

CHAPTER 16

NEGOTIATIONS, IMPASSE PROCEDURES AND
COMPULSORY INTEREST ARBITRATION OF
LABOR DISPUTES IN PUBLIC FIRE AND PO-
LICE DEPARTMENTS

Authority

N.J.S.A. 34:13A-5.4(e), 34:13A-6(b) and 34:13A-11 et seq.

Source and Effective Date

R.1991 d.425, effective July 17, 1991.
See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Executive Order No. 66(1978) Expiration Date

Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on July 17, 1996.

Historical Note

Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was filed and became effective prior to September 1, 1969. Chapter 16 was repealed by R.1977 d.272. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a). New rules were adopted by R.1977 d.349, effective September 16, 1977. See: 9 N.J.R. 350(a), 9 N.J.R. 497(a). Notice of Pre-Proposal: Arbitration process. See: 23 N.J.R. 2525(a). Pursuant to Executive Order No. 66(1978), Chapter 16 was readopted as R.1986 d.355, effective August 7, 1986. See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a). Pursuant to Executive Order No. 66(1978), Chapter 16 was readopted as R.1991 d.425. See: Source and Effective Date.

See section annotations for additional rulemaking.

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SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

(a) The rules of this chapter provide for implementation of c.85, P.L. 1977, an act which provides for compulsory interest arbitration of labor disputes in public fire and police departments and supplements the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1.1 et seq.

(b) N.J.S.A. 34:13A-5.4(e) provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates. Further, N.J.S.A. 34:13A-16(a) and (b) provide that whenever negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission is empowered upon the request of either party or upon its own motion to provide mediation to effect a voluntary resolution of the impasse, and in the event of a failure to resolve the impasse by mediation, to invoke fact-finding with recommendations for settlement at the request of either party.

(c) Additionally, the act provides for the submission of issues in dispute either to a mutually agreed and approved final and binding arbitration procedure or the final offer procedure set forth in N.J.S.A. 34:13A-16(d).

(d) Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations and for institution of impasse procedures, including compulsory interest arbitration of unresolved impasses. Also provided is a procedure for Commission determination of disputes regarding the identification of issues as economic or noneconomic.

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:16-2.1 Commencement of negotiations

(a) The parties shall commence negotiations for a new or successor agreement, or in the case of an agreed reopener provision, shall commence negotiations pursuant to such reopener provision, no later than 150 days prior to the public employer's required budget submission date. The budget referred to in the term "required budget submission date" shall be the first budget implementing the new or successor agreement. In circumstances where the Commission has not determined the public employer's required budget submission date, the public employer shall notify the employee representative in writing of the required budget submission date no later than 180 days prior to such date. The foregoing provisions shall not preclude the parties from agreeing to the automatic renewal of a collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement, nor shall it preclude the parties from establishing by mutual agreement an alternate date for the commencement of negotiations.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this subchapter or any alternate commencement date agreed to by the parties, notify the other party in writing of its intention to commence negotiations on such date, and shall simultaneously file with the Commission a copy of such notification.¹

(c) Nothing in this subchapter shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

¹ A blank form for filing such requests will be supplied upon request. Address requests to: Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08625-0429.

Case Notes

Citation. New Jersey State Policemen's Benevolent Assn. v. East Orange, 164 N.J.Super. 436, 396 A.2d 1158 (Ch.Div.1978).

SUBCHAPTER 3. MEDIATION

19:16-3.1 Initiation of mediation

(a) In the event that a public employer and an exclusive employee representative have failed to achieve an agreement through direct negotiations, either the public employer, the employee representative, or the parties jointly, may notify the Director of Conciliation, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed, and shall be signed and dated and shall contain the following information:¹

1. The name, address and telephone number of the public employer who is a party to the collective negotiations, and the name and title of its representative to be contacted, if known;
2. The name, address and telephone number of the employee representative and the name and title of its representative to be contacted, if known;
3. A description of the collective negotiations unit, including the approximate number of employees in the unit;
4. The dates and duration of negotiations sessions;
5. The termination date of the current agreement, if any;
6. The public employer's required budget submission date;
7. Whether the request is a joint request;
8. A detailed statement of the facts giving rise to the request, including all issues in dispute, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2);
9. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues; and
10. A statement that the parties have failed to achieve an agreement.

