

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
December 13, 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:

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 December 7, 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 October 25, 2012 regular 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 five in favor (Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall), and one opposed (Commissioner Jones).

The next item for consideration was the minutes of the November 19, 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 four in favor (Chair Hatfield, Commissioners Boudreau, Eskilson and Wall), and one two opposed (Commissioner Jones and Voos).

Commissioner Jones commented that at the November 19, 2012 Commission meeting there was extensive argument involving Robbinsville Township and Washington Township Commissioner Bonanni, Commissioner Voos, Commissioner Wall and himself and none of it was contained in the minutes. He stated that this is why he will continue to vote "no" on the minutes. He feels we should be dealing with minutes that are live, taped and available to the public. When individuals go to the Appellate Division based upon the opinions of this body, the minority opinion, and in addition to that, sometimes the majority opinion is not properly weighted, instead we rely totally upon counsel's written

word, which is not the governing body. Commissioner Voos commented that the minutes should reflect why the Commissioners voted how they did. Chair Hatfield responded that the decision will be redrafted to reflect the comments and direction of the Commissioners and will be placed back on the agenda for a vote. General Counsel Martin Pachman responded that the minutes are not part of the record for the Appellate judges to review. If the minutes are ever requested they would be provided but we do not provide it to them automatically. Deputy General Counsel Don Horowitz added that there is nothing that requires an administrative agency, a school board or a town council to keep verbatim minutes. Commissioner Eskilson stated there is a very fine line. He stated a transcript is not really necessary. Commissioner Wall commented that with the technology that is available in this day and age the idea of taking what is recorded here and placed on our website should be made available. Commissioner Eskilson responded he agrees with that but it also takes money and an investment, the resources need to be available. Commissioner Jones stated there should be an electronic record made available that would alleviate these particular differences. Chair Hatfield stated the agency is in the process of obtaining new servers and computer equipment and the request will be considered. Commissioner Boudreau commented that when he read the draft minutes he agreed there was a lot of

conversation that was not reflected in the minutes. If he is taking a position on a particular issue he would like the minutes to reflect same. Commissioner Eskilson stated that a digital recording should be the way to go. Chair Hatfield stated the request for a digital recording would be considered.

The next item for consideration was Adoption of the Annual Notice of Regularly Scheduled Meetings for 2013. Commissioner Eskilson moved that the Annual Notice of Meeting be approved and Commissioner Voos seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Boudreau, Eskilson, Jones, Wall and Voos).

Chair Hatfield extended well wishes to the Commissioners and staff during the holiday season.

Don Horowitz, Deputy General Counsel, reported that a resolution on behalf of former General Counsel Sidney Lehmann, who recently passed away, was presented to his family.

The Counsel's Office distributed a monthly report.

Mr. Horowitz reported that in the Bergen County Sheriff case and interim relief ruling was overturned and held that the Bergen County Executive had a right to participate in collective negotiations alongside the Sheriff. The Sheriff sought leave to appeal to the Appellate Division which was denied. However, it was learned that a trial court judge reached the opposite conclusion and said that the County Executive did not have a

right to participate in collective negotiations. There will have to be a determination reached somehow in terms of an Appellate court saying who has the jurisdiction to make that determination and which determination is right. Commissioner Jones stated that he feels it is critical that the Commission continue to monitor this case. Mr. Pachman stated that absolutely the case will be monitored. Frankly, from the Commission's point of view whether it is the Sheriff or the County Executive is less important to us as an agency than protecting the jurisdiction of the agency to deal with unfair practice cases. If there is an appeal in this case then there is a different issue as to whether or not we may come in as an amicus, only to the extent to argue the jurisdictional piece. Mr. Horowitz stated that procedurally in the case that was ruled on, that case is still technically before the Commission. There has not been a final decision issued in that dispute. That case was an unfair practice charge filed by the County Executive saying that the union was violating the law by excluding the County Executive from negotiations. We made a determination that we were substantially likely to find that the County Executive had a right to be present. The order that we issued sends it to the Director of Unfair Practices to continue the processing of the case. Mr. Pachman stated it was an appeal of an interim relief decision, so that based upon what we did here it was sent back for a further hearing before the Hearing

Examiner. Ultimately it could, and probably will come back to us, but at this moment our primary focus is not with the ultimate result in the case but with the jurisdictional issue.

