

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
January 31, 2013
10:00 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 "Annual Notice of Meeting."

On December 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.

Furthermore on January 28, 2013, copies of an additional written "Notice of Meeting" were posted and sent in a similar manner.

Chair Hatfield welcomed and introduced Jordon Ablon, who is a new Staff Agent working in the Unfair Practice/Representation Section. Mr. Ablon comes to us from the City of Boston. She welcomed and introduced Frank Kanther, Commission Case Administrator, working in the Administration/Legal Section. Mr. Kanther worked for us previously as a law clerk from September 2005 - September 2006, and worked for us again as an intern while in law school from September 2006 - December 2006. She also welcomed and introduced Krishna Raj, who is a senior in Ewing High School who works for the agency after school each day. Krishna has excelled in an Honors and AP course of study at his high school.

The Counsel's Office distributed a monthly and supplemental report.

Deputy General Counsel Don Horowitz reported that there is a summary of a published court decision released by the Appellate Division, which has reversed the Commission's decision in P.E.R.C. 2012-18, City of Camden and IAFF Local 788. The Commission affirmed an interest arbitration award and the court decision has reversed that and vacated the award and has directed it be sent back to us for the appointment of a new arbitrator to conduct a new arbitration hearing. The decision states that the arbitrator overstepped his bounds in determining that the State of New Jersey was a party to the proceeding based on their

history of providing state aid to Camden in the past. The court also found that the interest arbitrator should have but did not apply health insurance statutes that were passed in 2010 and 2011 that required public employees to make contributions to the cost of healthcare insurance if they were not already doing so. The Commissioners asked if we are allowed to appeal this decision. Commissioner Jones asked what would be the time constraints for a response. General Counsel Martin Pachman stated we were not named a party in this case, therefore, we would not have the authority to appeal the decision. Mr. Horowitz stated that another aspect was that the decision does not reach a final result on the contract because it remands it for a new interest arbitration proceeding. The Supreme Court may look at that and say the Appellate Division did not finally decide this dispute so it is not a final decision. Only final decisions are appealable as of right by either of the parties effected adversely. Any appeal to the Supreme Court is discretionary, they have the ability to say we do not want to hear it. Secondly, if it is not a final decision, meaning it does not dispose of all issues as to all parties, the party who wants Supreme Court review would have to further say I want to file a motion for leave to appeal, rather than a petition for certification. It is legal technicalities. This may or may not be considered a final decision because it has ordered that a new

interest arbitration proceeding be conducted. Deputy General Counsel Christine Lucarelli-Carneiro stated that we entered the appeal after the City of Camden filed an appeal. We came in to defend the vote of the Commission, however, there is a distinction between that and between us being the party to file the appeal. Commissioner Jones stated he feels we should be defending the Commission's decision. Mr. Pachman responded that if the Commission votes to pursue this matter we will in whatever method we can. Commissioner Jones asked if he could make a motion that if the IAFF decides to pursue this that we could join in also to defend PERC's interpretation. Commissioner Eskilson asked if he would have to be recused because his dealings with Mr. Heineman have been long over a year ago, and he is not sure if this matter fell within that time frame. Mr. Horowitz said we could check the decision. Mr. Horowitz stated that a party appealing a final Appellate Division to the Supreme Court must file its petition for certification within 30 days of receipt of the Appellate Division decision. At that point if the Commission can wait to see if the petition for certification is granted, and ask for status as a "friend of the court" since the Commission did participate in the Appellate Division proceedings that would probably be granted. Mr. Horowitz reported that Commissioner Eskilson recused himself on the decision that was reversed. He continued that by the time of the next meeting date, February 28,

2013, it would be one day prior to the deadline that the IAFF is facing. We would probably know by then whether or not the IAFF is going to appeal. Commissioner Jones asked that we just monitor the case to see if the IAFF appeals to the Supreme Court.

The first case for consideration was the draft decision in Borough of Fair Lawn and Fair Lawn 911 Operators Association, IAFF and White and Blue Collar Employees' Association of Fair Lawn, Docket No. RO-2011-041. Commissioner Voos moved the draft decision and Commissioner Bonanni seconded the motion.

