

**ASSEMBLY BUDGET COMMITTEE PREPARED STATEMENT OF  
LAWRENCE HENDERSON, CHAIRMAN  
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION  
APRIL 30, 2009  
TRENTON, NEW JERSEY**

**INTRODUCTION**

Good afternoon. It is an honor to be here. I want to thank Committee Chairman Louis Greenwald, Vice Chairman Gary Schaer, and the other distinguished members of the Committee, for the opportunity to talk about the Public Employment Relations Commission and answer any questions the Committee members might have.

**IN THE BEGINNING**

Forty one years ago, the Legislature passed the New Jersey Employer-Employee Relations Act (“Act”) and created the Public Employment Relations Commission. The labor relations climate in the years preceding adoption of the Act was rather heated at times. Strikes and other job actions by public employees over unresolved labor disputes had disrupted services, affected the business community and the people of the State, and garnered newspaper headlines and the attention of the public and elected officials. The Act declared that such job actions, regardless of the merits, are “forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected.” Some voices, including those of union and management representatives, clamored for a formalized, peaceful way to resolve labor disputes. The Act specifically declares “as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes...” and that labor and management, under PERC’s

guidance and supervision, were expected to voluntarily settle their disputes and that such settlement would “tend to promote permanent public...employer-employee peace and the health, welfare, comfort and safety of the people of the State.”

### **MEDIATION AND INTEREST ARBITRATION: A COMPARISON**

The 1968 Act specifically provided for voluntary mediation of labor disputes. Under the Act, mediation is a process of resolving collective negotiations impasses by having a mediator assist the parties to reach a voluntary settlement. The mediator does not have the authority to impose a settlement on the parties. Any agreement reached requires the mutual assent of the parties.

A 1977 amendment to the Act established interest arbitration for police and fire fighters as a required method of resolving collective negotiations impasses that were not voluntarily resolved earlier in the process. Other public employees do not have a statutory right to interest arbitration.

Interest arbitrators have the statutory authority to issue an award that decides the unresolved contractual issues based on statutory criteria and the parties’ evidence. While interest arbitrators have the authority to decide the matter by way of an award, relatively few awards are issued. Most interest arbitration cases are resolved through the effort of the interest arbitrator to mediate a voluntary settlement.

### **SO, HOW ARE WE DOING 40 YEARS ON?**

I think it’s fair to say that all of us in the public sector labor relations community have done a good job of creating a system that operates well in resolving disputes without the level of job actions and service interruptions that occurred in the years immediately prior to and after the Act was

adopted. In fact, the public sector labor relations community does a superb job of living up to the goal established in the Act because the vast majority of labor disputes are resolved voluntarily and not through formal agency decisions.

For example, there are approximately 1,200 police and fire negotiations units. Since many contracts are for three years, approximately 400 contracts would be up for negotiation in a given year. However, on average, less than 15 interest arbitration awards are now issued annually. Those awards represent less than 4% of all open police and fire contracts. Stated another way, more than 96% of open police/fire contracts are resolved voluntarily. The high level of voluntary resolution arguably indicates a level of satisfaction by the parties that is also reflected in the appeal record. On average, over the last six years, the Commission received about one substantive appeal of an interest arbitration award annually.

There are an estimated 950 collective negotiations units of school employees. Averaged in any given year, approximately 316 contracts are open. Over the last six years, every school employee collective negotiations impasse has been settled peacefully and voluntarily. Thus, no school employee collective negotiations have been resolved without the mutual agreement of the parties. The same holds true for collective negotiations involving non-school civilian employees, including civilian employees at the State, county, and municipal levels. 100% were settled.

The same most-disputes-settle-voluntarily model also applies to the various other PERC proceedings, such as unfair practice charges and representation matters. Very few are resolved through formal decisions. For example, over the last six years, the Commission has received 2,678 unfair practice charges. During that same six-year period, the Commission has issued 155 formal unfair practice decisions. That means that over that six-year period, on average, more than 94% of

the cases were resolved voluntarily.

During the last six years, there have been no recorded strikes.

The pattern of voluntary settlement of labor disputes has been consistent over the years, in good economic times and bad. The pattern of settling most disputes has also withstood the loss, through retirement or death, of many fine advocates and representatives. It has also withstood the introduction of new advocates and representatives. At all levels of government, hundreds of thousands of public employees have also come and gone over the years without altering the trend to settle most disputes.

While the system is not perfect, no human endeavor is, the record established by the public sector labor relations community over the last 41 years is a good one and is one that, we trust, would have satisfied those legislators who voted to pass the Act in 1968.

### **WHAT IS PERC AND WHAT DOES IT DO?**

As noted above, the Public Employment Relations Commission, commonly known as PERC, was created in 1968 as an independent, impartial agency to foster harmonious public sector labor relations by preventing or promptly resolving labor disputes. It has no other mission.