Commissioner Jones made a motion to continue to preserve PERC's position and to have counsel monitor this case and be prepared to move forward as an amicus in regard to the jurisdictional aspect of the case. Commissioner Wall seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Boudreau, Eskilson, Jones, Wall and Voos).

Deputy General Counsel Mary E. Hennessy-Shotter reported that the Newark State-Operated School District case listed under new appeals in the Counsel's report, has been settled.

The first case for consideration was the draft decision in City of Vineland and PBA Local 266, Docket No. SN-2010-098. 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 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-2010-099. Commissioner Voos moved the draft decision and Commissioner Eskilson seconded the motion. Commissioner Wall is recused from voting on this matter because of his affiliation with the PBA.

Commissioner Jones asked if we were in possession of the petition under Docket No. AR-2010-703? Ms. Hennessy-Shotter responded yes. Commissioner Jones stated that if the petition calls for what the union writes about then they did not deal with the 15 days, but what they dealt with was the maintenance of standards as it relates to differential treatment. Ms. Hennessy-Shotter stated they wrote a few words "discipline of officer" which was very vague. Unfortunately the PBA did not provide a certification in any of these case to support their argument. Commissioner Jones responded that what they are arguing is everyone else is doing this, and it is differential treatment, independent of, and not talking about if he got one day or a year. Ms. Hennessy-Shotter responded isn't that the merit of the grievance or the civil service appeal, and wouldn't you argue that to civil service that it was differential treatment on the 15 day, and on the 2 day suspension you would argue that to the arbitrator. Commissioner Jones responded as a matter of facts that have been presented, but not as a matter of a contract clause that has been violated, independent of the penalty. Mr. Pachman responded if there is differential treatment, absent a disciplinary action, they may have some other area of the contract that they wish to rely upon. This grievance focuses on the result of that alleged differentiated treatment. That is the basis upon which both the civil service law and our law

determines which forum the matter is heard in. Your point is well taken, but in the context we are directed to look at in this case it is a little misdirected. Commissioner Jones responded that there is nothing in any of the writings that suggest that this is anything other than a differential treatment maintenance of standards laws violation. He continued that his point simply taken is that they did not argue the penalty they argued the treatment of certain people and that is absolutely within the purview of this body. Mr. Horowitz responded that if we allowed this entire dispute to go before an arbitrator, and the arbitrator agreed that this was differential treatment, and set aside both suspensions, a court would vacate the part of the arbitration award setting aside the 15 days holding that he did not have jurisdiction to award that remedy. The motion to adopt the draft decision was approved by a vote of five in favor (Chair Hatfield, Commissioners Boudreau, Eskilson, Jones* and Voos). *(Commissioner Jones voted in favor of the decision except for restraining arbitration of the 15-day suspension).

The next case for consideration was the draft decision in City of Vineland and PBA Local 266, Docket No. SN-2010-100. Commissioner Eskilson 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. Commissioner Jones stated we are mixing terms, there is a

difference between adequate and minimal staffing laws. The motion to adopt the draft decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Boudreau, Eskilson and Voos), and one opposed (Commissioner Jones).

The next case for consideration was the draft decision in City of Vineland and PBA Local 266, Docket No. SN-2010-055. Commissioner Eskilson 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. Commissioner Jones stated he was going to refer to page 7, third paragraph, first four lines of the draft decision, where we outline more accurately what this is, and that he was going to be a "no" vote on this. Commissioner Voos stated that a key part of the decision is that there were good managerial reasons for this change. We seem to rely on the fact that management provided some statement, and the union did not. I was not convinced that there was a strong management necessity for the change. The simple fact that the union did not do a good job, or their attorney did not do a good job does not lead me to necessarily endorse them as presenting a good reason. I would like to see a more factual decision than to say because we lack evidence, that evidence could be presented in another jurisdiction. The Chair responded the management specifically certified the reasons why they were doing this for the overlap of supervision. The PBA had