Commissioner Jones stated he disapproved. The Director's October 2 opinion would be terrific if in fact the case was that we were relying upon that statutory criteria for the need to make sure that we do not have a million different negotiating bodies within a governmental entity. Every piece of case law that is defined by the Director has to do with the argument that we need larger groups, that these smaller groups create a burden. The Chief and the town who have the obligation to do this disagree. We are relying entirely on the wrong body without an aggrieved party to do this. The only argument not to sever these people would be that they have a vote not to sever. These people met all the criteria. We are wholly relying upon something that should not be applied. We have no business not telling these people that they have the fundamental right to be represented by the group that they want to has been taken away from them because of

criteria that does not apply and that was never exercised.

Ms. Lucarelli-Carneiro responded that 1) she is hearing that Commissioner Jones feels that a town should have the ability to waive out of the principle of law that states that this Commission currently and has historically preferred broad-based units, because if in that town there is not 15 other units then they should be able to waive out of that. Unfortunately that is not how the law works. The law is applied consistently regardless of what town it is or what that town's position is as to whether it would be one other unit or 15 other units. The other issue is conditions for severance. The law states that the condition for severance is if there is 1) an unstable negotiations relationship, which we do not have here, or 2) if certain members are not being represented responsibly, which we do not have here. Nothing that has been indicated in this record rose to that level and that is what the draft finds.

Commissioner Jones responded that there is a methodology in place where a) for people to organize a representation group and b) for people to separate from a group that they are already in for that matter. At a whole host of levels, as part of the regular course of doing business, all groups that bargain collectively have a right to choose their own representation. Far superceding anything relating to the stability issue of lack of representation. We have a statement that was unrefuted when one

of the members of the police department goes in to grieve an issue, where the head of that group declares the group as not being a union. That statement goes unchallenged. Mr. Horowitz referred to the statute that talks about defining negotiations units. It says that the Commission shall determine in each instance which unit is appropriate for collective negotiations. Over the years we have had situations where unorganized employees have filed petitions to be represented and we have found that because the group would be a small group among other employees who would be with them, we have denied them the ability to vote to be included in a collective bargaining unit because it is was not the most appropriate unit. This is a severance situation which is even more difficult for a petitioning group to overcome. Commissioner Jones responded that there are things within the case that are compelling and things that are unrefuted. Commissioner Jones stated there is a history of the Chief changing the salary and work schedules acknowledging that these people are in that first responder law and public safety group and are treated uniquely within this community and are negotiated with differently. Ms. Lucarelli-Carneiro responded that sometimes within one unit there are certain segments of the unit that will have specific negotiations concerns that other members of the unit won't and that is just reality in a broad-based unit. Commissioner Jones responded not without the body of the

recognized collective bargaining agent being there. Generally we will admit that you do not have to have all your ducks in a row if you have been bargaining as that group for a while. In real time it is this group of nine who have been conducting their own negotiations, have been treated completely differently, have dealt with anything from furloughs to discipline, and the stability that you are talking about in a public safety issue should not be magnified. I applaud the Chief for making sure that everyone works, but there is no defense in any of these issues as it relates to the union and severance. The greater issue at hand is not whether the need to have broad-based units isn't a good idea, but it is not nearly as important as the great idea, and the law of the land that these people are entitled in certain circumstances to severance and more importantly that they are entitled the representation of their choice, and they are not getting it elsewhere. The motion to adopt the draft decision was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall), and two opposed (Commissioners Jones and Voos).

The next case for consideration was City of Camden Housing Authority and AFSCME Council 71, Local 3974, Docket Nos. RO-2012-058, RE-2012-003 & CU-2012-025. Commissioner Boudreau moved the draft decision and Commissioner Jones seconded the motion. The motion to adopt the draft decision was unanimously approved

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

The next case for consideration was State of New Jersey and Council of New Jersey State College Locals, AFT and Communications Workers of America, AFL-CIO, Docket No. CU-2012-017. Commissioner Boudreau moved the draft decision and Commissioner Wall seconded the motion. Commissioner Voos stated that the Governor is the head of the Executive Branch and the Executive Branch has negotiation authority and she feels this is a matter about the constitution of the negotiations unit, and they are covered under the Executive Branch, and I have trouble saying they are not. Mr. Pachman responded that the section of the law that Commissioner Voos just referred states that the Governor shall serve as the negotiator on behalf of the state colleges. That leaves the relative status of the Governor who serves as their spokesperson and the state colleges somewhat up for grabs. If the state colleges, one or more of them, disagree with what the Governor has negotiated clearly they are the ratifying party, he is not, he is a representative for purposes of negotiation. That is not what we need to deal with in this case. What we need to deal with is whether or not these folks are managerial executives under the new definition. It is clear, in terms of this case, they are not state employees. They are certainly not employees of the Executive Branch. I do not

