

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
October 27, 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
John H. Eskilson
David Jones
Sharon Krengel
Richard Wall

Also present were:

David Gambert, Deputy General Counsel
Mary E. Hennessy-Shotter, Deputy General Counsel
Don Horowitz, Deputy General Counsel
Christine Lucarelli-Carneiro, Deputy General Counsel
Martin R. Pachman, 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 October 20, 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 August 25, 2011 special meeting. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Krengel. The motion to adopt the minutes was unanimously approved (Chair Hatfield, Commissioners Bonnani, Eskilson, Jones, Krengel and Wall).

The next item for consideration was the minutes of the September 22, 2011 meeting. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Krengel. The motion to adopt the minutes was unanimously approved (Chair Hatfield, Commissioners Bonnani, Eskilson, Jones, Krengel and Wall).

Chair Hatfield introduced Martin R. Pachman who has been appointed to the position of General Counsel, effective October 24th, 2011. Mr. Pachman has been a practicing attorney in the field of public sector labor law since his graduation from the University of Maryland School of Law. He began his career with the New York State Public Employment Relations Board and then joined the staff of the New Jersey Public Employment Relations Commission where he served as a mediator and hearing officer. He then entered the private practice of law, initially serving as Regional Counsel for A.F.S.C.M.E., and then representing public and private sector management entities. We are delighted to have Mr. Pachman join us and we welcome him to the agency.

Mr. Pachman responded that it is a pleasure to be here and he looks forward to working with everyone and that he hopes to be successful in performing the goals as set forth under the statute.

Chair Hatfield reported that interest arbitration training was held on October 17, 2011. At the last Commission meeting there was some discussion about the 1977 cap and the 2% cap and the impact on counties. Marc Pfeiffer is the guru on public sector finance and was involved in a thorough discussion on this subject at the training session.

The Counsel's Office distributed a monthly report.

Don Horowitz, Deputy General Counsel, reported that there was an appeal of a Commission decision in Voorhees Tp. involving grievances asserting that the employer had violated current and past agreements by making certain changes in health benefits particularly prescription co-pays for retired employees.

Mr. Horowitz further reported on a case involving Hasbrouck Heights which is a case emanating from a non-civil service employer and emphasizing that the internal departmental hearing, which can then be reviewed by a Superior Court, has to have due process protection for the employee. In this case it was an officer who was facing discipline. The trial court and the Appellate Court agreed that there were defects and overturned the

termination and sent it back. The result was the town had to pay back pay to the employee for the time he was on suspension.

The first case for consideration was City of Newark and Newark Deputy Chiefs Association, Docket No. CO-2011-097. Commissioner Krengel moved the draft decision and Commissioner Jones seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel and Wall).

The next case for consideration was Town of Morristown and PBA Local 43, Docket No. SN-2011-017. Commissioner Eskilson moved the draft decision and Commissioner Krengel seconded the motion. Commissioner Bonanni recused himself because he is conducting business with the DeCotiis law firm not related to labor issues. Commissioner Wall recused himself because of his affiliation with the PBA. Commissioner Jones commented that he was unhappy with this decision, because he disagreed with the interpretation of the underlying statute at issue dealing with mandatory contributions of 1.5 percent of salary towards health care costs. He questioned whether dental benefits are the same as "health benefits" as that term is used in the statute. He also questioned the application of the law to an individual employee who had waived total coverage, and was seeking only dental coverage from the employer. Commissioner Eskilson commented that while he agreed with Commissioner Jones logic, it

