to Readopt N.J.A.C. 19:15, Subpoenas. Commissioner Eskilson moved to submit the proposed readoption to the Office of Administrative Law for their proposal procedures and Commissioner Jones seconded the motion. The submission was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Voos and Wall).

Commissioner Bonanni moved to enter into Executive Session to discuss personnel issues and Commissioner Jones seconded the

motion. The Commission then voted unanimously to go into executive session (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Voos and Wall). The minutes of that session are recorded separately.

After the Commissioners returned from Executive Session, Commissioner Wall 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 regular meeting is scheduled to be held on Thursday, September 26, 2013.