

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
March 31, 2011
10:00 a.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 H. 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 March 24, 2011, 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 February 24, 2011 meeting. A motion to adopt the minutes was made by Commissioner Eaton and seconded by Commissioner Eskilson. The Chair noted that there was a change to the minutes on page 3 line 8, after the word "abstained" the words "from voting" were added. Commissioner Colligan moved the minutes be adopted with the change and Commissioner Voos seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson, Krengel and Voos).

Chair Hatfield reported that the General Counsel position was advertised in the New Jersey Law Review, Lawyerswebsite.com and also on our agency website. Applications will close as of April 5, 2011.

The Chair reminded the Commissioners that the Annual PERC/NJSBA Conference is Friday, April 15, 2011 and that all Commissioners are welcome and encouraged to attend.

Chair Hatfield welcomed two members of the staff who were present Lorraine Tesauro, Chief Mediator, and Bob Hackel, Director of Administration, who along with counsel, have been working very hard to make sure the conference is successful. She thanked them and noted that their hard work enhances the agency's reputation.

The Chair also welcomed David Lopez, a student intern who is working with Bob Hackel and Mike Miller, an attorney, who is helping out in the General Counsel's Office.

The Chair reported that the Association of Labor Relations Agencies conference is coming up in the month of July and will be held in Jersey City this year. More information will be forthcoming as it is received from Bob Hackel.

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

Don Horowitz, Deputy General Counsel, reported that the Supreme Court decided a grievance arbitration case upholding an arbitration award involving the City of Trenton and the PBA regarding compensation for "muster time". The standard for upholding a grievance arbitration award is whether the award is "reasonably debatable". The Supreme Court found that the award was "reasonably debatable" by a vote of 4 to 3.

The first case for consideration was State of New Jersey (Office of the Public Defender) and Communications Workers of America, Local 1037, Docket No. CO-2006-155 and State of New Jersey (Office of the Public Defender) and Communication Workers of America, Docket No. CO-2007-152. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Eaton recused herself because of her role in retaining counsel to represent her union. The motion was

unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eskilson, Krengel and Voos).

The next case for consideration was University of Medicine and Dentistry of New Jersey and Fraternal Order of Police, UMDNJ Lodge No. 74, Docket No. CO-2009-446. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Colligan questioned the distance of the transfer location for the employee. Mr. Horowitz responded that this case involves a state entity which operates in three locations which are quite distant from one another. There were two positions that needed to be filled. One was filled by a volunteer and the other was filled involuntarily. Commissioner Colligan then asked why the transfer was not based on seniority. Mr. Horowitz answered if the contract had called for seniority then there would be a baseline establishing the status quo. If all of the possible candidates for transfer are fungible then our case law holds that personnel decisions based on seniority are mandatorily negotiable. Commissioner Colligan asked if there was anything precluding UMDNJ from selecting the least senior officer. Mr. Horowitz responded there is nothing precluding them, but the issue is did they change a working condition in effectuating this transfer. Commissioner Eaton asked about procedure and stated the fact that this had never happened before, so something new took place, how could the union have

anticipated and bargained for same. She commented on stipulated fact #17 that states that UMDNJ also has declined to bargain with the FOP over procedures to be followed. Mr. Horowitz responded it is not clear if that means when the parties were negotiating a new agreement if they refused to bargain over the procedures or whether during the course of this incident they refused to bargain. There is language in contracts where situations that are covered by those provisions simply do not arise or arise very rarely. Commissioner Eaton stated that point #12 says the subject had not been raised by either the FOP or UMDNJ in negotiations for a successor agreement. She continued that the union has a limited ability to object to a procedure that was not anticipated. Mr. Horowitz responded if something new comes up and fits the definition of a mandatorily negotiable subject then the law does impose a duty to negotiate on the employer before establishing that new term. He continued by stating that the draft concludes that the stipulations do not carry the union's burden of proof. Commissioner Voos asked for an explanation of fact #14 regarding temporary transfers and permanent transfers. Mr. Horowitz stated there are Commission cases that recognize the difference between temporary transfers and permanent transfers. There is more of an employer interest when permanent transfers are made as opposed to temporary transfers. This case does not involve a temporary transfer situation. Commissioner Voos stated

