

MINUTES OF SPECIAL MEETING  
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION  
May 13, 2013  
11:00 a.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

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 May 2, 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 Eskilson moved the draft decision and Commissioner Boudreau seconded the motion.

Commissioner Jones stated that he was tremendously troubled with the way that the arbitrator conducted the re-hearing. Commissioner Jones stated that we have due process issues here and the first and the biggest of which is, which he deferred to counsel, a series of allegations that are a month old from the union's attorney and no one has addressed any of these violations of law concerning these allegations.

Chair Hatfield responded that she disagrees. On the question as to the clarification on the remand there were five questions asked. The arbitrator responded to all of the questions.

General Counsel Martin Pachman responded that we do not insert ourselves into the procedure by which an arbitrator carries out his function. In terms of how many hearings are held, how long they are held, the method by which the parties present their proof, is not something that is covered by any of our rules. We can not affirm or contradict the 25 page document that has been submitted by the union's attorney.

Deputy General Counsel Christine Lucarelli-Carneiro stated that the agency did not choose Arbitrator Mason, the arbitrators are chosen by lot. The City did dispute all of the assertions that the union made about the conduct and the tone of the second arbitration hearing.

Mr. Pachman responded that the place to which these sort of allegations or violations should be addressed is in Superior Court.

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

The next case for consideration was the draft decision in City of Atlantic City and Atlantic City Police Benevolent Association, Local 24, Docket No. IA-2013-016. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion.

Commissioner Voos stated she does see the purpose of the instruction but it seems that in most cases we ask parties to make their best argument and then we ask the arbitrators to make the decision based on the evidence that has been presented, and when one party fails to present evidence or fails to make an argument, "I think the arbitrator was reasonable in making the best calculations he could." Going back and saying the City did

not present their case well and they get another chance to do it is fundamentally unfair and very different than we usually do.

Chair Hatfield responded that under the old rules that was the procedure. The issue here is that we have a piece of legislation that says that the arbitrator can not award more than 2% or the 6% in aggregate. Most of these awards now are arguing primarily about the dollar amount. Not in an effort to micro manage but to give the arbitrators a tool so they can now say to the parties that they need this information. We were careful to give instructions that provided both parties the opportunity to present their information ahead of time to the arbitrator in a balanced way, that was our goal. We hope that the arbitrators use this as a tool.

Commissioner Voos commented about a case involving a school board in which the salary case, including the steps, was more than 2%, but one of the questions was what proportion of salaries were they compared to the entire school budget. Would it make the entire school budget go up more than 2% or would it make property taxes go up more than 2%? In that case we said that evidence was not there so we just ignored it. "I have trouble with going back to the parties for detailed evidence as a requirement for the Commission to enact on all arbitrators. This award seems pretty fair."

Commissioner Eskilson stated that it does not seem as inconsistent with what we have done in the past. He continued that the school board example is not a good example because we are talking about the narrow issue of the 2% as calculated under the Interest Arbitration Reform Act, and that does not apply to school boards. We are not talking about overall budget or a global issue, we are talking about a very narrow math issue. Earlier, in New Milford we said we wanted to see a specific type of scattergram. This helps to bring more clarity to this issue and some uniformity moving forward.

Commissioner Bonanni stated he agrees with Commissioner Eskilson's position.

Commissioner Jones stated that all these cases are predicated upon the misconception that while the 2% cap for taxes is a hard cap the 2% cap as it relates to raises does not include things like longevity and anniversary, and we keep getting it wrong, it is not in the statute.

Chair Hatfield responded the law is very clear when it talks about what comes under the 2%, we are not talking about the property tax. We are talking about the Legislature's clear instructions that the 2% is to apply to base salary. That base salary includes increases in longevity and increments.

The motion to adopt the draft decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni,

Boudreau and Eskilson), and two opposed (Commissioner Jones and Voos).

The meeting was then adjourned.

The next regular meeting is scheduled to be held on Thursday, May 30, 2013.