

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
March 21, 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
David Jones
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 March 18, 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 February 28, 2013 regular meeting. A motion to adopt the minutes was made by Commissioner Bonanni and seconded by Commissioner Wall. Commissioner Jones abstained. The motion to adopt the minutes was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Boudreau and Wall), and one abstention (Commissioner Jones).

The Counsel's Office distributed a monthly report.

Deputy General Counsel Don Horowitz reported that the Communications Workers of America, AFL-CIO has appealed the Commission decision involving the State of New Jersey and Council of New Jersey State College Locals, AFT.

Mr. Horowitz continued by reporting on a case involving Thomas v. Newark Police Department which was issued by the federal court of appeals. Essentially a public employee union is not the equivalent of a government agency and therefore not a "State actor" under federal and civil rights laws and can not be sued. The case involved a publication by the superior officers association that criticized the police detective whose testimony at a criminal trial did not support the prosecution's case. The police union was upset about that and criticized her in the publication and she sued them for defamation and other violations. The Court held that they were not covered by the Civil Rights Act.

The first case for consideration was the draft decision in Kean University and Council of New Jersey State College Locals, AFT, AFL-CIO, Kean Federation of Teachers, Docket Nos. CO-2008-384 and CO-2009-158. Commissioner Jones 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, Jones and Wall).

The next case for consideration was the draft decision in State of New Jersey, Department of Human Services and Seaton Samuel and IFPTE Local 195, Docket No. CO-2012-287. Commissioner Bonanni 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, Jones and Wall).

The next case for consideration was the draft decision in County of Camden and County of Camden Sheriff's Office and Camden County Sheriff's Officers PBA Local 277 and Superior Officers Association, Docket No. CO-2012-296. This case was pulled from the agenda and tabled until next month's meeting.

The next case for consideration was the draft decision in Trenton Board of Education and Trenton Educational Secretaries Association, Docket No. CO-2009-334. Commissioner Bonanni moved the draft decision and Commissioner Boudreau seconded the motion. Commissioner Jones stated that on this particular issue, if it

was as clear cut as interpreted in the draft, he would have a tendency to agree with the decision. However, two things occur here. There was the funding for an analyst, and if the by-product of that was not that they saved money, but in the middle of all this they chose to remove this secretary. It is clear that whenever her activities were taking place before, during and after there was always a pattern and practice of harassment. If it was just a matter of them creating an analyst job then she should have been able to stay. But at the same time hiding behind the creation of this other position of which there were dozens of other people they could have moved they chose to move her and that is just too circumstantial. That position should not have been eliminated they should have found another position to eliminate. Not so much because they did not have the authority to do it, but they did it in a fashion as retaliation.

The Chair responded that they abolished 200 positions and 42 of them were secretarial. This secretary was not targeted and they actually rehired her in another position.

Deputy General Counsel Christine Lucarelli-Carneiro responded that the legal question that was asked in this case was that if there was any retaliation was that a substantial contributing factor to the abolishing of the position. Clearly, the facts do not even come close to meeting that legal standard in this case. This was one of 200 positions that were abolished.

There was ample testimony about the budgetary constraints that the Board was under and the need for the financial analyst position.

Commissioner Jones state that the secretary answered a handful of questions explaining that she was doing her activities before work, or after work, or on breaks. She was not required to do that. If her legitimate administrative function that is tied to her collective bargaining agreement can be done during work.

Ms. Lucarelli-Carneiro responded that the supervisor did allow her to do that.

Deputy General Counsel Don Horowitz responded that someone who holds a union position is not insulated from regular reorganizations or reductions in force. That does not give them a shield against that and the courts have said so. The courts have also said even in a case where the union can show that an individual engaged in protected activity, the employer was aware of the protected activity and the employer was hostile to the protected activity, if her position was abolished for reasons unrelated to that protected activity the employer has not violated the Act.

Ms. Lucarelli-Carneiro stated that the Hearing Examiner did not exactly find her testimony credible on each of the incidents that she testified to.

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

The next case for consideration was the draft decision in South Hunterdon Regional Board of Education and South Hunterdon Regional Education Association, Docket No. SN-2012-012.

Commissioner Boudreau moved the draft decision and Commissioner Wall seconded the motion. Commissioner Jones asked what was the status of these negotiation. Chair Hatfield responded they are currently in negotiations. Commissioner Jones stated that the until they actually say what they want in the contract why are we injecting ourselves in that the argument by the defense attorney is absolutely right. This should not be in front of us until they actually have that. I have read nothing in the record that they stated they wanted to re-institute all the terms and conditions as they exist.

