

MINUTES OF SPECIAL MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
January 25, 2013
11:30 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 January 17, 2013 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 case for consideration was the draft decision in City of Camden and Camden Organization of Police Superiors, Docket No. IA-2013-007. Commissioner Jones moved the draft decision and Commissioner Voos seconded the motion. Commissioner Eskilson stated that he had difficulty with this draft decision. He continued by stating that in our findings we always list the reasons why interest arbitration awards can be vacated. There are three issues, the due weight issue, which is not being referenced here, the violation of standards in the statute, which may or not be referenced here, or the substantial credible evidence criteria, which it is not clear if that is being referenced either. Commissioner Eskilson stated that some of the issues upon which we are resting this decision he believes were addressed by the arbitrator. For example, the issue of the pay of other employees, it seems on page 3 of the arbitrator's decision he deals with it by stating that "the overall compensation presently received is a secondary concern and there is virtually nothing which I can impose which would make a meaningful change." It seems that the arbitrator is dealing with that issue and saying that no matter what that issue is not going to be relevant to his decision. Deputy Attorney General Christine Lucarelli-Carneiro asked if the issues could be dealt

with one at a time. Commissioner Eskilson asked if the criteria issue could be addressed first because he does not see what criteria we are basing the decision on. Ms. Lucarelli-Carneiro asked Commissioner Eskilson if he was more concerned with the use of the word "vacated" than he was with the use of the word "remanded". Commissioner Eskilson responded that remand for clarification he can understand, but we are vacating and remanding and there is specific criteria under which we may vacate a decision, and he did not see where we have met that criteria. Ms. Lucarelli-Carneiro responded the use of the word vacated in the award means that based on the clarification that the arbitrator obtains as a result of the remand, if he wanted to modify any other parts of the award that may not have been addressed in our decision he has the ability to do so. In this remand we are not asking for the arbitrator to necessarily give us a different answer, we really just need clarification. Commissioner Eskilson responded that the issues we are asking clarification on it seems some of those are actually addressed. Ms. Lucarelli-Carneiro responded that a concern with the award was that the arbitrator mentions other recent arbitration awards several times throughout his award, and the fact that these awards have gone unpaid. The union has asserted that in fact both awards have been paid in full. We have a need for the award to be accurate. Commissioner Eskilson then addressed the \$15,000

severance issue. He asked if we were suggesting that the arbitrator may have been ordering/recovering monies already paid out? Prospective versus retroactive. I read it as prospective, it was not clear to me if it was retroactive, one that would be highly unusual, and would require a recovery of funds, would it not? Ms. Lucarelli-Carneiro said unfortunately this part of the award was very unclear, it refers to 2006 freezes, so we need clarification on this issue. Commissioner Eskilson then asked about the assertion that the arbitrator failed to address the severance proposal. The last line in his decision states "all other proposals by either party should be considered to have been rejected." That language seems to be fairly common and standard language used by arbitrators. Ms. Lucarelli-Carneiro responded that is true, but often times we find the use of that language with the less important proposals made by the parties. Generally we expect and we see arbitrators address the more significant proposals, whether they are granted, or whether they are denied and what the justification for that is, and in this case the severance proposal was a fairly important proposal that was on the table and we want the arbitrator to address it in the award. Commissioner Eskilson asked if we were inserting our opinion on what we think is important and what is not, and is that within our purview? Ms. Lucarelli-Carneiro responded that the arbitrator can tell us that on remand if he thinks that he did

not address it because he thought it was that insignificant. Commissioner Eskilson responded that part of his concern is the backdrop information concerning the City of Camden and if we are somehow questioning the financial condition of the City of Camden, which has been documented everywhere for quite some time. They are a ward of the state, that is not going to change, there is no money, so I am not sure why we are going through this entire exercise. General Counsel Martin Pachman responded that we really do not have a choice. Frankly, we are certainly not criticizing the ultimate outcome. We just need to have a more detailed outline as to how the arbitrator got to the conclusion that he came to. If it turns out that the arbitrator, after providing that information, comes to the same conclusion that is well and fine. It is not our job to second guess the arbitrator's ultimate conclusion. Commissioner Eskilson responded that in this decision and all others we note the criteria upon which we may vacate an award, and one of them is not convenience and flexibility, and if we are going to vacate we should at least reference under which of these criteria the decision failed and therefore we are vacating. He continued by stating he does not see where this need for clarification falls into any one of those categories as a basis for vacating the decision. Commissioner Boudreau stated that he was trying to understand at what level the "burden of proof" is put on the

arbitrator. Mr. Pachman responded that unfortunately the law requires the arbitrator to state the facts that lead them to what may be an obvious conclusion that the City of Camden is on the verge of bankruptcy, and the City ought to be able to present to the arbitrator how it paid for those awards, what the source of the funding was and whether or not it is funding that is available for the general use of the City in meeting an obligation that he might set forth. Our problem is that there seems to be some confusion in the award with regard to whether or not they were paid in the first instance. Commissioner Eskilson stated that we spell out in every single decision we make with respect to arbitration awards the criteria by which we may vacate an award. Ms. Lucarelli-Carneiro stated it would fall under no. 3, credible evidence. Commissioner Jones stated he feels that it falls under all of them. This award should be vacated and should be sent back. Commissioner Eskilson stated that if this decision is to prevail it should at least specify which factor we deemed this vacation to fall under. If it is all three fine then it should be stated and why, and if is credible evidence it should be stated and why and it should be in the decision for the future of now and future decisions as well. Ms. Lucarelli-Carneiro stated that at this point we do not really know whether the union's assertions are correct, or not correct, or correct partially. We need the arbitrator to tell us. I understand

Commissioner Eskilson's concerns about wanting to specifically identify the basis for vacating the award. Chair P. Kelly Hatfield responded that we could add a sentence about the credible evidence. We are vacating the award based on the lack of credible evidence 16g. Commissioner Jones - yes, Commissioner Wall - yes, Commissioner Boudreau - yes, Chair Hatfield - yes, Commissioner Voos - yes, Commissioner Bonanni - yes, and Commissioner Eskilson - with the additional language I vote yes. The motion to adopt the draft decision, with the amended language, was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall).

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, January 31, 2013.