that #13 in the record indicates this has never happened before. Mr. Horowitz answered that it is not known how the positions opened up at the Newark campus that had to be filled. Commissioner Krengel referred back to question of procedures for employee transfers being mandatorily negotiable. UMDNJ did not agree to negotiate over this. We do not know where in the process that this took place, it appears to be not during the regular bargaining cycle. It seems that it is impossible to say exactly what their refusal to negotiate a mandatorily negotiable item meant in this case. Mr. Horowitz responded we do not know exactly what the proposals were. Commissioner Krengel agreed we do not know what the proposals were in terms of language, in terms of timing, we do not know any of that. There seems to be enough of a question here to say maybe the FOP is right in terms of a mandatorily negotiable issue. Mr. Horowitz referenced a footnote on page 2 of the draft. Under N.J.A.C. 19:14-16.7, the parties are made aware, that the stipulation of facts has to be sufficient in the case of the charging party to support a burden of showing there has been a violation of the Act. With regard to the employer it has to be sufficient to support any defenses that they have. Commissioner Krengel does not feel the stipulated record provides enough information. Mr. Horowitz responded that it is the Commissioner's decision to determine whether the stipulations are sufficient to carry the burden of proof by the

FOP or to carry the defense of UMDNJ. The motion was not approved with a vote of three in favor (Chair Hatfield, Commissioners Bonanni and Eskilson), and four opposed (Commissioners Colligan, Eaton, Krengel and Voos).

Commissioner Voos went on the record to verify her reasoning for opposing the draft decision stating it was based on the last sentence in stipulated fact #17. On number 13, it hasn't been done before. On number 14, in a prior case involving temporary transfers, they ended up settling an unfair labor practice charge on procedures. Chair Hatfield responded it was the responsibility of the charging party to clarify the allegations. Commissioner Eskilson stated he does not feel there was a clear violation in the stipulated record. Chair Hatfield stated UMDNJ and the FOP had the opportunity to negotiate the procedure but obviously they did not based on the record. Mr. Horowitz asked if any of the other members of the majority wanted to articulate their reasons, or respond to Commissioner Voos' reasons, as a means to provide guidance in redrafting the decision. Commissioner Eaton stated she understands what Commissioner Voos has said. She stated that she would hope everyone could tell what she thought by the questions that she had asked. Her concern was about the remedy. Commissioner Eskilson asked why would UMDNJ negotiate if the order was issued in the charging party's favor. He stated it is a significant issue and transfer

to another location is a significant part of your employment. He further stated that if there was an order to make them negotiate he would feel more comfortable with that.

The next case for consideration was Hunterdon County Sheriff's Office and FOP Lodge No. 94, Docket No. IA-2009-103. Commissioner Eaton moved the draft decision and Commissioner Voos seconded. Commissioner Eskilson recused himself because he has worked with one of the attorneys for the parties. Commissioner Eaton questioned re-opening of a Commission decision for reconsideration. Ms. Lucarelli-Carniero responded that there is a case cited on page 3 of the draft decision, which is one of many cases, that gives administrative agencies the inherent power to reopen previously issued decisions. That is a power that should be exercised very sparingly and with reasonable diligence. Given that there was erroneous advice from a Commission staff member in this case, the draft finds there was a proper set of circumstances to reopen the decision. Commissioner Krengel suggested that language be added to the draft decision that states that not only does the County certify about the telephone call, but that PERC acknowledges a mistake was made. Chair Hatfield responded that the new law was being followed. The petition came in after the 7 days, which was the first appeal to the Commission, under the new law. A mistake was made and language can be added to reflect same, but it definitely will not

happen again. Commissioner Eaton moved the draft decision and Commissioner Voos seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eaton, Colligan, Krengel and Voos).