(b) Upon receipt of the aforementioned notification and request, the Director of Conciliation shall appoint a mediator if it is determined after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach an agreement through direct negotiations, and that an impasse does in fact exist in negotiations.

(c) The Commission or the Director of Conciliation may also initiate mediation at any time in the absence of a request in the event of the existence of an impasse.

¹ A blank form for filing such requests will be supplied upon request. Address requests to: Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08625-0429.

19:16-3.2 Appointment of a mediator

The mediator appointed pursuant to the subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's mediation panel, or any other appointee, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator without regard to the parties' joint request. If an appointed mediator is unable to serve or if for any reason cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this subchapter shall not be reviewable in any other proceeding before the Commission.

19:16-3.3 Mediator's function

The function of a mediator shall be to assist the parties to reach a voluntary agreement. A mediator may hold separate or joint conferences as he or she deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties.

19:16-3.4 Mediator's confidentiality

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged by the mediator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party to any cause pending in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

Amended by R.1991 d.425, effective August 19, 1991.
See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Reference to the New Jersey Employer-Employee Relations Act added.

19:16-3.5 Mediator's report

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation which shall, in general, be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;

3. A statement of the issues which have been resolved through mediation;
4. A statement of issues which are still unresolved if any; and
5. A statement setting forth any other relevant information in connection with the mediator's involvement in the performance of his or her functions.

SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding

(a) In the event of the parties' failure to resolve the impasse through mediation, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation, in writing, to invoke fact-finding and upon receipt of such request, fact-finding with recommendations for settlement shall be invoked. An original and four copies of such request shall be filed with the Director of Conciliation together with proof of service upon the other party. The request shall be signed and dated and shall contain the following information.¹

1. The name, address and telephone number of the public employer who is a party to the collective negotiations, and the name and title of its representative to be contacted, if known;
2. The name, address and telephone number of the employee representative and the name and title of its representative to be contacted, if known;
3. A description of the collective negotiations unit, including the approximate number of employees in the unit;
4. The name of the mediator;
5. The number and duration of mediation sessions;
6. The date of the last mediation effort;
7. The termination date of the current agreement, if any;
8. The public employer's required budget submission date;
9. Whether the request is a joint request;
10. A detailed statement of the facts giving rise to the request, including all issues in dispute, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2);
11. A statement as to whether a dispute exists as to negotiability of any of the unresolved issues; and
12. A statement that the parties have failed to achieve an agreement.

(b) In the absence of a joint request seeking the invocation of fact-finding, the non-filing party may submit a statement or response within seven days of receipt of the request for fact-finding, setting forth the following:

1. Any additional unresolved issues to be submitted to the fact-finder;
2. A statement as to whether it disputes the identification of any issues as economic or noneconomic;
3. A statement as to whether it refuses to submit any of the issues listed on the request to fact-finding on the ground that they are not within the required scope of negotiations; and
4. Any other relevant information with respect to the nature of the impasse.

(c) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the invocation of fact-finding as submitted by the requesting party.

(d) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the request for fact-finding or within five days after receipt of the response to a request for fact-finding. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to fact-finding.

¹ A blank form for filing such petition will be supplied upon request. Address requests to: Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08625-0429.

19:16-4.2 Appointment of a fact-finder

(a) Upon the invocation of fact-finding pursuant to this subchapter, the Director of Conciliation shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which it objects, indicate the order of its preference regarding the remaining names, and communicate the foregoing to the Director of Conciliation no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not so responded within the time specified, all names submitted shall be deemed acceptable. The Director of Conciliation shall appoint a fact-finder giving recognition to the parties' preference. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding the foregoing provisions, the Director of Conciliation shall have the authority to appoint a fact-finder without the submission of names to the parties.

(b) The fact-finder appointed pursuant to this subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's fact-finding panel, or any other appointee, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement and/or to make findings of fact and recommend the terms of settlement. If an appointed fact-finder is unable to serve or if for any reason cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable by the Commission.

19:16-4.3 Fact-finder's function

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or their representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties agree to have them public, or take such other steps as the fact-finder deems appropriate in order to discharge the function of the fact-finder.

(b) For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum and to require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before the fact-finder.

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party to any cause pending in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) If the impasse is not resolved during fact-finding, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the process as possible.

