

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
February 28, 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 February 25, 2013, 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 December 13, 2012 regular meeting. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Boudreau. Commissioner Bonanni abstained from voting because he was not in attendance at the meeting. Commissioner Jones abstained. The motion to adopt the minutes was approved by a vote of five in favor (Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall), and two abstentions (Commissioners Bonanni and Jones).

The next item for consideration was the minutes of the January 25, 2013 special meeting. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Voos. Commissioner Jones abstained. 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).

Commissioner Wall asked for an update on the status of the digital recording request. Chair Hatfield responded that the agency is in the process of updating computer equipment and is working with the Office of Information Technology.

The next item for consideration was the minutes of the January 31, 2013 regular meeting. A motion to adopt the minutes was made by Commissioner Eskilson and seconded by Commissioner Wall. Commissioner Jones abstained. Commissioner Voos requested

editing of two of her comments. 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 Counsel's Office distributed a monthly and supplemental report.

Martin Pachman, General Counsel reported that the Appellate Division unanimously reversed the Commission's decisions in the Belmar, Mount Laurel and Keyport cases, except for one piece. Those cases all involved the issue of furloughs and the court said that there were two reasons that it was not a negotiable subject. One reason was at the time there was a civil service regulation that preempted it, and secondly the court felt it was a managerial prerogative. It was a per curiam decision. It is binding on those cases but it does not have the force of law that a formal published opinion would have. Commissioner Bonanni asked why are some decisions published and some are not?

Deputy General Counsel Don Horowitz responded that less than 10 percent of Appellate Division decisions are published, and that all Supreme Court decisions are published. He continued by reporting on the Delaware River Port Authority case, when you are dealing with a bi-state agency, and you are trying to determine what rights its organized employees have, you look to the laws of each of the two states. If they have the same law on the same

subject, such as interest arbitration, then the employees of that bi-state agency get the benefit of that law. If Pennsylvania did not have interest arbitration and New Jersey did, then the DRPA police would not have it. The other case involves Williams v. Camden where someone who had enough time in to retire was laid off and he did not put in his retirement application because civil service did not put in his bumping rights. The City tried to say he was laid off and not give him benefits he would get on retirement, such as payout for accumulated leave, and the court said "no" he had the time. It was not his fault that he did not retire as soon as he was advised he was going to be laid off because he might have had a right to another job.

The first case for consideration was the draft decision in Newark State Operated School District and Newark Teachers Union, Docket No. CO-2011-220. Commissioner Boudreau moved the draft decision and Commissioner Bonanni 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 the draft decision in North Hudson Regional Fire & Rescue and North Hudson Firefighters Association, Docket No. IA-2010-099. Commissioner Eskilson moved the draft decision and Commissioner Wall seconded the motion. Commissioner Jones stated we are talking about days, not months,

we are talking about an important issue. Mr. Pachman responded that this was after the Sandy issue, after his office reopened, and quite honestly somebody in his office instead of electronic mailing it to us or overnight mail to us placed it in the regular mail, and that is why it was late. This rule is a statutory rule, it is not regulatory. Commissioner Jones stated that it is tough sometimes when you have so many experts in this field to get these things done. In the spirit of the law, Hurricane Sandy, for better or worse, we should make an exception to these parties to let them have their say. Deputy General Counsel Christine Lucarelli-Carneiro added that the union's attorney made several different arguments as to why his late appeal should be considered, only one of which was Hurricane Sandy. They merely asserted that their office was closed for a few days, and that was the extent of their argument. Commissioner Voos abstained. The motion to adopt the draft decision was approved by a vote of five in favor (Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall), one opposed (Commissioners Jones), and one abstention (Commissioner Voos).