Members of the seven-member Commission are appointed by the Governor, with advice and consent of the Senate, to fixed three-year terms. Two Commission members represent public employers, two represent public employee organizations, and three represent the public. The full-time Chairman is one of the public members. The current commissioners are:

**Public Members**

Lawrence Henderson, Chairman;

Kirsten Sheurer Branigan;

Pierre Joanis;

**Employee Organization Members**

Don Buchanan;

Patrick Colligan;

**Public Employer Members:**

Cheryl Fuller;

Matthew Watkins.

The agency currently has 32 FTEs (23 professionals/9 support employees) in four sections (Unfair Practice & Representation, Conciliation & Arbitration, General Counsel, and Administration) to assist the Chairman and the rest of the Commission in carrying out their duties.

PERC professional employees perform a variety of duties, including serving as:

- Staff Agents to assist parties to settle unfair practice charges and representation matters;
- Hearing Examiners (PERC’s version of administrative law judges) in contested unfair practice matters that are not settled earlier in the process;
- Hearing Officers in contested representation matters that are not settled earlier in the process;
- Mediators and conciliators in collective negotiations impasses; and

- Attorneys in the General Counsel’s Office who draft Commission decisions and represent the agency in court.

Ninety five percent of the agency’s \$3.5M budget is allocated to salaries.

Special panels of experienced labor relations neutrals are used to supplement agency staff on an as needed basis in mediation and conciliation matters. They are also used in fact finding and interest arbitration and grievance arbitration. These neutrals are referred to as “ad hoc” neutrals and are not agency employees. Ad hoc neutrals who serve as fact finders, conciliators, super conciliators, grievance arbitrators or interest arbitrators are paid equally by the parties. However, ad hoc neutrals who supplement the agency professional staff as mediators are paid a per diem rate by the Commission.

The agency’s constituency includes approximately 450,000 public employees, 3,000+ bargaining units, and 1,700 public employers. Covered public employers include the State, counties, municipalities, local school districts, charter schools, public colleges and universities, NJ Transit, fire districts, libraries, autonomous agencies, authorities, boards, commissions, and special districts.

One can visit PERC’s informative website at [www.state.nj.us/perc](http://www.state.nj.us/perc) for updated information about the agency, including interest arbitration awards since 1996.

### **PERC’S IMPARTIALITY**

The Legislature recognized that to be effective, PERC had to be impartial. To that end, the Legislature established that PERC should be independent of control or influence by any organization that might be a party to an agency proceeding. Hence, PERC’s independence by

statute from the control or supervision of the State of New Jersey Department of Labor and Workforce Development, which is a public employer. What is impartiality?

The traditional definition means not taking sides. In practical terms for a labor relations agency that can be called upon to mediate or decide labor disputes, it means being fair in all that it does so that the agency is acceptable to both sides in a dispute. Acceptability is the key to the success of the dispute resolution process, including mediation.

Labor relations professionals mediating collective negotiations impasses have no authority, statutory or otherwise, to impose settlements. Instead, they must use a myriad of skills and techniques to assist the parties to reach a voluntary settlement. Mediators cannot be perceived as entering the process with an agenda or being an advocate for one party or the other. The mediator's single goal is to get a voluntary settlement. Mediators cannot allow their personal values or opinions to interfere with reaching agreement on terms acceptable to the parties. Mere disagreement with the objectives of one or both parties does not excuse the mediator from seeking to finalize an agreement. The parties must remain convinced of the mediator's neutrality. If a mediator is perceived as being partial to one side, the mediator's acceptability can be compromised and his or her effectiveness lost. That's not a good thing for the mediator, the parties, the agency, or the process established 41 years ago.

## **IMPACT OF LEGISLATION ON AGENCY**

### **CASELOAD AND ADMINISTRATIVE BURDEN**

The agency's caseload and administrative burden are regularly impacted by new legislation that reflect the priorities of the Administration and Legislature. Typically, the new legislation does

not increase agency funding or staffing. For example, the Police and Fire Public Interest Arbitration Reform Act was adopted in 1996 to amend the law governing contract negotiations impasses involving police and fire departments and their employee representatives. In addition to the mediation and fact-finding functions noted above, the Reform Act authorizes PERC to appoint an interest arbitrator who will assist the parties in resolving negotiations disputes. Over the last five years, approximately 97% of interest arbitrator appointments have been by mutual request of the parties rather than through by-lot appointment by PERC. If voluntary settlement is not reached, the arbitrator has authority to conduct formal hearings and issue a binding award setting terms and conditions of employment. Appeals of awards must be filed with PERC rather than with the Superior Court, which was the case under the prior law.