(e) Any findings of fact and recommended terms of settlement shall be limited to those issues that are within the required scope of negotiations, unless the parties have agreed to submit issues to the fact-finder which involved permissive subjects of negotiations.

(f) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties privately and to the Director of Conciliation.

(g) All individually incurred costs shall be borne by the party incurring them. The cost for the services of the fact-finder, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, and any other necessary expenses of the fact-finding proceeding, shall be borne by the Commission as provided by law.

(h) The parties shall meet within five days after receipt of the fact-finder's findings of fact and recommended terms of settlement, in order that statements of position may be exchanged and an opportunity provided for the parties to reach an agreement.

Amended by R.1991 d.425, effective August 19, 1991.

See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Reference to the New Jersey Employer-Employee Relations Act added.

SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION

19:16-5.1 Scope of compulsory interest arbitration

The provisions in this subchapter relate to notification requirements, compulsory interest arbitration proceedings and the designation of arbitrators to resolve impasses in collective negotiations involving public employers and exclusive employee representatives of public fire and police departments.

19:16-5.2 Initiation of compulsory interest arbitration

(a) Compulsory interest arbitration may be initiated through appropriate utilization of any of the following:

1. In the event of a continuing impasse following receipt of a fact-finder's findings of fact and recommended terms of settlement, a petition requesting that an impasse be resolved through compulsory interest arbitration may be filed by an employee representative and/or public employer.¹

2. Upon the approval by the Director of Arbitration of a mutually agreed upon terminal procedure, compulsory interest arbitration shall be initiated pursuant to the mutually agreed upon and approved terminal procedure. The parties may submit a mutually agreed upon terminal procedure for approval at any time prior to the submission of any notification requirement.

3. The submission of a 60-day notification by either party indicating that the parties have failed to agree on a mutually agreeable terminal procedure shall constitute a petition requesting that an impasse be resolved through compulsory interest arbitration.

4. In the event of an impasse and notwithstanding the failure of either party to initiate impasse procedures or compulsory interest arbitration, the Commission or the Director of Arbitration may invoke compulsory interest arbitration.

¹ Blank forms for filing such petitions will be supplied upon request. Address requests to: Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08625-0429.

19:16-5.3 Notification requirement

(a) In the event of a continuing impasse and notwithstanding the fact that other impasse resolutions have not been exhausted, the parties shall notify the Director of Arbitration no later than 60 days prior to the required budget submission date of the public employer as to whether or not they have agreed upon a terminal procedure which provides for finality in resolving all issues in dispute pursuant to N.J.S.A. 34:13A-16.

(b) If the parties have agreed upon a terminal procedure, the procedure shall be reduced to writing and shall be submitted to the Director of Arbitration for approval.¹ The Director of Arbitration, within 10 days of receipt of the submission of a mutually agreed upon terminal procedure, shall notify the parties as to whether such procedure has been approved.

¹ A blank form for filing such a notification will be supplied upon request. Address requests to: Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08625-0429.

19:16-5.4 Contents of the notification or petition requesting the initiation of compulsory interest arbitration

(a) An original and four copies of a 60-day notification or a petition requesting the initiation of compulsory interest arbitration together with proof of service upon the other party shall be filed with the Director of Arbitration. This document shall be signed and dated and contain the following information:

1. Name, address and telephone number of the public employer who is a party to the collective negotiations, and the name and title of its representative to be contacted, if known;

2. Name, address and telephone number of the employee representative and the name and title of its representative to be contacted, if known;

3. A description of the collective negotiations unit and the approximate number of employees involved;

4. A statement as to whether either party has previously requested mediation, whether a mediator has been appointed, the name of the mediator, and the dates and duration of mediation sessions, if any;

5. A statement as to whether fact-finding with recommendations for settlement has been invoked, whether a fact-finder has been appointed, and whether a fact-finding

report and recommendations have been issued, and the date of such report, if any;

6. The termination date of the current agreement, if any;

7. The required budget submission date of the public employer;

8. Whether the request is a joint request;

9. A statement indicating which issues are in dispute, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2);

10. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues; and

11. A statement indicating compulsory interest arbitration is sought to be initiated:

i. Based on a mutually agreed upon terminal procedure which provides for finality in resolving the issues in dispute. The terminal procedure shall be attached to the petition and contain a request that such procedure be approved; or

ii. Based on the parties' failure to agree upon a terminal procedure; or

iii. Based on a continuing impasse after the receipt of a fact-finder's report and recommendations for settlement.

