

MINUTES OF MEETING  
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION  
May 26, 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:

Patrick V. Colligan  
Adrienne E. Eaton  
John H. Eskilson  
Sharon Krengel  
Paula B. Voos

Also present were:

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 May 19, 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 April 28, 2011 meeting. A motion to adopt the minutes was made by Commissioner Voos and seconded by Commissioner Eaton. Commissioner Eskilson abstained. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Krengel and Voos).

The next item for consideration was the minutes of the May 5, 2011 special meeting. A motion to adopt the minutes was made by Commissioner Krengel and seconded by Commissioner Eskilson. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Eskilson, Krengel and Voos).

Chair Hatfield announced that Gayl Mazuco will be joining the Public Employment Relations Commission as the Director of Unfair Practice and Representation. Ms. Mazuco will be assuming the position which was held by Arnold Zudick who retired in December. Ms. Mazuco is currently an assistant attorney general with the Department of Law and Public Safety. She has extensive legal experience as a labor relations professional. In her role as the Director of Legal Affairs and Employee Relations, she has coordinated labor policy and contract administration issues for the Office of the Attorney General, the Department's administrative division. Ms. Mazuco also has a background in the education field. Prior to joining the Office of the Attorney General, AAG Mazuco was an assistant section chief in the

Division of Law, where she was responsible for leading the higher education assignment. She has both civil and criminal trial experience, and has expertise with all aspects of administrative practice. Ms. Mazuko is a cum laude graduate of Drew University, holds a Masters Degree in Political Science from Rutgers University, where she was an Eagleton Fellow, and is a cum laude graduate of Rutgers School of Law, Camden. It is anticipated that Gayl will join us on June 6, 2011. I hope you will join me in welcoming her to the Agency.

I also would like to acknowledge and thank Deputy Director Jonathan Roth for his support and leadership over the past few months. I appreciate his dedication to the Agency and his willingness to go the 'extra mile'.

The first case for consideration was Jose Santana and Stockton State College, OAL Docket No. CSV 477-09, Agency Docket No. 2009-2165 and State of New Jersey Stockton State College and IFPTE Local 195, PERC Docket No. CO-2008-321. Commissioner Eaton moved the draft decision and Commissioner Colligan seconded the motion. Commissioner Eskilson stated that he did not feel there was ample evidence to support protected activity. Ms. Lucarelli-Carneiro responded that there is a line, which is not always clear, between protected activity and unprotected activity. When a union official is approaching an employer about union related business that official is given a certain amount of latitude.

Cases have found that the conversations can take the form of arguments, objections or raising of the voices. This decision finds that this particular incident was protected activity in accordance with the precedent that we have on this issue. The administrative law judge recognized in this decision that neither party acted in an ideal fashion and that the situation have been handled better by both individuals. Commissioner Eskilson stated there were people misbehaving on both ends. Ms. Lucarelli-Carneiro stated that the ALJ made several credibility determinations in this case and the standard of review is a very high standard of review. It would be a heavy burden to overturn the credibility determinations that the ALJ made. The motion was approved by a vote of five in favor (Chair Hatfield, Commissioners Colligan, Eaton, Kregel and Voos), and one opposed (Commissioner Eskilson).

The next case for consideration was University of Medicine and Dentistry of New Jersey and Fraternal Order of Police, UMDNJ Local No. 74, Docket No. CO-2009-446. Commissioner Colligan moved the draft decision and Commissioner Eaton seconded the motion. Commissioner Colligan noted that on page 10 of the draft decision it states that the transfer will not be rescinded. It appears that the decision is being questioned but then the transfer still stands. Mr. Horowitz responded that the charge alleges that the violation occurred by refusing to negotiate over

how to determine to pick an individual for an involuntary transfer. The case law is uniform that an employer's reason for making an involuntary transfer of a police officer can not be challenged. Reassignments and transfers of police officer is not mandatorily negotiable. Commissioner Colligan stated that his issue specifically with this case is that this is an extraordinary transfer. Mr. Horowitz responded that there is a stipulated record in this case and we can not add facts or invite the parties to add facts when it has been agreed to send their dispute to the Commission based on a very finite set of facts. Chair Hatfield stated that she has great concern about some of the language in draft decision. On page 9 it states that UMDNJ unilaterally challenged the "new rule" governing working conditions. There was no rule or procedure established. There are only certain facts in front of us and because of that I feel the charging party did not meet the burden of proof in this case. Commissioner Krengel suggested that the language be changed in the decision to say that the transfer can not be rescinded. Mr. Horowitz suggested that an additional court citation be included in reference to involuntary transfer of police officers. Commissioner Eskilson asked for clarification concerning involuntary transfers not being mandatorily negotiable. Mr. Horowitz responded that the criteria that an employer uses to transfer a police officer is not mandatorily negotiable and can

