

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
November 19, 2012
10:40 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
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 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 Courier Post, as well as to the State House Press Office

(c) mailed to the Secretary of State for filing; and

(d) posted on the agency's web site.

Furthermore on November 16, 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 September 27, 2012 regular meeting. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Boudreau. The motion to adopt the minutes was approved by a vote of six in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall), and one opposed (Commissioner Jones).

The next item for consideration was the minutes of the October 1, 2012 special meeting. A motion to adopt the minutes was made by Commissioner Bonanni and seconded by Commissioner Eskilson. Commissioner Jones abstained from voting as he was not present at the meeting. The motion to adopt the minutes was approved by a vote of six in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall), and one abstention (Commissioner Jones).

The next item for consideration was the minutes of the October 11, 2012 special meeting. A motion to adopt the minutes was made by Commissioner Boudreau and seconded by Commissioner Eskilson. The motion to adopt the minutes was approved by a vote of six in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall), and one opposed (Commissioner Jones).

Chair Hatfield advised the Commissioners that a holiday luncheon has been scheduled at Paulie's Anna Rose for December 13, 2012 after the next Commission meeting.

Martin Pachman, General Counsel commented on the memorandum that was forwarded to the Commissioners clarifying the use of the Doctrine of Necessity. The formal opinion of the Attorney General was attached and also addressed in the memorandum. This opinion justifies the policy that the Commission is following. Commissioner Jones responded he continues to disagree with the use of the doctrine of necessity. Commissioner Wall asked what constitutes a quorum. Mr. Pachman responded that if a statute does not specify a particular number, a quorum is the majority, either of those present and voting, or those who make up the organization, i.e., the body as a whole. There appears to be some confusion regarding the use of the word "quorum". A certain number of members must be present to constitute a quorum needed to call a meeting to order. Then on every particular agenda item there must be a sufficient number of members present and able to vote to have a quorum to act on that matter. Mr. Pachman continued that, if there are only three Commissioners who are regularly eligible to vote on a particular matter a quorum is not present and a vote couldnot be taken, except through the application of the Doctrine of Necessity. That is why the Doctrine of Necessity was developed by the courts, we did not invent this. It is there to take care of exactly the kind of situations in which we occasionally find ourselves. Commissioner Jones states if the statute is silent on quorums then it does not

make a difference, and that is exactly what the opinion letter states. Mr. Pachman read the last paragraph of the Attorney General's opinion letter into the record:

"For these reasons, it is our opinion that laws which define a quorum for meetings of a public body as a specific minimum number of members must be strictly applied irrespective of any vacancies in the agency's current membership. Laws which define a quorum as a majority or larger percentage of "all the members" or of "the authorized membership," or words to that effect, must like-wise be read as requiring a fixed number of members which remains constant despite any vacancies. On the other hand, where an act states that a quorum consists of "a majority of the members" or "a majority of the voting members," or where an act is silent on the question, a quorum means a majority of the current membership after taking into account any vacancies."

Mr. Pachman further explained that just because someone is recused it is not a vacancy. A vacancy means there was an unfilled seat on the body. We have been abiding by what has been stated in the record.

Don Horowitz, Deputy General Counsel, reported that former General Counsel Sidney Lehmann recently passed away. There was a funeral service held where over 600 people attended. Mr. Lehmann was well-respected in the labor relations community. Commissioner Jones recommended that a letter of recognition and gratitude be submitted on behalf of the Commission acknowledging his years of service and expressing condolences to the family. The motion was approved by acclamation.

The Counsel's Office distributed a monthly report.

Mr. Horowitz, Deputy General Counsel, reported that the Appellate Division, Superior Court, has affirmed the Commission's decision in State of NJ (Judiciary) and PANJ. The Commission found that the dominant issue in a grievance was a staffing decision. The court agreed with that analysis. The Court held that grievance arbitration was not the proper place to pursue residual compensation issues.

There is a new appeal in the Morris County Sheriff case and an appeal in the Cumberland County Prosecutor case has been withdrawn.

There are two other cases of interest. One is the Association of School Administrators which involves a challenge to regulations adopted by the Commissioner of Education. The Court took a very expansive view of the power of an administrative agency to adopt regulations to implement even the spirit of a piece of legislation it administers.

The second case is Hawk v. NJIT which involves a decision made by NJIT to remove tenure from a full professor. One of the interesting things about this case is that the Court found that a decision of NJIT is essentially the same as a decision of an administrative agency and could be appealed to the Appellate Division.

The first case for consideration was the draft decision in State of New Jersey (Juvenile Justice Commission) and New Jersey State Policemen's Benevolent Association, Local 105, Law Enforcement Unit, Docket No. CO-2011-070. Commissioner Jones moved the draft decision and Commissioner Voos seconded the motion. Commissioner Wall is recused from voting on this matter because of his affiliation with the PBA. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos).