(b) In the event that the above 60-day notification indicates that the parties have failed to agree upon a terminal procedure, the parties, no later than 10 days thereafter, shall separately file a statement with the Director of Arbitration indicating the reasons for their inability to agree on a procedure. The failure of a party to submit such a statement or the substance of the statement shall not provide a basis for any delay in effectuating the provisions of this subchapter.

19:16-5.5 Response to the notification or petition requesting the initiation of compulsory interest arbitration

(a) In the absence of either a jointly submitted notification or joint petition requesting the initiation of compulsory interest arbitration, the respondent shall file within seven days of receipt of such notification or petition, a statement of response setting forth the following:

1. Any additional unresolved issues to be submitted to arbitration;

2. A statement as to whether it disputes the identification of any of the issues as economic or noneconomic;

3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that they are not within the required scope of negotiations; and

4. Any other relevant information with respect to the nature of the impasse.

(b) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party. The substance of this response shall not provide the basis for any delay in effectuating the provisions of this chapter.

(c) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

(d) Where a dispute exists regarding the identification of an issue as economic or noneconomic, the party contesting the identification of the issue shall file with the Commission a petition for issue definition determination. This petition must be filed within 10 days of receipt of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

19:16-5.6 Appointment of an arbitrator or panel of arbitrators

(a) The Commission shall maintain a special panel of interest arbitrators. Members of this panel shall be appointed for three-year terms following a screening process as set forth in N.J.S.A. 34:13A-16(e). Reappointments to the panel shall also be contingent upon a similar screening process. The arbitrators appointed pursuant to this subchapter shall be from this special panel. All arbitrators appointed by the Commission shall be considered officers of the Commission while performing duties pursuant to this subchapter.

(b) Except as otherwise set forth in these rules, upon the initiation of compulsory interest arbitration, pursuant to this chapter, the Director of Arbitration shall communicate simultaneously an identical list of names of seven arbitrators from the Commission's special panel of interest arbitrators. Each party shall eliminate no more than three names to which it objects, indicate the order of preference regarding the remaining names, and communicate the foregoing to the Director of Arbitration no later than the close of business on the seventh working day after the list was submitted to the parties. If a party has not so responded within the time specified, all names submitted shall be deemed acceptable. The Director of Arbitration shall appoint an arbitrator after giving recognition to the parties' preferences. If an appointed arbitrator is unable to serve, or if for any reason cannot proceed pursuant to the appointment, the Director of Arbitration shall submit a second such list and the procedures set forth above shall be repeated. The appointment of an arbitrator pursuant to this subchapter shall not be reviewable in any proceeding before the Commission.

(c) The parties may jointly request the appointment of a particular arbitrator, including the person who was appointed as mediator or fact-finder if such appointment has previously been made. If that person is not a member of the Commission's special panel of interest arbitrators, the Director of Arbitration may approve the appointment for that particular arbitration.

(d) In the event that the parties have agreed to a tripartite panel of arbitrators, each party shall communicate in writing to the Director of Arbitration indicating the name, address and telephone number of the arbitration representative designed to the panel. In all such circumstances, the arbitrator appointed by the Director of Arbitration from the Commission's special panel of interest arbitrators shall serve as chairman of the arbitration panel. The arbitration representatives designated by each of the parties need not be members of the Commission's special panel, and shall not be considered officers of the Commission.

(e) In the event that the parties have, by mutual agreement, established their own procedure for the selection of an arbitrator, the Director of Arbitration shall appoint the arbitrator so selected, provided that such arbitrator is a member of the Commission's special panel of interest arbitrators, or the parties may request that the Director of Arbitration approve the appointment for the particular arbitration.

19:16-5.7 Conduct of the arbitration proceeding

(a) The conduct of the arbitration proceeding by an arbitrator or panel of arbitrators shall be under the exclusive jurisdiction and control of the arbitrator or arbitrators.

(b) The appointed arbitrator or panel of arbitrators may mediate, or assist the parties in reaching a mutually agreeable settlement at any time throughout formal arbitration proceedings.

(c) Information disclosed by a party to an arbitrator while functioning in a mediatory capacity shall not be divulged by the arbitrator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by an arbitrator while serving in a mediatory capacity shall be classified as confidential. The arbitrator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the arbitrator, on behalf of any party to any cause pending in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) The arbitrator may administer oaths, conduct hearings, require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. Any hearings conducted shall not be public unless all parties agree to have them public.

