

MINUTES OF SPECIAL MEETING  
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION  
October 11, 2012  
1:00 p.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  
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 "Notice of Special Meeting."

On October 9, 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.

The first item for consideration was a Resolution to Invoke the Doctrine of Necessity regarding the County of Morris, Morris County Sheriff's Office and PBA Local 298 decision. Chair Hatfield read the resolution for the record. The Chair asked the Commissioners, who would normally be recused from voting, to state on the record the reason for recusal. Commissioner Eskilson, Sussex County Administrator, stated that the law firm of Knapp, Trimboli and Prusinowski represents the County of Sussex as labor counsel. 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. Commissioner Boudreau stated that he is President of the Morris County Chamber of Commerce and they have a partnership with the Freeholders of Morris County, who make financial contributions to the Economic Development program, which is a division of the Chamber. Commissioner Wall stated he has two issues. First is his affiliation with the PBA, and the second reason is that this case involves his department. Commissioner Eskilson moved to adopt the resolution and Commissioner Boudreau seconded the motion. The motion to adopt the resolution was approved by a vote of six in favor (Chair

Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall), and one opposed (Commissioner Jones).

The first case for consideration was the draft decision in County of Morris, Morris County Sheriff's Office and PBA Local 298 Association, Docket No. IA-2012-035. Commissioner Jones moved the draft decision and Commissioner Voos seconded the motion. Commissioner Bonanni stated he had concerns with the decision. In ruling on the original appeal PERC said that the current interest arbitrator had to apply the nine statutory criteria to the entirety of the award. With regard to the 2011 step increases, the interest arbitrator had to identify and explain how the statutory factors were relevant in his discussions and decision on the step increases. On the increments, he did not agree that the direction was followed. On page 6, at the bottom, where it is written that this alleged pattern included not only a salary freeze but a surrender of step increments. The terms "alleged pattern" is only a term that the Commission is using. Neither party used that term. Commissioner Bonanni stated it is a fact, not an allegation, that the pattern of 2011 wage freezes and no step increases was implemented, with the exception of this unit and the superiors unit. He stated that he is not going to support this decision because it would inhibit future negotiations and future settlements without interest arbitration. He said that PERC in 2007, in a Somerset

County case, said that a party attacking the application of an internal pattern bears the burden of coming forward with evidence of a demonstrated need for deviation or a need to accommodate specific problems. Commissioner Bonanni stated he could reasonably support sending this entire decision to a new arbitrator to do exactly what this Commission asked the first arbitrator to do. The Chair responded that the term "alleged pattern" can be removed. To go back to the arbitrator's justification he did give a couple of examples. One of the more significant ones is the fact that his awarding of the salary increments was because of the specific provision in the agreement that states that the contract continues after its expiration. Commissioner Jones stated that as it applies to equal footing, two standards are comparability and ability to pay. Commissioner Eskilson stated that he is particularly troubled by the equal footing argument and by the arbitrator's disposing of the internal pattern argument with that. The fact that this unit is not subject to layoffs because of the 24/7 nature of the facility does not differentiate the unit and the collective negotiations process and the need to participate in salary discussions at a time of extreme budgetary distress. The Chair asked if it could be agreed that the arbitrator's justification of awarding the salary increments is because they were required by a prior agreement of the parties. Some of the other units in Morris

County had a memorandum of agreement with different language that terminated at the expiration of the contract. She asked if taking out that particular language would help. The Chair suggested removing the language as one of the arbitrator's justifications and just include the particular provision concerning the expired agreement. Commissioner Eskilson responded that he would be okay with that. Commissioner Wall stated that it does not appear that the arbitrator took just that one single issue and made it the sole criterion. The arbitrator had a list of criteria, and to just take out one of them over another may not be fair to the arbitrator because he is stating that there were several issues he took into consideration. Ms. Lucarelli-Carneiro responded that further on, the decision describes why the agency finds that the award should be affirmed. The equal footing reason is not relied on. It was suggested language on page 12 be added to state that the agency is not persuaded by the arbitrator's finding that this unit is different. Commissioners Jones and Voos stated they were not in agreement. Chair Hatfield made a motion to change the language on page 12 to add "we are not persuaded by the arbitrator's finding that this unit was not on equal footing with other units." Commissioner Eskilson seconded the motion. Commissioner Bonanni commented about the language that states the independent record, including the impact of the cap levy. Ms.

Hennessey-Shotter responded that neither party made the argument and the County did not state that it has a cap problem. She added that the record that was submitted was reviewed and there was nothing to indicate that there was a cap problem. The Chair responded that if the parties do not state that there is a problem we can not assume that there is one. The motion to amend language in the draft decision was approved with a vote of four in favor (Chair Hatfield, Commissioners Bonnani, Boudreau and Eskilson), and three opposed (Commissioners Jones, Voos and Wall). The motion to adopt the draft decision with the amended language was approved with a vote of five in favor (Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall), one opposed (Commissioner Bonanni), and one abstention (Commissioner Jones).

Commissioner Jones and Wall left the meeting at this time as they were both recused from voting on the next draft decision.

The last case for consideration was the draft decision in Point Pleasant Borough and PBA Local 158 & SOA, Docket Nos. IA-2012-018 and IA-2012-019. Commissioner Eskilson moved the draft decision and Commissioner Boudreau seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos).

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

The next regular meeting is scheduled to be held on Thursday, October 25, 2012.