

MINUTES OF SPECIAL MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
July 19, 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:

John Bonanni
Paul Boudreau
John H. Eskilson
David Jones
Paula B. Voos

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 "Notice of Special Meeting."
On July 13, 2012 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 the Commissioners that were present and participated via the telephone conference call. Commissioner Wall was not present.

The first item for consideration was a Resolution on Invoking the Doctrine of Necessity regarding the Township of Morris and Morris County Council No. 6, IFPTE, AFL-CIO, Docket No. CO-2011-027. Chair Hatfield read the resolution for the record. There must be four Commissioners present and eligible to vote to constitute a quorum on any agenda item. The interest arbitration law mandates that an appeal be decided in 30 days, so the doctrine of necessity is required to secure a quorum. Commissioner Eskilson moved to adopt the resolution and Commissioner Bonanni seconded the motion. The Chair asked the Commissioners that would normally be recused from voting to state on the record the reason for recusal. Commissioner Bonanni, Morris County Administrator, stated that he is normally recused from Morris County cases and from cases involving Fred Knapp, Esq., who is labor counsel for Morris County. In the interest of full disclosure, Commissioner Bonanni said that he made the decision to appeal the arbitrator's ruling. Commissioner Eskilson, Sussex County Administrator, stated that Mr. Knapp's law firm also represents Sussex County as legal counsel for personnel matters. Commissioner Boudreau stated that he is President of the Morris County Chamber of Commerce and the Morris

County Economic Development Corporation is a division of the chamber that receives both private sector support but also monies from the Morris County freeholders annually. Commissioner Jones stated that there is a unique circumstance as it relates to Morris County and that the tripartite make-up of this panel as contemplated by the statute is being dissolved. He further stated that every time the doctrine is invoked it gives an unnecessary advantage to the managerial side, with no deference to the spirit of the actual Act. He continued by stating that this is not a proper application of the doctrine of necessity. He further stated that we should be making application to some other tribunal.

General Counsel Martin Pachman responded that although this is not in the general scheme of state government, these situations happen with local political bodies all the time. It arises in school districts, even more often, where there are recusals that preclude a quorum from being achieved. The doctrine of necessity was created specifically to deal with these kind of purposes. The determination of the courts, the school ethics commission, and every place else we have researched, is exactly the same methodology that we are invoking here. Recusals based upon relationships of this sort preclude the organization responsible for making the decision from having or achieving a voting quorum. Thus, everyone is allowed to vote. There is

simply no other way to handle this. It is an inevitable result of having a Commission that is tripartite. Therefore, whichever members are precluded from voting, irrespective of whether they are labor, management, or neutral, and would be normally barred from participating in a quorum creates the circumstance that necessitates the waiver of those recusals and permitting everyone to vote. Commissioner Eskilson responded that he does not accept the statement that this creates an imbalance in favor of management. If Commissioner Wall did not have a medical absence, all seven members of the Commission would be voting on this matter. Even with his absence we still have two public members and the Chair who do not represent management. Commissioner Bonanni stated he agrees with Commissioner Eskilson. The motion to adopt the resolution was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos), and one opposed (Commissioner Jones).

The first case for consideration was the draft decision in Township of Morris and Morris County Council No. 6, IFPTE, AFL-CIO, Docket No. CO-2011-027. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Jones abstained from consideration as he disagreed that the appeal presented a proper occasion for application of the doctrine of necessity. The motion to adopt the draft

decision was unanimously approved (Chair Hatfield, Commissioners Boudreau, Bonanni, Eskilson and Voos).

Commissioner Eskilson removed himself from the meeting at this time, as he was recused from voting on the Union County case.

The next case on the agenda was the draft decision in County of Union and PBA Local No. 108, Docket Nos. IA-2012-037 and SN-2012-065. Commissioner Jones moved the draft decision and Commissioner Voos seconded the motion. Commissioner Bonanni stated he believes that the 2½% across the board increases, including increments, clearly goes against the interest arbitration bill. He continued that he understands this does not fall under the new interest arbitration law, but the 2% property tax levy that the entity has to raise does have to comply with it. General Counsel Martin Pachman responded that the hard cap of 2% does not apply to this award. With regard to the other caps that are set forth in the law the arbitrator did specifically take into account the cost of the award, compared it against the budget and said it would not negatively impact or counter the statutory caps that the County had to abide by. Commissioner Bonanni stated that from his experience whenever a bargaining unit comes up for negotiation, most likely, they are going to balance themselves off of what other units have received. He continued by stating that he also had a concern

about the length of the award. The motion to adopt the draft decision was approved by a vote of three in favor (Chair Hatfield, Commissioners Jones and Voos), and two opposed (Commissioners Bonanni and Boudreau).

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

The next regular meeting is scheduled to be held on Thursday, August 9, 2012 at 10:00 a.m.