(e) Unless a terminal procedure has been mutually agreed to by the parties and approved by the Director of Arbitration, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration, under which the authority of the arbitrator to render an award on economic issues shall be confined to a choice between the last offer of the employer on such issues as a single package and the last offer of the employee representative on such issues as single package; and, on the noneconomic issues in dispute, the award shall be confined to a choice between the last offer of the employer on each issue in dispute and the employee representative's last offer on each issue.

(f) The arbitrator, after appointment, shall communicate with the parties to arrange for a mutually satisfactory date, time and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time and place for a hearing. The arbitrator shall submit a written notice containing arrangements for a hearing within a reasonable time period prior to the date of hearing. The arbitrator, prior to the arbitration hearing, shall fix the time for the parties to submit their positions on all issues in dispute. The arbitrator may, in his or her discretion, accept a revision of position by either party on any issue until a hearing is deemed closed, provided that the other party is given the opportunity to respond. The parties may also at any time prior to the close of hearing mutually agree to adopt a different terminal procedure, providing such procedure is approved by the Director of Arbitration.

(g) The arbitrator's authority shall be limited to those issues which are within the required scope of negotiations, unless the parties have mutually agreed to submit issues to the arbitrator which involve permissive subjects of negotiation.

(h) The arbitrator shall be permitted to take evidence, but shall not render a decision on any issue which is the subject of a petition for a scope of negotiations determination filed with the Commission or on any issue which is the subject of an issue definition proceeding pursuant to N.J.A.C. 19:16-8.1 et seq.

(i) The arbitrator shall have the authority to grant adjournments for good cause shown upon the application of either party or upon the arbitrator's own motion.

(j) The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.

(k) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not exceed 30 days from the close of the hearing. Briefs shall be submitted to the arbitrator along with submission of proof of service on all parties. The parties shall not be permitted to revise their positions or to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

Amended by R.1986, d.355, effective September 8, 1986.

See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).

Deleted text in (a) "issue definition pursuant" and substituted "issue definition proceeding pursuant"; also added to (k) "but brief period . . . of the hearing."

Petition for Rulemaking: Petitioner proposes that interest arbitration proceedings be public upon request of either the public employer or majority representative.

See: 21 N.J.R. 3567(a), 21 N.J.R. 3677(a), 22 N.J.R. 260(a).

Amended by R.1990, d.221, effective May 7, 1990.

See: 22 N.J.R. 330(a), 22 N.J.R. 1380(a).

Arbitrator's consent to public hearing removed.

Amended by R.1991, d.425, effective August 19, 1991.

See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Reference to the New Jersey Employer-Employee Relations Act added.

Law Review and Journal Commentaries

Arbitration—Public Employment. Judith Nallin, 133 N.J.L.J. No. 14, 67 (1993).

Case Notes

Regulation upheld permitting revision of offers during hearing at arbitrator's discretion; meaning of "final offer" in statute. Newark Firemen's Mutual Benevolent Assn. v. Newark, 177 N.J.Super. 239, 426 A.2d 78 (App.Div.1981), affirmed 90 N.J. 44, 447 A.2d 130 (1982).

19:16-5.8 Stenographic record

A stenographic record shall not be a procedural requirement for the conduct of a hearing. However, any party shall have the right to have a stenographic record taken of the arbitration proceeding. The arrangements for a stenographic record must be made by the requesting party after the appointment of the arbitrator. The cost of such record shall be paid by the party requesting it or divided equally between the parties if both make such a request. If a stenographic record is requested by either or both parties, the party or parties to the request shall provide at its/their cost a copy of a transcript to the arbitrator.

19:16-5.9 Opinion and award

If the impasse is not otherwise resolved, the arbitrator or arbitrators shall decide the dispute and issue a written opinion and award within 45 days after the filing of briefs, unless the Director of Arbitration grants the arbitrator permission to extend this time period to a specified date. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16(g) which are judged relevant for the resolution of the specific dispute. The opinion and award shall set forth the reasons for the result reached. Copies of the opinion and award shall be submitted directly to the Commission which will then serve the parties simultaneously.

Amended by R.1986, d.355, effective September 8, 1986.