the opportunity to state that was not the case, but they did not. Mr. Pachman responded that we have insisted that the parties that come before us are prepared and present us with what we need, and what they know we need to present their case. If it is an unfair labor practice case where there is a full hearing and it is an adversarial proceeding, our hearing officers have a right to do that, and often times do. In a scope case such as this we have to rely on what the parties present us with. They do not have a trial going on where the "judge" can say give me more information about why you need to have this overlap, or why the overlap is unnecessary. The motion to adopt the draft decision was approved by a vote of three in favor (Chair Hatfield, Commissioner Boudreau and Eskilson), and two opposed (Commissioners Jones and Voos).

The next case for consideration was the draft decision in New Jersey Transit and Amalgamated Transportation Union, Docket No. SN-2012-036. Commissioner Eskilson moved the draft decision and Commissioner Voos seconded the motion. Commissioner Boudreau stated he had a lot of concern about this case. He said he was interested in the adoption of the Supreme Court test on this, and the notion of the "coherent public transportation system in the most efficient and effective manner." What would be important to an effective bus operation? The first thing that would be important to me is that I would have unilateral ability to select

the kind of bus I would buy. The second thing would be that I would have the ability to hire who I want. The third would be that I would have the ability to train that person in the way I want. The fourth reason would be that I would absolutely have a process to collect money and make sure that the financial aspect of this operation was tight, and that all of my employees understood how important that was. So I look at this and say that we are going to make a decision that says essentially the misapplication of funds or theft of funds has nothing to do with a running a coherent public transportation system in an effective and efficient matter. I am sensitive to the issue of interrogations of employees. Commissioner Wall stated he does not understand why the union representative was not called. Commissioner Eskilson stated they could have waited until the employee was convicted to terminate him. He understands Commissioner Boudreau's concerns and he does feel he had a right to union representation. Commissioner Jones stated that when you start a bus company the first thing you have to do is comply with the legal process and make sure that they follow the rules. The Attorney General's arguments are convoluted in this case. All that needed to be done was conduct a criminal investigation. This individual should have been suspended, pending termination. Ms. Lucarelli-Carneiro responded that the judge dismissed the criminal conviction, so the charges resulted in the

administrative termination. What was really interesting about this case is that we never get these types of cases in a scope petition. I do not believe the parties understood what the issue before us was. The motion was unanimously approved (Chair Hatfield, Commissioners Boudreau, Eskilson, Jones, Wall and Voos).

The next case for consideration was the draft decision in County of Middlesex and PBA Local 165, Docket No. SN-2012-039. 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. Commissioner Eskilson recused himself because the case involved the Mets law firm. Commissioner Jones stated this case goes right back to the previous case that was just discussed and asked if we were going to mince words between adequate and necessary, best interest of the public, public safety with the words "staffing" because that is the exit word, the strategy word for management to do these things. We are going to get somebody killed. When we get somebody killed will we finally realize that these are not things that were trying to better the bad of employees over time, hirings or any other reason that you would want to diminish expenses as opposed to a legitimate public safety need. This is not adequacy, not a staffing argument. The reason that they do it, almost every police department in the

state does it. The County does nothing to suggest that they can ensure the safety of the taxpayer in this, and we mince words again, and for that reason obviously I will be voting "no". Mr. Pachman responded that staffing was not argued because staffing is a managerial prerogative. The motion to adopt the draft decision was approved by a vote of three in favor (Chair Hatfield, Commissioner Boudreau and Voos), and one opposed (Commissioner Jones).

The last case for consideration was the draft decision in Borough of Clayton and FOP Lodge 130, Docket No. SN-2012-034. Commissioner Boudreau moved the draft decision and Commissioner Jones seconded the motion. The motion was unanimously approved (Chair Hatfield, Commissioners Boudreau, Eskilson, Jones, Wall and Voos).

Commissioner Eskilson 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, January 31, 2013.