

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
January 28, 2010
10:00 a.m.
495 West State Street
Trenton, New Jersey

The meeting was called to order by Ira Mintz, General Counsel.

Present were:

Commissioners:

Patrick V. Colligan
Adrienne E. Eaton
Cheryl G. Fuller
Sharon Krengel
Paula B. Voos
Matthew U. Watkins

Also present were:

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

At the commencement of the meeting, the General Counsel, 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, 2009 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 21, 2010, copies of an additional written "Notice of Meeting" were posted and sent in a similar manner.

General Counsel Ira Mintz called the meeting to order. He welcomed the three new Commissioners, Adrienne E. Eaton, Sharon Krengel and Paula B. Voos.

The first item for consideration was the minutes of the December 17, 2009 meeting. A motion to adopt the minutes was made by Commissioner Fuller and seconded by Commissioner Watkins. The motion was unanimously approved (Commissioners Colligan, Fuller and Watkins). Commissioners Eaton, Krengel and Voos abstained.

The next item for consideration was the minutes of the January 8, 2010 special meeting. A motion to adopt the minutes was made by Commissioner Watkins and seconded by Commissioner Colligan. The motion was unanimously approved (Commissioners Colligan, Fuller and Watkins). Commissioners Eaton, Krengel and Voos abstained.

The General Counsel distributed his monthly and supplemental reports. He reported on a case involving the New Jersey Institute of Technology ("NJIT"). The Commission's decision in this case has been appealed by NJIT. In that decision the Commission restrained binding arbitration of a grievance challenging the termination of a NJIT police officer. In the course of that litigation, the officer argued that he was entitled to pursue arbitration under the new disciplinary arbitration statute. NJIT argued that it was not covered by that

statute. The Commission found that NJIT was covered by that statute but this was not a proceeding that had been properly filed under that statute. The Commission allowed the employee ten days to file a petition under the new statute. NJIT has appealed the Commission decision. In the meantime, the employee did file for disciplinary arbitration, but the Director of Arbitration found the petition to be untimely. The employee then moved for reconsideration, which was denied by the Director of Arbitration for the same reason. It is unclear at this time if the appeal will continue in light of the fact that there is no challenge to the termination going on either in grievance or disciplinary arbitration.

The General Counsel continued by reporting on a few interesting cases in his supplemental report. The first case involved New Jersey Transit ("NJT"), where the Appellate Division affirmed a Law Division decision confirming a grievance arbitration award finding that NJT violated the contract when it terminated an officer who was injured on duty without convening a board of doctors, as set forth in the collective bargaining agreement. The particular relevance to the Commission is that there was a scope of negotiations determination stating that the grievance was legally arbitrable. The arbitrator ruled in favor of the union and the Courts have confirmed that award.

The next case involved South Amboy and South Amboy PBA. There has been a lot of litigation about reimbursement for co-pays and other costs when the State Health Benefits Commission changes co-pays. There is an oral argument scheduled to be held on February 4, 2010 in the Appellate Division in a case involving reimbursement for co-pays and whether or not the grievance can go to arbitration. In this case, the City moved from a self-insured plan to the State Health Benefits Program and in the course of doing that raised co-pays and eliminated reimbursement for Medicare Part D for retirees. The union filed a grievance. The arbitrator found a violation and ordered reimbursement and that arbitration award was confirmed by the trial court and the Appellate Division affirmed that determination.

The last case to be reported on was Hudson County and District 1199J, which had to do with a provisional employee who took the exam for his position, did not pass the exam, and was terminated. The union filed a grievance stating that the employer was not required to terminate the employee. The case proceeded to arbitration and the arbitrator agreed stating that there was no statute or regulation that requires that a provisional employee who fails a Civil Service exam has to be terminated prior to the twelve-month limit on provisional employment under Civil Service. The relevance to the Commission is that there was a scope of negotiations case where the

Commission had ruled that there was no statute or regulation that preempted arbitration of this case.

The first case for consideration was New Jersey State Judiciary (Camden Vicinage) and Probation Association of New Jersey, Docket No. CO-2008-287. Commissioner Watkins moved the draft decision and Commissioner Colligan seconded the motion. The motion was unanimously approved (Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins).

The next case for consideration was Quinton Township Board of Education and Quinton Education Association, Docket No. SN-2009-080. Commissioner Fuller moved the draft decision and Commissioner Watkins seconded the motion. The motion was unanimously approved (Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins).

The next case for consideration was City of South Amboy and South Amboy Policemen's Benevolent Association, Local 63 & South Amboy Superior Officers' Association, Docket No. SN-2010-003. This case was removed from the agenda. The parties reached a settlement.

The next case for consideration was Borough of North Caldwell and PBA Local 81, Docket No. SN-2010-025. Commissioner Fuller moved the draft decision and Commissioner Krengel seconded the motion. Commissioner Colligan recused himself because of his affiliation with the PBA. Commissioner Watkins recused himself because counsel for the municipality is also his labor counsel.

The motion was unanimously approved (Commissioners Eaton, Fuller, Krengel and Voos).

The next item for consideration was the Adoption of the 2010 Interest Arbitration Biennial Report. Commissioner Colligan moved to adopt the report and Commissioner Fuller seconded the motion. The motion was unanimously approved (Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins).

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

The next meeting is scheduled to be held on Thursday, February 25, 2010 at 10:00 a.m.