General Counsel Martin Pachman responded that if in fact the Association was not seeking to maintain those clauses in the successor agreement they would have, one would presume, simply conceive that we would withdraw them. I do not believe what we need to have is a delay in the negotiations process for non-negotiable items to be recognized as non-negotiable.

Commissioner Jones stated we should not be hearing these issues until they have a document in front of them saying this is

either a scope on these issues or we do not want to deal with them.

Mr. Pachman respectfully disagreed. He stated that we do not need to be in a position, under the statutes and regulations, by which the negotiations are actually held up at the bargaining table in order for us to recognize what the state is. These items, to the extent that they are found to be managerial prerogatives, they are managerial prerogatives, and the Association does not dispute that they are managerial prerogatives. All they are saying is that we are going to reserve our right to raise them sometime down the road. We are here to resolve disputes and not merely deferring them to a later point in time. Once you at the crossroads in negotiations now you are holding up a contract and there are consequences to the litigation that we do not need to deal with.

Deputy General David Gambert responded that the Superintendent from the Board met with the Association's President prior to the expiration of the agreement. The clauses that would be in contention were noted and there was a joint agreement to submit it for a scope of negotiations petition to find out whether or not they were mandatorily negotiable, which was done prior to the agreement expiring. However, the agreement did expire and we received a letter from the Board indicating that there was a dispute regarding these provisions.

Mr. Horowitz stated that if we had no background on the case whatsoever when this petition was filed, and they indicated that they were still in the middle of their contract, and there were no grievances about any of the provision, we would not have decided the case then. We do not allow parties to say in the middle of a contract that provision we were agreed to were not negotiable unless there is some active dispute. Through our backlog with the passage of time there is now a dispute over whether these provisions should be carried forward into a new contract.

Chair Hatfield responded that in fairness to South Hunterdon obviously they have been in negotiations for a long time, and unfortunately our docket is very big, and we are getting to this right now. It would be very unfair for us to not take a vote on this. They are negotiating, and even if we rule on this if they want to change the language in any of the provisions, they can do that to make it more acceptable. That is what negotiations is all about. No one is unilaterally implementing anything.

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

The next case for consideration was the draft decision in Township of Howell and PBA Local 228, Docket No. SN-2012-038. Commissioner Boudreau 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 approved by a vote of three in favor (Chair Hatfield, Commissioners Bonanni and Boudreau), and one opposed (Commissioner Jones).

The next case for consideration was the draft decision in Somerset County Sheriff's Office and FOP Lodge 39, Docket No. SN-2012-056. Commissioner Bonanni moved the draft decision and Commissioner Boudreau seconded the motion. Commissioner Jones abstained from voting because he did not receive the decision. The motion to adopt the draft decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau and Wall).

The next case for consideration was the draft decision in State of New Jersey Judiciary and Judiciary Council of Affiliated Unions, Docket No. SN-2012-062. Commissioner Boudreau moved the draft decision and Commissioner Wall seconded the motion. Commissioner Jones abstained from voting because he did not have an opportunity to read the decision. The motion to adopt the draft decision was unanimously approved. (Chair Hatfield, Commissioners Bonanni, Boudreau and Wall).

The next case for consideration was the draft decision in Borough of Wallington and PBA Local 321, Docket No. SN-2012-071. Commissioner Bonanni 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 is recused from voting on this matter because this case involves the Loccke law firm. This case was pulled from the agenda and tabled until next month's meeting.

The last case for consideration was the draft decision in Mount Olive Board of Education and Mount Olive Education Association, Docket No. SN-2012-073. Commissioner Bonanni moved the draft decision and Commissioner Wall seconded the motion. Commissioner Boudreau stated for the record that the Schenk Price law firm involved in this case is a member of the Morris County Chamber of Commerce. Commissioner Jones made a motion to modify the order to have separate votes on whether to grant the request concerning hiring and retention of substitute teachers and to deny the request concerning whether substitute teachers are covered by the contract. The Commission accepted Commissioner Jones' proposal to amend the order to have separate votes. The motion to adopt the draft decision (part A) was approved by vote of four in favor (Chair Hatfield, Commissioners Bonanni, Boudreau and Wall), and one opposed (Commissioner Jones). The motion to adopt the draft decision (part B) was unanimously approved (Chair Hatfield, Commissioners Bonanni, Boudreau, Wall and Jones).

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

The next regular meeting is scheduled to be held on
Thursday, April 25, 2013.