disagree with the fact this whole things raises questions about the structure of state government and the structure of the state colleges. That goes way beyond our purview to make a decision. Commissioner Voos responded that we are making a decision, one way or another, and we are going down the wrong path. The state colleges have common negotiations because of the faculty at all those colleges. Commissioner Jones stated that under the new statute they would be covered if they were state employees as a managerial executive. We are relying on this interpretation that because the trustees are now listed as the employer rather than the state that that does not apply. The people are in the same function, there is not a public college in New Jersey that does not get taxpayer funds. The legislation says, 18A:64-20, at the end of what we highlight and what we reference, is that as it relates to these employees and their change with the employer is that any and all rights of tenure, civil service retirement, pension disability, leaves of absence, or similar benefits provided by or for, under the provision of this law, the laws of this State shall not be effected or interrupted. If you take that statement in its effort to say we are maintaining the status quo other than we no longer have the Department of Higher Ed, the Governor is the lead negotiator and the trustees are the employers. If you take that and the totality of what has changed the answer is not a thing. It is still public dollars, the

Governor is still negotiating, and all those benefits and rights that are inherent in the law are protected by this. The law says that they are managerial executives. They took the time out to earmark and show that they were managerial executives. Chair Hatfield responded she respectfully disagrees. The local colleges have totally different procedures, they have their own payroll, they hire, they fire. It clearly states that they will continue in their respective employment within the employ of the board of trustees of their respective colleges. They are not part of the Executive Branch of government, they are not state employees, but they are employees of the colleges, and they are choosing the Governor to be their chief negotiator. Mr. Pachman responded that it states that these people who are now employees of the board of trustees by this change will lose nothing that they had before in terms of their civil service rights, their tenure rights, and so on and so forth. That is what that language means and frankly it is not terribly unique to that section of the law regarding state colleges. Mr. Pachman stated the managerial executive modification occurred in 2010. Commissioner Jones responded that they knew going in 2010 they should have been protected. Mr. Pachman responded that they knew in 2009 that these people were not employees of the state and they should have amended the listing of 9 or 10 state units to exclude the state colleges, they did not do that. Commissioner

Jones responded unless the Legislature and the people who behind this knew and felt like I do that this meant they were preserving the state employees and expected these people to be protected. Everyone going into this thing knew that this other statute existed and in 2010 they named those people. They are either incredibly incompetent or that they meant to interpret the law the same way that I do that they maintain the status quo with the trustee taking that other position, but they are still state employees. Mr. Pachman responded there is one other alternative and that is that the Legislature and Governor Corzine, in amending the managerial executive language, was not concerned particularly about the 60 or 70 people throughout the state college system with these positions and it just fell through the cracks. Commissioner Voos commented that there are some distinctions as well as some similarities among the state colleges, but it is madness to carve out a separate labor relations law on small details for all the state colleges where they are negotiating under the law that always covered state employees. The motion to adopt the draft decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson), and three opposed (Commissioners Jones, Voos and Wall).

The next case for consideration was Northern Burlington County Regional Board of Education and Northern Burlington County

Regional Board Teachers' Association, Docket No. SN-2012-015.

Commissioner Jones moved the draft decision and Commissioner Voos seconded the motion. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall).

The next case for consideration was Millburn Township Board of Education and Communications Workers of America, Local 1031, Docket No. SN-2012-031. 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, Jones, Voos and Wall).

The next case for consideration was Roselle Park Board of Education and Roselle Park Education Association, Docket No. SN-2012-033. Commissioner Bonanni moved the draft decision and Commissioner Voos seconded the motion. The motion to adopt the draft decision was unanimously approved (Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall).

The next case for consideration was Summit Board of Education and Summit Education Association, Docket No. SN-2012-026. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Chair Hatfield was recused because she resides in the Town of Summit. Commissioner Voos became Acting Chair. The motion to adopt the draft decision

was unanimously approved (Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall).

The last case for consideration was Summit Board of Education and Summit Education Association, Docket No. SN-2012-032. Chair Hatfield was recused because she resides in the Town of Summit. The motion to adopt the draft decision was unanimously approved (Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall).

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

The next regular meeting is scheduled to be held on Thursday, February 28, 2013.