Under the 1996 Reform Act, arbitrators issue a conventional award on all unsettled issues, unless the parties agree to another procedure. From January 1996 through December 2008, the vast majority of interest arbitration awards were decided by conventional arbitration. In conventional arbitration, the arbitrator is not required to adopt the final offer of either party and may fashion an award the arbitrator deems most reasonable given certain statutory criteria and the evidence and arguments submitted by the parties.

Interest Arbitration is not negotiations. It's not quick. It's not cheap. And, unlike in negotiations or mediation, the parties cannot control the outcome. It's down and dirty litigation-just like divorce with a complex financial overlay except when it's over the parties must still work with each other. Because of changes in the law, judicial decisions, and the parties' increasing sophistication, the interest arbitration process has become more complex, time-consuming and expensive. For example, prior to two 1993 Supreme Court decisions, the average award was 15

pages. Now it is 60 pages. Why? Interest arbitrators are obligated to fully develop a record and write an award that must pass the scrutiny of PERC and the courts. Advocates are also obligated to put more time and effort into their presentations. Hence, mountains of documents and testimony of expert witnesses. As noted above, appeals of interest arbitration awards must now be filed with PERC, which now must sift through all of the documents that are filed with the appeal.

More recently, on March 5, 2009, the Governor signed A-3481(now P.L. 2009, c. 16), which, among other things, permits police officers and fire fighters in approximately 349 non-Civil Service jurisdictions to appeal their terminations to PERC. The agency is obligated to establish and maintain a special panel of arbitrators from which an arbitrator will be selected by the parties or appointed by the agency to conduct expedited hearings in the matters. On March 5, 2009, A-3796 was introduced. If enacted, it will create identical procedures for civilian employees in non-Civil Service jurisdictions. The police and fire fighter legislation will add to the agency's caseload and administrative burden. The proposed civilian legislation, because it covers a larger pool of eligible employees, would add significantly to that caseload and burden.

The Administration and Legislature's focus on property taxes and government efficiency resulted in the enactment of P.L. 2007, c. 62 and c. 63 in April 2007. These laws dramatically affected local government and school district budgets, taxing authority and labor relations. These two laws significantly expanded PERC's authority.

Chapter 63 encourages local jurisdictions to explore budget savings through mergers, shared services or joint meetings. The agency is charged with the task of assisting jurisdictions to resolve labor relations disputes or issues that may arise from any such mergers, shared services or joint meetings. An example of the agency being called upon to provide such service occurred after the

1999 merger of five municipal fire departments into the North Hudson Regional Fire and Rescue. That merger resulted in the filing of more than 70 unfair practice charges, grievances, representation and scope of negotiations petitions, and interest arbitration proceedings. The disputes that were resolved took years to close.

Recent newspaper accounts indicate that mergers, shared services and joint meetings are being considered more often and more seriously than at any time in the past. Demand for agency services under Chapter 63 will obviously be important, possibly even urgent, and may well cause the agency to re-prioritize other agency cases.

The following is a list of other recent legislative initiatives that have impacted the agency:

- N.J.S.A. 40A:4 was amended in April 2007 by L. 2007, c.62 to create several new property tax and local government budget initiatives that will affect the number and complexity of Commission cases.
- N.J.S.A. 34:13A-5.3 was amended in January 2006 by P.L. 2005, c.380 to require the courts and agencies of New Jersey to apply a presumption of contractual arbitrability to public sector grievances.
- N.J.S.A.34:13A-5.3 was amended by L. 2005, c. 161, s.2 to permit employee organizations to obtain certification from the Commission as a majority representative if the Commission finds that a majority of employees in the unit have signed authorization cards and no other organization is seeking to represent that unit of employees.
- N.J.S.A. 34:13A-5.10 was amended by L. 2005, c. 142, s.1 to limit the number of negotiations units of civilian State employees and to provide that challenges to

placement of employees within a unit should be resolved by filing unit clarification petitions with the Commission.

- N.J.S.A. 34:13A-33 through 37 were added by L. 2003, c. 126 to prohibit school boards from unilaterally imposing or changing employment conditions and to require the Commission to appoint a super conciliator when mediation and fact-finding proceedings do not result in a voluntary settlement.
- N.J.S.A. 34:13A-5.3 was amended by L. 2003, c. 119, s.2 to permit negotiated agreements calling for binding arbitration of major disciplinary disputes involving State employees other than troopers.
- N.J.S.A. 34:13A-5.5 and 5.6 were amended by L. 2002, c. 46, s. 2 to require PERC to determine that majority representatives are entitled to collect representation fees from nonmembers absent a negotiated agreement if the Commission determines that a majority of employees in the negotiations unit are dues-paying members and the majority representative has a valid demand-and-return system.

### **WHERE DO WE GO FROM HERE?**

We at PERC look forward to working with labor and management to foster good public sector labor relations in an effort to continue to meet the legislative goal of protecting the people of New Jersey from the adverse effects of labor disputes.