The next case for consideration was Township of Teaneck and FMBA Local 42, Docket No. SN-2012-043. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Jones asked are we as a Commission saying that there are no staffing levels? Mr. Pachman responded there

is a difference between what we are saying and what the employer is saying and is allowed to do. What we are saying is that management can establish minimum manning levels, and if they do so, which is a managerial prerogative, a proposal on a systematic basis create a staffing level below the minimum manning that they have created is non-negotiable. We are not creating the standard. Commissioner Voos stated she finds the decision economically illogical, whatever the legal reason was. Management has the right to determine the overall number of firefighters. They have the right to determine minimum staffing levels. If they decrease the number of firefighters further they might get to a situation in which people never take the time off that they are due under their contract. To say that somehow that can not be negotiated or arbitrated seems unreasonable. I feel the contract should go to arbitration to have that view heard. Mr. Pachman stated that this Commission has said, going back to cases in the 70's, that management has the right to determine their minimum manning standards. In this particular case, the town has decided that town-wide there needs to be a certain number of firefighters on duty to protect the public. That is the minimum manning that we have said is their managerial prerogative. Now what has happened, based on the record that we have in front of us, is that there are circumstances in which by allowing up to four firefighters to be off duty at any given

time, at any given shift, based on the fact that there are a diminished number of firefighters primarily what happens is that when they allow the four men off on a shift they fall below their minimum number to protect the public. When you add to that the potential that somebody might be out sick or other emergency kinds of circumstances it would bring the number of firefighters available to actually fight fires down even further. We find in this case the minimum staffing standard would be violated if we also permitted the four men off to be part of the contract. Commissioner Voos stated that the question is whether the parties can sit down and discuss and hopefully agree to some clause in the collective bargaining unit that would be enforceable later on in order to solve their problem of scheduling time off and providing enough firefighters to be safe and to serve the public. Mr. Pachman responded that if they could do that they would not have come to the Commission. Secondly people use the word negotiate as though it were a sine qua non for agreement. No one in this case has asserted that firefighters are precluded from taking their time off in some global sense. All they are saying is that no more than four men can be off on a non-scheduled basis on a particular day. Commissioner Boudreau stated that it seems that especially in the situation that we are in with caps, with local budgets under duress, I hope that this Commission is not going to try to wade into the leaves of making those kind of

decisions here. We want to stay away from that kind of discussion in involvement in what the ultimate decisions of the local government here is globally. Mr. Pachman responded that we are concerned with process, not substance. The role of the Commission is to ensure a fair playing field so that both parties can sit down and attempt to work out their difficulties. Commissioner Jones responded that what we are debating is their right to go in front of a body and let an arbitrator or let the parties agree to the best way to do this as opposed to cutting the legs off from one side in a most hypocritical application. Commissioner Eskilson responded that we are not denying them the ability to do that at a later date, what we are saying here is that there is a managerial prerogative to minimum staffing level. This is a narrow focus, this is on these circumstances and these facts, at this time, and a past practice, and that does not mean the firefighters can not bring that to the negotiating table when they next sit down. Mr. Horowitz stated that they are at the table, that is how this dispute arises, no one is seeking to enforce a specific agreement through grievance arbitration. The union's proposal is not based on any specific contract language from the past contract. There is nothing in the past contract that says there shall be four firefighters per shift that can take time off. That does not exist in the past contract. There is an allegation that there is a past practice and the union

wants to continue that past practice of four. We are saying, that given the facts, that insistence on four firefighters per shift, given the current compliment of firefighters of the employer, and given the employer's determination as to how many firefighters they need on any given shift, that would significantly interfere with the employer's ability to determine what a safe number of firefighters per shift is. 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 New Jersey Transit and ATU Division 822, Docket No. SN-2012-048. Commissioner Voos 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 next case for consideration was Township of Howell and TWU Local 225, Bridge 4, Docket No. SN-2012-060. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion. Commissioner Boudreau asked if the court was going to decide on both issues. Mr. Pachman responded that the court is actually going to decide on whether or not the arbitrator was correct in his interpretation that the contract contained a provision setting forth how the calculation should be

done, or a past practice. Commissioner Boudreau then asked if this could potentially come back to us at some point. Mr. Pachman responded that anything could come back, but the answer is generally "no". Commissioner Eskilson asked if this was a non-civil service matter. Mr. Horowitz responded that normally under civil service, they will administer the promotional exam and there would be a notice saying what you would need in order to qualify for the job. Commissioner Jones stated that no one on the body is suggesting that the union labor has the right to decide promotional criteria, but the process is clearly negotiable. 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 Pleasantville Board of Education and Pleasantville Education Association, Docket No. SN-2012-070. Commissioner Eskilson 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).

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, March 21, 2013.