

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 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 making the request shall provide at its/their cost a copy of a transcript to the arbitrator.

Amended by R.1996 d.365, effective October 21, 1996.
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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 120 days of the Director of Arbitration's assignment of that arbitrator. The arbitrator or panel of arbitrators, for good cause, may petition the Director of Arbitration for an extension of not more than 60 days. The arbitrator shall notify the parties in writing of such a petition and the Director shall notify the parties and the arbitrator in writing of whether the petition has been granted or denied. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the Director of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this section may be subject to suspension, removal or discipline under N.J.A.C. 19:16-5.6. 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. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. 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 Director of Arbitration who 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."

Amended by R.1996 d.240, effective May 20, 1996.
See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote section.

Case Notes

Arbitrator's opinion. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Deeming factor irrelevant in compulsory interest arbitration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Production of evidence on each statutory factor. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

"Financial impact on the governing unit, its residents and taxpayers," does not equate with municipality's ability to pay. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Consideration of wages and salaries in comparable areas of private employment. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Vacating award. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

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, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

Amended by R.1996 d.365, effective October 21, 1996.
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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.

19:16-5.12 Fees for filing and processing interest arbitration petitions

At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a \$150.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a \$150.00 fee upon filing the petition and the non-petitioning party shall pay a \$150.00 fee upon filing its response to the petition pursuant to N.J.A.C. 19:16-5.5. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

New Rule, R.1996 d.275, effective June 17, 1996.
See: 28 N.J.R. 1610(a), 28 N.J.R. 3174(a).

19:16-5.13 Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a \$135.00 fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a \$135.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or ruling, the party shall pay a \$25.00 fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

New Rule, R.1996 d.275, effective June 17, 1996.
See: 28 N.J.R. 1610(a), 28 N.J.R. 3174(a).
Amended by R.1997 d.221, effective May 19, 1997.
See: 29 N.J.R. 857(a), 29 N.J.R. 2467(c).

Amended the section name and inserted the third sentence.

19:16-5.14 Comparability guidelines

(a) N.J.S.A. 34:13A-16g identifies eight factors that an interest arbitrator must consider in reviewing the parties' proposals. The arbitrator must indicate which of the factors listed in that subsection are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor. N.J.S.A. 34:13A-16g(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions. . . ." Subsection a of section 5 of P.L. 1995, c.425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

(b) The guidelines set forth in (c) and (d) below are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. The guidelines are intended to be instructive but not exhaustive. The arbitrator shall consider any and all evidence submitted pursuant to the comparability guidelines and shall apply these guidelines in addressing the comparability criterion.

1. The Public Employment Relations Commission recognizes that the extent to which a party to an arbitration proceeding asserts that comparisons to public employment in the same or similar comparable jurisdictions are relevant to that proceeding is a matter to be determined by that party. The Commission also recognizes that it is the responsibility of each party to submit evidence and argument with respect to the weight to be accorded any such evidence.

2. The Commission further recognizes that it is the arbitrator's responsibility to consider all the evidence submitted and to determine the weight of any evidence submitted based upon the guidelines in (c) and (d) below and to determine the relevance or lack of relevance of comparability in relationship to all eight factors set forth in N.J.S.A. 34:13A-16g. Promulgation of these guidelines is not intended to require that any party submit evidence on all or any of the elements set forth in (c) and (d) below or assert that the comparability factor should or should not be deemed relevant or accorded any particular weight in any arbitration proceeding. Nothing in this section shall preclude the arbitrator from supplementing the factual record by issuing subpoenas to require the attendance of witnesses and the production of documents. Nor does anything in this section prevent the arbitrator from requesting the parties to supplement their presentations in connection with this factor or any other factor set forth in the law.

(c) The following are comparability considerations within the same jurisdiction:

1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;
2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;
3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;
4. History of negotiations:
 - i. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and
 - ii. History of differentials between uniformed and non-uniformed employees;
5. Pattern of salary and benefit changes; and