was his opinion that we had to deal with the law as written by the Legislature. Don Horowitz pointed to certain interpretive documents issued by the Department of Community Affairs which established guidelines for the implementation of the new law, and pointed out that this Commission draft would permit arbitration over the allegation by the P.B.A. that the employee's contribution exceeded the cost to the employer of the coverage which the employee was receiving. Commissioner Krengel also voiced concern over language in the draft opinion which stated "there is no basis to construe the amendments differently than the reading provided by the DCA", and raised a question as to whether we were bound to accept the interpretation of DCA. There was some discussion by Commissioner Jones of a "Bridgewater case" which he claimed supported his position. Mr. Horowitz then stated that while we have no primary jurisdiction to interpret statutes other than our own, where there is a preemption issue raised we are obligated to review the statute being raised as preempting collective negotiations in the particular case. After the above referenced discussion, Chair Hatfield stated that the issues had been thoroughly addressed and recommended that a vote be taken on the draft decision. The vote was tied, with Chair Hatfield and Commissioner Eskilson voting in favor of adopting the draft decision, and Commissioners Jones and Krengel opposing adoption. Mr. Horowitz declared that in this case, since there

was not a majority of the quorum voting in favor of any position, the matter should be held over to another agenda.

The next case for consideration was City of Newark and FOP Lodge 12, Docket No. SN-2011-019. Commissioner Eskilson moved the draft decision and Commissioner Krengel seconded the motion. Commissioner Jones stated that immediate suspensions without due process is outside the perimeter. The motion to adopt the draft decision was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Wall), and one opposed (Commissioner Jones).

The next case for consideration was East Orange Board of Education and East Orange Education Association, Docket No. SN-2011-023. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonnani, Eskilson, Jones, Krengel and Wall).

The next case for consideration was City of Millville and NJCSA Cumberland Council 18, Docket No. SN-2011-034. Commissioner Eskilson moved the draft decision and Commissioner Jones seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonnani, Eskilson, Jones, Krengel and Wall).

The next case for consideration was Readington Township Board of Education and Readington Township Education Association,

Docket No. SN-2011-040. Commissioner Wall moved the draft decision and Commissioner Eskilson seconded the motion. There were questions raised by Commissioner Jones regarding whether our Commission precedent justifies the conclusion that this case was evaluative rather than disciplinary, and Ms. Hennessy-Shotter responded that in this case the rationale provided by the Board dealt with the teachers interaction with her student(s) rather than issues external to her relationship with those children who she was charged with responsibility over. Evaluation of such performance by law must be sent to the Commissioner of Education, and not to an arbitrator. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonnani, Eskilson, Jones, Krengel and Wall).

The next case for consideration was Rutgers, The State University of New Jersey and Union of Rutgers Administrators-American Federation of Teachers, Local 1766, AFL-CIO, Docket No. SN-2011-042. Commissioner Wall moved the draft decision and Commissioner Eskilson seconded the motion. Commissioner Jones recused himself because this case involved the Loccke law firm. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonnani, Eskilson, Krengel and Wall).

The last case for consideration was City of Camden and The International Association of Firefighters, Local 788, Docket No.

IA-2009-065. Commissioner Wall moved the draft decision and Commissioner Jones seconded the motion. Commissioner Eskilson recused himself based on his relationship with Mr. Heineman who represents one of the parties involved in this case. Commissioner Eskilson stated that he will be seeking further advice from the Ethics Officer concerning future recusals involving Mr. Heineman's firm. Commissioner Krengel indicated her concern that the current draft, by referencing the previous draft which had been voted down at the prior meeting, was not sufficiently reflective of the will of the Commission. Ms. Hennessy-Shotter responded that this decision referenced the previous action of the Commission in part, because the law required us to act on this case by a certain date, and attachment of the previous decision protects the Commission by showing that it had attempted to comply with these timeliness requirements. Commissioner Krengel made a motion to amend the draft decision by removing language on page 12 starting with the sentence "with regard to the financial impact..." and ending on page 13 with the words "this decision affirms the award." This amendment was seconded by Commissioner Wall. The amended draft decision was adopted by the Commission by a vote of three in favor (Commissioner Jones, Krengel and Wall), and two opposed (Chair Hatfield and Commissioner Bonanni).

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

The next meeting is scheduled to be held on Tuesday, November 22, 2011 at 10:00 a.m.