The next case for consideration was the draft decision in Township of Edison and International Association of Firefighters Local 1197, Docket No. CO-2011-120. Commissioner Boudreau moved the draft decision and Commissioner Wall seconded the motion. The motion to adopt the draft decision was approved by a vote of six in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall), and one opposed (Commissioner Jones).

The next case for consideration was the draft decision in Robbinsville Township Board of Education and Washington Township Education Association, Docket No. CO-2010-484. Commissioner Eskilson moved the draft decision and Commissioner Boudreau seconded the motion. Commissioner Voos stated that she was not comfortable making a summary judgment in this case, as she feels it should go before an arbitrator. General Counsel Pachman responded this is not a scope of negotiations case it is an

unfair labor practice case, so there is no arbitrator in the offing here. The parties chose to expedite the process by submitting this case on a joint motion for summary judgment. The critical facts are undisputed. The financial constraints were undisputed, the impact of permanently laying off teachers on class size and on programmatic offerings that the District could make were undisputed. The Commission's task is to apply the weighing and balancing test that we are required to do under the law. Commissioner Bonanni stated that when the municipal governing body turns a budget down the school board has the right to appeal that to the County Superintendent or to the Commissioner of Education. He asked if that was done in this case. Mr. Pachman responded that the process was started and then they were advised by the County Superintendent office that it was not going to go anywhere so it was withdrawn. Commissioner Bonanni asked if there was a three day furlough implemented for the non-bargaining unit employees as well. Mr. Pachman responded it was for all employees. The draft decision suggests in this particular circumstance the alternative of mass layoffs or long-term layoffs is the more likely to cause greater disruption to the children than a short-term temporary layoff. Commissioner Voos stated the parties do not have to agree, but they have to bargain. Commissioner Voos stated it is the Commission's job to uphold collective bargaining. Commissioner

Bonnani stated he was not clear that there was a real intent to negotiate, but he found nothing to substantiate what the parties presented in the record. Mr. Pachman responded that the Board did request negotiations and the Association refused to come to the table, they said they stand on their contract. Only then did the Board adopt the three day furlough that was put into effect. Commissioner Jones stated that management is circumventing the collective bargaining process here. Mr. Pachman stated the reason that the right to lay individuals off on a permanent basis came out of a series of decisions, mostly by the courts, applying the balancing test that was used in the IFPTE case. Commissioner Voos asked what would happen if the draft was not adopted, would it then go to a hearing examiner. Mr. Pachman responded that it would not go to a hearing examiner, the Commission has to make a decision. The motion to adopt the draft decision was not approved. The vote was three in favor (Chair Hatfield, Commissioners Boudreau and Eskilson), and four opposed (Commissioners Bonanni, Jones, Voos and Wall).

The next case for consideration was the draft decision in City of Vineland and PBA Local 266, Docket No. SN-2010-094. Commissioner Voos moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Wall is recused from voting on this matter because of his affiliation with the PBA. The motion to adopt the draft decision was unanimously approved

(Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos).

The next case for consideration was the draft decision in City of Vineland and PBA Local 266, Docket No. SN-2010-095.

Commissioner Bonanni moved the draft decision and Commissioner Boudreau seconded the motion. The motion to adopt the draft decision was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos), and one opposed (Commissioner Jones).

The next case for consideration was the draft decision in City of Jersey City and Jersey City Police Superior Officers' Association, Jersey City Police Officers' Benevolent Association, Jersey City Public Employees, Inc., Local 246, Jersey City International Association of Fire Fighters, Local 1066 and Jersey City International Association of Fire Fighters, Local 1064, Docket Nos. SN-2012-016, SN-2012-019, SN-2012-020, SN-2012-021 and SN-2012-022. Commissioner Voos moved the draft decision and Commissioner Boudreau seconded the motion. Commissioner Jones is recused from voting on this matter because this case involves the Loccke law firm. Commissioner Wall is recused from voting on this matter because of his affiliation with the PBA. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos).

The next case for consideration was the draft decision in

Township of West Windsor and West Windsor Policemen's Benevolent Association, Local 271, Docket No. SN-2012-028. Commissioner Voos moved the draft decision and Commissioner Boudreau seconded the motion. Commissioner Wall is recused from voting on this matter because of his affiliation with the PBA. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos).

The next case for consideration was the draft decision in New Providence Board of Education and New Providence Education Association, Docket No. SN-2012-066. Commissioner Eskilson moved the draft decision and Commissioner Wall seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall).

The last case for consideration was the draft decision in Township of Howell and PBA Local 228, Docket No. SN-2012-038. This case was pulled from the agenda and placed on hold until next month's meeting.

Commissioner Voos 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, December 13, 2012 at 10:00 a.m.