

MINUTES OF SPECIAL MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
May 13, 2011
10:00 a.m.
495 West State Street
Trenton, New Jersey

The special meeting was called to order by Chair P. Kelly Hatfield.

Present by telephone 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 "Notice of Special Meeting."

On May 11, 2011 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.

A roll call was initiated to confirm all Commissioners were present on the telephone.

The first item for consideration was County of Atlantic and FOP Lodge #34, Docket No. IA-2007-057. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Colligan stated that in reading the draft decision, as he has stated on record before in other cases, he would prefer making rulings like this based on case law and previous decisions rather than just economic considerations. Commissioner Colligan stated he felt strongly that we should be basing our decisions on past case law and past decisions in which the Commission upheld interest arbitration awards. Commissioner Voos stated that she has been on the Commission when decisions have been sent back for a more complete explanation by the arbitrator and decisions where awards were altered based on scope of negotiations factors. She said that she does not remember seeing an award by an arbitrator where some items were voided and others were not and asked if this has been a practice in the past? Ms. Hennessy-Shotter responded that the Commission has never changed, to her knowledge, an economic term of an award. Commissioner Voos responded that she is troubled by this. She stated she could go with altering some, but not all, of the items. Ms. Lucarelli-Carneiro responded that the 15.75% that the arbitrator valued his award at was just the value of the salary

increases that the County has not appealed from. As the draft recites, those increases range from 3 to 4% over the course of four years. The County is only appealing with regard to the three specific economic issues that the draft discusses. The cost of those economic issues are not factored into the 15.75% value that the arbitrator determined his package cost. These are above and beyond that 15.75%. Ms. Lucarelli-Carneiro responded that the County is only appealing with regard to the three specific economic issues that the draft discusses. Commissioner Voos asked if we had an estimate from the County of what that value is. Commissioner Eaton stated she saw a number for the total cost of the shift differential. She then asked do we know how that translates into percentage. Ms. Lucarelli-Carneiro responded that the County only talks in terms of a bottom-line amount. She noted that we know what the holiday pay would cost and we know what the shift differentials would cost, but we do not know what the equity adjustment would cost. Ms. Lucarelli-Carneiro continued that we just have a limited appeal on three economic issues. It is also noted that these officers have been working under the terms of an expired collective negotiations agreement since December 31, 2006. The Commission statutorily is authorized to affirm, modify, vacate or remand the award. The award has been vacated twice, and given the time constraints, vacating the award for the third time might not be an appropriate

option. The draft concludes that the award on the three issues challenged by the appeal are not supported by substantial credible evidence. The Commissioners continued to discuss whether the arbitrator's reasons for awarding each item was supported by sufficient evidence, including comparability factors, taking into account the standard the Commission uses to review interest arbitration awards and whether the arbitrator had adequately addressed the issues raised by the Commission in its prior decisions remanding portions of the initial awards to the arbitrator. The discussion also focused on whether the shift differentials, \$1,200 equity adjustment and holiday pay were reflected in the most recent agreement or were proposed new contract terms. The Commissioners questioned staff as to the Commission's options with this interest arbitration in light of the prior remands and the time constraints posed by the new law and what procedural and substantive rulings a reviewing court might make if the Commission's decision is appealed. The discussion also included whether to add or change language to reflect that unusual circumstances are present given the procedural history of this interest arbitration proceeding. A consensus was reached to add this language on page 2: "We emphasize that we are modifying this decision due to the unique circumstances here where the decision has been vacated twice before and a third remand would not benefit the parties." The

Commissioners also decided to add language to page 10 of the decision noting the case's unique circumstances where the decision has already been remanded twice and a third remand would not benefit the parties.

A vote was taken on the draft submitted to the Commission with the language changes that had been agreed to by consensus. The vote was three in favor of the draft (Chair Hatfield, Commissioners Bonanni and Eskilson), and four opposed (Commissioners Colligan, Eaton, Krengel and Voos). The motion to adopt the draft decision fails.

A motion was then made by Commissioner Eskilson, seconded by Commissioner Bonanni to adopt a decision that would remove the \$1,200 "equity adjustment" and the shift differential from the arbitrator's award, but would affirm his award on holiday pay. Additional discussion ensued about how common shift differentials were in contracts for law enforcement personnel, the absence of shift differentials from most other contracts between the County and other units of its employees, and whether the award contained sufficient evidence to grant the shift differential.

A vote was taken on the motion. Three in favor (Chair Hatfield, Commissioners Bonanni and Eskilson), three opposed (Commissioners Colligan, Krengel and Voos) and one abstention (Commissioner Eaton). The vote resulting in a tie, the motion to adopt the draft decision fails.

A motion was then made by Commissioner Colligan, seconded by Commissioner Voos to adopt a decision that would remove the \$1,200 "equity adjustment" from the arbitrator's award, but would affirm his award on holiday pay and the shift differential. After some additional discussion focusing on the need to reach a final decision, a vote was taken. Four in favor (Commissioners Colligan, Eaton, Krengel and Voos), three opposed (Chair Hatfield, Commissioners Bonanni and Eskilson). The motion carried.

The last case for consideration was Borough of Bloomingdale and PBA Local 354, Docket No. IA-2011-045. Commissioner Colligan stated he would be recusing himself because of his PBA affiliation. He then requested to leave the conference call. Chair Hatfield said yes. Commissioner Eaton moved the draft decision and Commissioner Krengel seconded the motion. Chair Hatfield asked if there was any discussion. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson, Krengel and Voos).

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