The next case for consideration was Borough of Waldwick and PBA Local 217, Docket No. IA-2010-058. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded. Commissioner Colligan recused himself because of his affiliation with the PBA. Commissioner Voos stated she has concerns having to do with the letter of the law versus the intent of the legislation. She continued by stating that the arbitrator had already heard all the facts of the case and for him to be removed from the case because of the technicality of the new law is not clear. Ms. Hennessy-Shotter stated the order here would, more likely than not, speed up the process. Operating under the new law the fast-track process does not apply, actually if they re-file for interest arbitration that process will be done in 45 days. Commissioner Krengel asked how do you view the arbitrator's position when the two parties have a different view of the new law. Normally we are not subject to the decisions of arbitrators but here based on the record the decision finds that the Borough's counsel objected back and in November, recognizing that this new law was coming and he was reserving his right to proceed under the new law. Based upon that, and then the

objection to jurisdiction, the language of the new law was wrong. Mr. Horowitz added that, in November, the parties had no reason to believe that they would be unable to mutually select an arbitrator under the new law because at that time the version of the bill that was pending did not ban mutual selection. It was later changed to ban mutual selection. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eaton, Eskilson, Krengel and Voos).

The next case for consideration was County of Gloucester and New Jersey State Firemen's Mutual Benevolent Association and Communications Workers of America, Local 1085, Docket Nos. RO-2008-066 & RO-2010-027. Commissioner Krengel moved the draft decision and Commissioner Bonanni seconded. Commissioner Eaton recused herself because CWA is also her counsel. Commissioner Bonanni went on the record to say he has worked with counsel for Fox and Fox. Commissioner Colligan stated that the FMBA and the IAFF seem to be a more natural negotiating party for EMTs and the fact that, although they are not subject to interest arbitration, they work holidays, they work shifts, the FMBA or the IAFF or any other appropriate emergency services union, just seems to be more of a natural fit to negotiate. He continued that he knows CWA negotiates for hundreds of titles, but he dealt with this issue in Franklin Township with the CWA negotiating for dispatchers and fire prevention people who work on call or different shifts and I

think we may have to address that in the future with one of these FMBA or IAFF groups. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eskilson, Krengel and Voos).

The last case for consideration was Union County Prosecutor's Office and PBA Local 250, Docket No. SN-2011-015. Commissioner Bonanni moved the draft decision and Commissioner Eaton seconded. Commissioner Eskilson recused himself because Mr. Mets represents employees that he negotiates with. Commissioner Colligan recused himself because of his affiliation with the PBA. Commissioner Eaton asked if they do not currently have an outside work program, does that mean the officers can not do outside work because the employer has to run the program. Mr. Horowitz responded right. Commissioner Eaton further stated that at the bottom of page 4 of the draft it states "as there is no current program in place, we cannot determine, based upon the wording of the PBA proposal, the parameters of the off-duty work program it contemplates...", this was not understood because there is a proposal and at least some of that proposal is negotiable. Mr. Horowitz responded that the issue, and he emphasized that the order notes the proposals that are not mandatorily negotiable as presently written, so they can be modified by the union to propose terms that are mandatorily negotiable. Where there is an outside work program the employer

has to have some degree of control to determine circumstances when outside work is appropriate. The wording of the proposal in this case does not seem to adequately preserve the rights of the employer to control those situations. Commissioner Eaton stated the language of the proposal is so vague that it allows the Prosecutor's Office to maintain this right. Mr. Horowitz responded that at the time the proposal is made, if the language is not clear enough or does not protect it, it needs to be decided whether or not to have the program at all, which some of our cases hold as a managerial prerogative, then the current proposal is not mandatorily negotiable. Commissioner Krengel said it sounds like a "catch 22" to her, it is not final language it is proposed language. The law says it is mandatorily negotiable and they do not have a program they are seeking a program, that is mandatorily negotiable. Commissioner Bonanni made a motion to table this case and consider at next month's meeting and Commissioner Eaton seconded. The motion to table was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson, Krengel and Voos).

The next item for consideration was the Proposed Readoption with Amendments of PERC Regulations Governing Scope of Negotiations Proceedings. Commissioner Colligan moved to readopt the rules and Commission Eskilson seconded. The motion was

unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson, Krengel and Voos).

The last item for consideration was Reappointments to the Special Panel of Interest Arbitrators. Commissioner Eskilson moved to reappoint the panel and Commissioner Bonanni seconded. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson, Krengel and Voos).

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

The next meeting is scheduled to be held on Thursday, April 28, 2011 at 10:00 a.m.