

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
February 3, 2011
1:30 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
Patrick V. Colligan
Adrienne E. Eaton
John Eskilson
Sharon Krengel
Paula B. Voos

Also present were:

Mary E. Hennessy-Shotter, Deputy General Counsel
Don Horowitz, Deputy General Counsel
Christine Lucarelli-Carneiro, Deputy 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 16, 2010 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, 2011, copies of an additional written "Notice of Meeting" were posted and sent in a similar manner. In addition, on January 31, 2011, copies of a "Notice of Rescheduled Meeting" were posted and sent in a similar manner.

The first item for consideration was the minutes of the December 16, 2010 meeting. A motion to adopt the minutes was made by Commissioner Krengel and seconded by Commissioner Colligan. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Krengel and Voos). Commissioners Bonanni and Eskilson abstained.

The next item for consideration was the minutes of the special meeting held on December 22, 2010. A motion to adopt the minutes was made by Commissioner Eaton and seconded by Commissioner Voos. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Krengel and Voos). Commissioners Bonanni and Eskilson abstained.

Chair Hatfield welcomed two new Commissioners. John Eskilson of Sussex County and John Bonanni of Morris County. She thanked Commissioners Matthew Watkins and Cheryl Fuller for their competent and professional service during their term of office.

Chair Hatfield reported that an Interest Arbitration Training Session was held on January 24, 2011. The training session focused on the recent reforms to the interest arbitration process recently enacted by the Legislature. Marc Pfeiffer and Thomas Neff from the NJ Division of Local Government Services were available to provide an analysis of the legislation and the impact of the arbitration award cap upon local property taxes and how the tax levy applies to interest arbitration law.

Commissioner Colligan asked how many interest arbitrators have remained on the panel. Chair Hatfield responded that four arbitrators have remained and approximately 6 to 8 have asked that no cases be assigned to them until June of this year. Commissioner Colligan responded that a significant number of arbitrators have left the panel.

Commissioner Colligan asked why Ira Mintz was no longer General Counsel. The Chair responded that Ira was an at will employee and that the matter was a personnel matter which she would not discuss. Commissioner Colligan again questioned the reason why Ira was no longer employed at PERC. He praised Ira's competence, professionalism, neutrality, and many years of service. He also praised the agency's history of neutrality and questioned whether the agency's neutrality would continue. He raised concern regarding the agency functioning with vacancies in the positions of General Counsel, Director of Unfair Practices and Director or Conciliation and Arbitration.

Commissioner Eaton agreed with Commissioner Colligan about Ira's competence, professionalism and neutrality, as did Commissioners Krengel and Voos. They also questioned why Ira was no longer employed at PERC. The Chair responded that as Chair, it was within her discretion to decide who would be employed as General Counsel. Commissioner Voos requested to go into executive session to discuss the matter further. The Chair

responded that there was no basis to go into executive session.

The Counsel's Office distributed a monthly report and a supplemental report.

Don Horowitz, Deputy General Counsel, reported that the Appellate Division has reversed the Commission's decision in Morris Cty. The Commission held that the employer had engaged in unfair practices by issuing a directive providing that staff who are assigned to positions normally closed on the weekend will no longer be permitted to work those positions on a holiday. The Court determined that the employer did not violate the Act when it ended the long-standing practice that had allowed employees who were assigned to posts that were nonoperational on weekends to work those posts on nonoperational holidays and be paid a premium for the privilege.

The Appellate Division affirmed the Commission's decision in Wall Tp. In its initial decision, the Commission found that the Board violated the Act, when it terminated an employee after she tried to grieve her evaluation and enlisted the Wall Township Information Technology Association's assistance to have the Board review the contents of her evaluation and to negotiate with the Board concerning the evaluation process. The Commission also denied the Board's motion for reconsideration in which the Board contended that during a transition between former and present legal counsel, a hearing in this matter was waived without the

Board's knowledge, participation or consent. The Commission denied the motion because at the time of its initial decision, the Board's former counsel was the counsel of record with the apparent authority to stipulate the facts and waive a hearing examiner's report.

Appeals have been withdrawn in Town of Kearny and Tp. of South Orange Village.

An appeal has been filed by the employer in Franklin Township holding that existing contract language relating to work schedules of law enforcement officers is mandatorily negotiable. There is a companion case on today's agenda.

The first case for consideration was Atlantic County Department of Public Safety and Fraternal Order of Police Lodge No. 34 and Christopher M. McCarty, OAL Docket No. CSV 8377-09, Agency Docket No. 2009-3217 and PERC Docket No. CO-2009-323. Commissioner Eaton moved the draft decision and Commissioner Voos seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson, Krengel and Voos).