See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).

Deleted "as expeditiously as possible after the closing of hearing" and substituted "within 45 days after the filing of briefs"; also deleted served simultaneously on the parties of the commission" and substituted "submitted directly to . . . the parties simultaneously."

Case Notes

Borough should not have been required to show substantially detrimental result from adopting union's offer. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Parties to public interest arbitration are required to submit evidence on all statutory factors. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993); certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Comparison with police salary increases in other municipalities was not dispositive of comparison factor for public interest arbitration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Cost of living factor was relevant in police officer public interest arbitration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Arbitrators are required to give weight to the statutory factors in public sector arbitration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Arbitrators in public interest arbitrations are required to discuss relevant and irrelevant factors and provide analysis. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Arbitrator was required to relate implication of arbitration award on other municipal budget items. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Inadequacy of consideration of statutory factors warranted remand of public interest arbitration award. *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 263 N.J. Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

19:16-5.10 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes

The arbitrator shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, American Arbitration Association, and the Federal Mediation and Conciliation service as approved April 28, 1975.

19:16-5.11 Cost of arbitration

The costs of services performed by the arbitrator shall be borne equally by the parties in accordance with a fee schedule adopted by the Commission. Should the parties utilize an arbitration panel with an appointee of each of the parties, the cost involved in the participation of such appointee shall be paid by the party making such appointment.

SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION

19:16-6.1 Purpose of procedure

The purpose of this subchapter is to provide an expeditious procedure for the resolution of disputes as to whether an issue is an economic or a noneconomic issue as defined in N.J.S.A. 34:13A-16(f)(2).

19:16-6.2 Procedure

(a) Whenever there is a dispute between the parties as to whether an issue is an economic or a noneconomic issue, either party or the parties jointly may file with the Commission a petition for issue definition determination.¹

(b) An original and four copies of such a petition together with proof of service upon the other party shall be filed with the Commission and shall be signed and dated and shall contain the following information:

1. The name, address and telephone number of the public employer who is a party to the collective negotiations, and the name and title of its representative to be contacted, if known;
2. The name, address and telephone number of the employee representative and the name and title of its representative to be contacted, if known;
3. A description of the collective negotiations unit, including the approximate number of employees in the unit;
4. A listing of the item or items on which there is a dispute as to the definition of the issue or issues as economic or noneconomic issues.

5. A brief or statement in lieu of brief indicating the arguments relied upon to support the definition of the disputed issue or issues favored by the party filing the petition.

(c) The party opposing the definition of the disputed issue or issues set forth in the petition may submit to the Commission within 10 days of receipt of the petition its position with respect to each disputed issue or issues, together with a brief or statement in lieu of brief to support its position. Failure to submit such a response shall be deemed to indicate acceptance of the issue definition advanced by the petitioner. A copy of the response must be served on the petitioner and proof of such service must be filed with the Commission.

(d) The parties may jointly submit a petition for issue definition determination along with their briefs or statements in lieu of briefs.

(e) Upon receipt of such a petition and, unless the petition has been jointly filed, after the time for the submission of a response has run, the chairman of the Commission or other designated representative shall render a written determination which classifies the disputed issue or issues as economic or noneconomic issues as defined in N.J.S.A. 34:13A-16(f)(2).

(f) In an effort to expedite the resolution of a petition for issue definition determination, determinations pursuant to this proceeding normally will be made on the basis of the written submissions without a hearing. However, a hearing may be requested by one or both of the parties or the chairman or other person designated by the Commission. A request for a hearing shall be made in writing and shall be submitted no later than five days after receipt of the position of the party opposing the definition of the disputed issue or issues set forth in the petition. Failure to submit such a request shall be deemed to constitute a waiver of the right to a hearing. A request for a hearing shall not be used for the purposes of delay.

(g) Determination pursuant to this subchapter shall not be reviewable in any proceeding before this Commission.

Amended by R.1986 d.355, effective September 8, 1986.
See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).

¹ Blank forms for filing such petitions will be supplied upon request. Address requests to: Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08625-0429.

SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT

19:16-7.1 Failure to submit a notice or other document

The failure to submit any notification, petition, statement or other document as set forth in these rules shall not provide the basis for any delay in these proceedings, nor shall it otherwise prevent or preclude the resolution of a dispute through compulsory interest arbitration pursuant to this chapter.