

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
January 30, 2014
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
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 19, 2013 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 January 27, 2014, copies of an additional written "Notice of Meeting" were posted and sent in a similar manner.

The Counsel's Office distributed a monthly report.

The first case for consideration was the draft decision in Bridgewater-Raritan Regional Board of Education and Stan J. Serafin, Docket No. CI-2009-045. Commissioner Eskilson moved the draft decision and Commissioner Voos seconded the motion. Commissioner Jones suggested that a more appropriate synonym be used instead of the word "tortured". The word "protected" was approved by acclamation. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall).

The next case for consideration was the draft decision in 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 Boudreau seconded the motion. Commissioners Bonanni and Wall are recused from voting because the law firm of Schenck, Price, Smith & King also represent the County of Morris in employment litigation.

Commissioner Jones stated that he disagrees with the draft decision. He stated that we relied upon Bloomfield and what we did essentially was what we have tried not to do and that is legislative intent. We are now deciding Atlantic County v. PBA 243, being a similar case, we are now going to use to redefine the policy that has worked well. The dynamic status quo that is

being defined here and is now being translated readily into all these incremental things creates an environment where you are taking away earned raises. I would beg those of us who want to look at this in a fair and balanced matter to reject the immediate application of Atlantic County and maintain the dynamic status quo.

Commissioner Voos stated that the dynamic status quo encourages bargaining and that the static status quo does not. It does not give the employer a significant incentive to bargain.

Commissioner Jones stated that we are basically tilting the scale to one side. No longer are you motivated to do the right thing under the spirit of the Act and that is to come together as a public entity and find a solution to the CNA/CBA differences.

Commissioner Eskilson disagreed. Circumstances have changed, it may have worked 30 years ago. The economic circumstances are more dire. In the case of police contracts the increments are defined by law as base salary, so it is a salary increase.

Chair Hatfield responded we are there because many of the arbitrators are adding steps or freezing people on the salary guide.

Commissioner Voos stated when we have a dynamic status quo the union does still have an incentive to negotiate for protected senior members. The dynamic status quo does not eliminate the

union's incentive to negotiate. The dynamic status quo does give management more incentive to negotiate than the static status quo. I do not agree that the static status quo encourages bargaining more than the dynamic status quo.

The motion to adopt the draft decision was approved by three in favor (Chair Hatfield, Commissioners Boudreau and Eskilson) and two opposed (Commissioners Jones and Voos).

The next case for consideration was the draft decision in Bethlehem Township Board of Education and Bethlehem Township Education Association, Docket No. CO-2011-458. Commissioner Eskilson moved the draft decision and Commissioner Boudreau seconded the motion. Commissioners Bonanni and Wall are recused from voting because the law firm of Schenck, Price, Smith & King also represent the County of Morris in employment litigation. Commissioner Boudreau stated for the record that Jackson Lewis, LLP is a member of the Morris County Chamber of Commerce.

The motion to adopt the draft decision was approved by three in favor (Chair Hatfield, Commissioners Boudreau and Eskilson) and two opposed (Commissioners Jones and Voos).

The next case for consideration was the draft decision in Pequannock Township Board of Education and Pequannock Township Education Association, Docket Nos. SN-2013-007 and SN-2013-008. This case was pulled from the agenda because it has been settled.

The next case for consideration was the draft decision in State of New Jersey Judiciary (Ocean Vicinage) and Probation Association of New Jersey (Professional Case Related Unit), Docket No. SN-2013-016. Commissioner Boudreau moved the draft decision and Commissioner Eskilson seconded the motion.

Commissioner Voos stated that management has decided that every employee must work one Saturday a month and asked how that would affect religious beliefs.

General Counsel Martin Pachman responded that if such a claim was raised, based on religious grounds, it would have to be addressed but it is in a different forum.

Commissioner Jones stated that we cite in this matter those things that are necessary to meet when we talk about management imposing this. Clearly, there are things that demonstrate a need to work certain shifts and certain hours. We do not have this in the record. We have all these other issues that clearly a past practice of a certain amount of success. Why Saturday and not Sunday?

Mr. Pachman responded that kind of determination is the essence of a managerial prerogative that they have a right to exercise.

Commissioner Voos asked if we are deciding whether or not this can go to arbitration, right? She continued that she has reservations about whether or not the arbitrator will uphold the union's position.

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 two opposed (Commissioners Jones and Voos).

The next case for consideration was the draft decision in East Orange Board of Education and East Orange Education Association, Docket No. SN-2013-032. 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, Boudreau, Eskilson, Jones, Voos and Wall).

The next case for consideration was the draft decision in State of New Jersey and New Jersey Division of Criminal Justice Non-Commissioned Officers Association and New Jersey Division of Criminal Justice Superior Officers Association and Fraternal Order of Police, Lodge 91, Docket Nos. CO-2011-073. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Boudreau stated for the record that Jackson Lewis, LLP is a member of the Morris County Chamber of Commerce.

Commissioner Jones stated that on the issues that are deemed negotiable he agrees. On the issues that have been deemed non-negotiable he feels, based upon the language and the contractual status, that many of those items would be negotiable. Anyone on

a prima facie application under Loudermill can be suspended, but within 5 days generally that person has to be brought before a group that is going to make that case. We as a body can not diminish that right to those proceedings. The only thing that is certainly negotiable is the application on how you want to handle Loudermill. It can be done with a lawyer or a union representative. The state makes its case and somebody rules on it. It is a fundamental right.

Mr. Horowitz responded that L.5 which is on page 8 about suspending a permanent career service employee that Loudermill is an individual right, the union's proposal has been that an employee may be suspended without pay. That does not bargain away an employee's Loudermill right. It is simply an opportunity to give a short explanation to explain away the employer's perception that this employee has committed an offense warranting discipline.

Commissioner Jones responded to say that that matter is non-negotiable when the process is clearly negotiable.

Mr. Horowitz stated that the draft decision states that the following provisions, or the disputed portions thereof, are not mandatorily negotiable. As currently written it goes beyond the Loudermill requirement and if there were additional due process requirements imposed before an immediate suspension on balance that would handicap the employer if the employer has made a

decision that this person must be immediately removed pending further investigation.

Commissioner Jones responded that we are not giving an insightful or completely accurate representation as to the fact that Loudermill ensures you a certain level of negotiability.

Mr. Horowitz made a suggestion to modify the draft decision on page 12 to say "section L.5, as presently written," and asked Commissioner Jones if that would be more satisfactory.

Commissioner Jones responded that he thinks we would have to go further because if he was management he could say these things are off the table by virtue of the scope.

Commissioner Eskilson stated he was in agreement with Mr. Horowitz's suggestion to modify the language on page 12 to "as written in the current proposal."

Commissioner Eskilson made a motion to adopt the draft decision with the amended language on page 12 to reflect "as written in the current proposal" after section L.5 and Commissioner Bonanni seconded the motion.

Commissioner Voos abstained.

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

The next case for consideration was the draft decision in Cherry Hill Fire District No. 13 and IAFF Local 3249, Docket No.

SN-2013-059. Commissioner Jones 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, Jones, Voos and Wall).

The next case for consideration was the draft decision in Township of Manchester and Office and Professional Employees International Union, Local 32, Docket No. SN-2013-072.

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

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

The next regular meeting is scheduled to be held on Thursday, February 27, 2014.