

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
March 29, 2012
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:

David Jones
Sharon Krengel
Paula B. Voos
Richard Wall

Also present were:

David Gambert, Deputy General Counsel
Mary E. Hennessy-Shotter, Deputy General Counsel
Don Horowitz, Deputy General Counsel
Martin R. Pachman, General Counsel
Barbara L. Neuman, Certified Court Reporter

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 15, 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.

Furthermore on March 22, 2012, 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 29, 2012 meeting. A motion to adopt the minutes was made by Commissioner Krengel and seconded by Commissioner Wall. The motion to adopt the minutes was unanimously approved (Chair Hatfield, Commissioners Jones, Krengel, Voos and Wall).

Chair Hatfield informed the Commissioners that the Annual PERC Conference is scheduled to be held on Friday, June 8, 2012 and that all Commissioners are welcome.

Chair Hatfield welcomed Hearing Officer Patricia Taylor-Todd and also welcomed and introduced Christina Gubitosa, Tim Averell and Ryan Ottavio, as new staff agents with the agency.

Chair Hatfield advised the Commissioners that there are two new interest arbitration appeals. A suggested meeting date of April 9, 2012 at 11:00 a.m. was scheduled.

The Counsel's Office distributed a monthly report.

Don Horowitz, Deputy General Counsel, reported that the Appellate Division affirmed a Commission decision in Franklin Tp. The employer asserted that it had managerial prerogative to change a four-on, four-off work schedule to a four-on, two-off schedule. The Court agreed with the Commission that the proposed work schedule changes were mandatorily negotiable, could be submitted to an interest arbitrator for inclusion in successor agreements and could not be unilaterally imposed.

Mr. Horowitz also reported on a case involving Linden Bd. of Ed. which involved how long back pay obligation and reimbursement for a tenured employee might last.

The first case for consideration was the draft decision in County of Hudson and NUHHCE District 1199J, AFSCME, Docket No. CO-2009-412. Commissioner Wall moved the draft decision and Commissioner Jones seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Jones, Krengel, Voos and Wall).

Next for consideration was the draft decision in County of Hudson and NUHHCE District 1199J, AFSCME, AFL-CIO, Docket No. CO-2009-443. Commissioner Wall moved the draft decision and Chair Hatfield seconded the motion. Commissioner Jones stated the checks and balances system should have allowed for further discussion and that Mr. Lopez was compelling in his testimony which should have been given more weight. Ms. Hennessy-Shotter responded that there were several witness and union witnesses present, but they were not called. Mr. Pachman stated that the Commission should not second guess the Hearing Examiner. We have to defer to the Hearing Examiner's ruling on credibility and it was determined that the testimony was not credible. The motion to adopt the draft decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Krengel, Voos and Wall), one opposed (Commissioner Jones).

Next for consideration was the draft decision in Township of Raritan and Communications Workers of America, AFL-CIO, Local 1040, Docket No. RO-2011-067. Commissioner Voos moved the draft decision and Commissioner Wall seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Jones, Krengel, Voos and Wall).

Next for consideration was the draft decision in Township of Nutley and Nutley PBA Local #33, Docket No. SN-2011-065. Commissioner Krengel moved the draft decision and Commissioner Voos seconded the motion. Commissioner Wall recused himself because of his affiliation with the PBA. Commissioner Jones stated that this is a case where we rely too heavily on the Ridgefield Park decision. The union agrees that language specifically relates to the aspect of the notice for past manpower issues. He said he is not suggesting that minimum manpower be debated. Mr. Horowitz responded that this particular grievance is about a specific order that was issued which involved an unexpected absence where the shift commander made the decision to maintain a 5 person minimum, in this case that is what this decision is restraining. In footnote number 5 of the decision, the notice provision states we are not stopping any claim from going to arbitration regarding the notice issue. Commissioner Jones stated the grievance is about the whole article. The record is replete and never challenges these 5

unrefuted examples where they operated under minimum manpower. Mr. Pachman responded that staffing decisions are neither mandatorily nor permissively negotiable and cannot be challenged through binding grievance arbitration. He said there was a valid point made on the notice provision and the union can grieve the contract provision in reference to the notice. Chair Hatfield made a motion to amend the order on the last page of the decision to state that the Township of Nutley's request for a restraint of binding arbitration is granted, in part. The PBA may arbitrate any claim that the Township did not adhere to notice deadlines. Commissioner Kregel seconded the motion. The motion to adopt the amended draft decision was unanimously approved (Chair Hatfield, Commissioners Jones, Kregel and Voos).

The last case for consideration was the draft decision Salem County Special Services School District and Salem County Special Services School Employees Association, Docket No. SN-2011-083. Commissioner Voos moved the draft decision and Commissioner Jones seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Jones, Kregel, Voos and Wall).

The next item for consideration was a draft resolution in honor of Marc Pfeiffer which was read into the record. The resolution was unanimously approved by acclamation.

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

The next regular meeting is scheduled to be held on Thursday, April 26, 2012 at 10:00 a.m.