The next case for consideration was Bloomfield Board of Education and Bloomfield Education Association, Docket No. CO-2010-509. Commissioner Eaton moved the draft decision and Commissioner Eskilson seconded the motion. A detailed discussion ensued. Commissioners Colligan, Eaton and Voos questioned if the

accuracy of the final figures on page 8 of the draft decision and the figure listing the number of faculty on the salary guide were correct. They suggested that the figures be verified before the decision was issued. Commissioner Eaton recommended a change on page 8 of the draft decision to read "There are 414 tenured teachers on the salary guide who would receive an irretrievable increment." The decision was modified in order that it would not contain any figures pertaining to any financial issues or staff size that could not be verified. The draft decision was amended by acclamation to incorporate the changes recommended by Commissioner Eaton. The motion was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson), with one opposed (Commissioner Voos).

Commissioner Krengel left the meeting at 2:00 p.m.

The next case for consideration was County of Atlantic and FOP Lodge #34, Docket No. IA-2007-057. Commissioner Eskilson moved the draft decision and Commissioner Colligan seconded the motion. Commissioner Eaton asked if there were new issues being added to the case. Christine Lucarelli-Carneiro, Deputy General Counsel responded that the employer raised many issues in its appeal from the initial award. The Commission remanded the first time to obtain clarification regarding three issues in the initial award. The Commission needed clarification on those issues before the appeal could be considered in its entirety.

The arbitrator issued a supplemental award on the three issues and the parties had an opportunity to respond to the supplemental award. This decision addresses the employer's arguments raised regarding the initial award and the supplemental award.

Commissioner Voos stated she did not feel the arbitrator did a good job. She continued by stating that the other issues being added after the three specific issues were remanded seems unfair and unusual. Ms. Lucarelli-Carneiro responded that there was no indication in the first remand that the Commission would not be considering the entire appeal at a later point, and that the information regarding the issues raised in the first remand was needed in order to do a comprehensive analysis of the case. The arbitrator was asked to issue a supplemental award in response to the remand within 30 days. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson). Commissioner Voos abstained.

The next case for consideration was State Operated School District of the City of Paterson and Paterson Education Association, Docket No. SN-2010-070. Commissioner Eaton moved the draft decision and Commissioner Voos seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson and Voos).

The next case for consideration was Borough of Hawthorne and Hawthorne P.B.A. Local 200, Docket No. SN-2010-101. Commissioner

Colligan recused himself because of his affiliation with the P.B.A. Commissioners Bonanni and Eskilson recused themselves pending further advise and ethics training. After the recusal, there was no quorum to decide the case. This case will be tabled for next month's agenda.

The next case for consideration was City of Passaic and International Brotherhood of Electrical Workers, Local 1158, Docket No. SN-2010-107. Commissioner Voos moved the draft decision and Commissioner Eskilson seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson and Voos).

The next case for consideration was Township of Franklin and Franklin Township P.B.A. Local No. 154, Supervisory Officers Association, Docket No. SN-2011-025. Commissioner Eaton moved the draft decision and Commissioner Voos seconded the motion. Commissioner Colligan recused himself because of his affiliation with the P.B.A. and Franklin Township. Commissioner Bonanni stated for the record that he has been involved in a proceeding, not related to labor relations, which involved the attorney for one of the parties. Accordingly, he did not believe he should recuse himself in this particular case. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson and Voos).

It was noted for the record that in Township of South Orange Village and Policemen's Benevolent Association, Local No. 12 and Policemen's Benevolent Association, Local No. 12A Superior Officer's Association, Docket Nos. SN-2011-004 and SN-2011-005 the appeal has been withdrawn.

The last case for consideration was Township of Edison and International Association of Fire Fighters Local No. 1197, Docket No. SN-2011-014. Commissioner Eskilson moved the draft decision and Commission Bonanni seconded the motion. Commissioner Colligan recused himself because Louis Rainone, Esq. of the DeCotiis firm is his adversary in Franklin Township. Commissioners Eaton and Voos had questions on contract language. The motion was approved by a vote of three in favor (Chair Hatfield, Commissioners Bonanni and Eskilson), and two opposed (Commissioners Eaton and Voos).

The next item for consideration was Adoption of a Resolution to Honor Arnold H. Zudick upon his retirement for 34 years of service with the Public Employment Relations Commission. Chair Hatfield read a draft resolution honoring Arnold H. Zudick upon his retirement for 34 years of service with the Public Employment Relations Commission, which was unanimously approved by acclamation.

Commissioner Colligan requested that a resolution be prepared in honor of Ira Mintz. Chair Hatfield responded that a draft resolution would be prepared for February's meeting.

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

The next meeting is scheduled to be held on Thursday, February 24, 2011 at 10:00 a.m.