

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
June 25, 2009
10:00 a.m.
495 West State Street
Trenton, New Jersey

The meeting was called to order by Chairman Lawrence Henderson.

Present were:

Chairman: Lawrence Henderson

Commissioners:
Kirsten S. Branigan
Donald J. Buchanan
Patrick V. Colligan
Cheryl G. Fuller
Matthew U. Watkins

Also present were:

Mary E. Hennessy-Shotter, Deputy General Counsel
Don Horowitz, Deputy General Counsel
Christine Lucarelli-Carneiro, Deputy General Counsel
Ira Mintz, General Counsel
Annette Thompson, who acted as Stenographer

At the commencement of the meeting, the Chairman, 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 18, 2008 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; and

(c) mailed to the Secretary of State for filing.

Furthermore on June 18, 2009, copies of an additional written "Notice of Meeting" were posted and sent in a similar manner.

Chairman Henderson called the meeting to order. The first item for consideration was the minutes of the May 28, 2009 meeting. A motion to adopt the minutes was made by Commissioner Fuller and seconded by Commissioner Buchanan. The motion was unanimously approved (Chairman Henderson, Commissioners Branigan, Buchanan, Colligan and Fuller). Commissioner Watkins abstained.

The General Counsel distributed his monthly and supplemental reports. He provided a brief update on the furlough issue by reporting that the State and the civilian unions have entered into tentative agreements resolving the issue of furloughs. The agreements are subject to ratification by the end of the month. The parties have asked the court litigation to be placed on hold. The Civil Service Commission did adopt staggered furloughs as part of the new rule and has stayed implementation pending any new appeals. The parties have agreed to jointly request that the Civil Service Commission rescind the new regulations. The memoranda also establish a commission to look into the whole issue of furloughs and layoffs and the impact on public employees. The Commission is made up of unions and management as well as the chairman of this Commission and the chairman of the Civil Service Commission, with a report due by December of 2010.

He continued by reporting that the Supreme Court issued a decision yesterday involving the Mount Holly Bd. of Ed. and Mount Holly Ed. Ass'n. This decision dealt with the relationship

between collective negotiations agreements and individual employment contracts. There has been a lot of litigation over that relationship, particularly in school districts, because they have individual employment contracts. There have been a number of court decisions over the years. In Camden v. Alexander, the court gave primacy to the individual employment contract finding that there was no presumption of arbitrability in the public sector. The Legislature then responded and amended our statute to find a presumption of arbitrability in the public sector and then two court decisions ended up in the Supreme Court. One in Pascack Valley and one in Northvale. In Pascack Valley the Court found that the collective negotiations agreement was primary over the individual employment contract, but the contract had specific language that said a mid-contract termination of a custodian would be treated as discipline subject to the grievance procedure. This language was in the contract when the Court said that it could go to binding arbitration. In Northvale, the contract did not provide that language. There was a 3-3 split in the Supreme Court, and so the Appellate Division decision became the final decision. The new Chief Justice had recused himself in Northvale, but he participated in Mount Holly. The Court held that a collective negotiations agreement will, in most cases, prevail over an individual employment contract.

In Mount Holly, the just cause clause was enough to get the grievance to binding arbitration. This was a significant tie-breaking decision. School boards that want to prevent mid-contract terminations from going to binding arbitration will need to negotiate contract language specifically excluding these type of cases from the arbitration clause.

The first case for consideration was State of New Jersey (Department of Transportation) and Jane Lyons, Docket No. CI-2007-065. Commissioner Buchanan moved the draft decision and Commissioner Watkins seconded the motion. The motion was unanimously approved (Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Watkins).

The next case for consideration was Old Bridge Township Fire District #2 and Old Bridge Township Career Fire Fighters Association, Local 3311, IAFF, Docket No. CU-2008-013. Commissioner Fuller moved the draft decision and Commissioner Branigan seconded the motion. The motion was unanimously approved (Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Watkins).

The next case for consideration was Carteret Board of Education and Carteret Education Association, Docket No. SN-2009-026. Commissioner Watkins moved the draft decision and Commissioner Fuller seconded the motion. Commissioner Watkins made a recommendation that a footnote stating, "We express no

opinion on whether blue jeans meet any occupational safety requirements," be moved into the body of the decision. The motion to adopt the draft with the revision was unanimously approved (Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Watkins).

The next case for consideration was Hudson County and District 1199J, NUHHCE, AFSCME, AFL-CIO, Docket No. SN-2009-035. Commissioner Colligan moved the draft decision and Commissioner Buchanan seconded the motion. Commissioner Fuller recused herself because she has a standing relationship with Hudson County. The motion was unanimously approved (Chairman Henderson, Commissioners Branigan, Buchanan, Colligan and Watkins).

The next case for consideration was Rumson-Fair Haven Regional Board of Education and Rumson-Fair Haven Regional Employees Association, Docket No. SN-2009-037. Commissioner Watkins moved the draft decision and Commissioner Branigan seconded the motion. The motion was unanimously approved (Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Watkins).

The last case for consideration was State of New Jersey (Division of State Police) and State Troopers Non-Commissioned Officers Association, Docket No. SN-2009-048. Commissioner Fuller moved the draft decision and Commissioner Watkins seconded the motion. The motion was approved by a vote of five in favor

(Chairman Henderson, Commissioners Branigan, Buchanan and Fuller and Watkins), and one opposed (Commissioner Colligan).

The next item for consideration were the Appointments to the Special Disciplinary Arbitration Panel. A motion to adopt the Director of Arbitration's recommendations for appointment to the special disciplinary arbitration panel was made by Commissioner Watkins and seconded by Commissioner Buchanan. The motion was unanimously approved (Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Watkins).

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

The next meeting is scheduled to be held on Thursday, August 13, 2009 at 10:00 a.m.