not be attacked in arbitration. The only way it could be attacked is if there is an allegation the transfer was done in response to union activity or for some other discriminatory reason prohibited by the Law Against Discrimination. Chair Hatfield stated the problem with this case is there are no procedures here. Mr. Horowitz stated the question is whether the absence of the procedures is viewed as not a change from the status quo or whether the absence of a procedure triggers a negotiation obligation. The first draft said there was no evidence the status quo was changed, and the second draft says it appears that this situation has never come up before so this is new term and condition of employment concerning procedures pertaining to involuntary transfer. Chair Hatfield stated this is what she has an issue with. She continued that because there was no procedure there is now a new rule governing those conditions. She concluded by stating that she is concerned about the draft decision. Commissioner Krengel moved that the draft decision be amended to reflect her recommended change and Commissioner Voos seconded. The motion to amend the draft decision was approved by a vote of five in favor (Commissioners Colligan, Eaton, Eskilson, Krengel and Voos), and one opposed (Chair Hatfield). A vote was then taken on the amended draft decision which was approved by a vote of four in favor

(Commissioners Colligan, Eaton, Krengel and Voos), and two opposed (Chair Hatfield and Commissioner Eskilson).

The next case for consideration was County of Hunterdon and FOP Lodge 29, Docket No. IA-2009-067. Commissioner Eaton moved the draft decision and Commissioner Voos seconded the motion. Commissioner Krengel commented about language at the top of page 2 of the draft decision concerning the arbitrator's award that we are constrained by our rules and standards to affirm the award and we question the arbitrator's decision to award a new salary schedule with automatic increments in the current economic climate. She stated that she had mentioned her concerns about this previously. She continued that throughout the decision it states that we are constrained to follow the arbitrator's award. She stated that if we continue to do this it will have a chilling effect, which should not be our intention. Commissioner Eaton agreed. Commissioner Eskilson stated that the arbitrator has a standard of review, but that there did not seem to be testimony on the issue as to whether or not the salary guide for financial reasons was the guiding force or if there were any other motivating factors. He continued that he understands the need for a stable workforce in a correctional facility. Chair Hatfield responded there actually was testimony from the Director of Public Safety. Ms. Lucarelli-Carneiro responded there was evidence from the union, which the arbitrator credited, that the

County values inexperience over experience and that the more senior officers received smaller raises and that was in large part why there was such turnover. Commissioner Voos stated she agreed and made a motion to strike language in the decision and Commissioner Krengel seconded. The motion to amend the draft decision was approved by a vote of four in favor (Commissioners Colligan, Eaton, Krengel and Voos), and two opposed (Chair Hatfield and Commissioner Eskilson). A vote was then taken on the amended draft decision which was approved by a vote of four in favor (Commissioners Colligan, Eaton, Krengel and Voos), and two opposed (Chair Hatfield and Commissioner Eskilson).

The next case for consideration was Mount Laurel Township and American Federation of State, County & Municipal Employees, Council 71, Local 3263, Docket No. SN-2010-074. Commissioner Eaton moved the draft decision and Commissioner Voos seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Eskilson, Krengel and Voos).

The last case for consideration was Township of Pennsville and FOP Lodge 6, a/w FOP N.J. Labor Council, Docket No. SN-2010-090. Commissioner Colligan moved the draft decision and Commissioner Krengel seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Colligan, Eaton, Eskilson, Krengel and Voos).

Commissioner Eaton asked about an Atlantic County case and if there was a motion for consideration. Ms. Lucarelli-Carneiro responded that there is a motion for reconsideration and that the case has been fully briefed. Commissioner Eaton asked if they were asking for interim relief. Ms. Lucarelli-Carneiro responded that interim relief has been denied and now the Commission is being asked to reconsider the request for interim relief.

Commissioner Colligan asked if there were any updates concerning the situation about Westlaw. Mr. Horowitz responded that there are no new developments. Bob Hackel, Director of Administration is aware of the situation and is also involved with attempting to resolve this matter.

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

The next meeting is scheduled to be held on Thursday, June 30, 2011 at 10:00 a.m.