

CHAPTER 12

NEGOTIATIONS AND IMPASSE PROCEDURES;
MEDIATION, FACT-FINDING AND
GRIEVANCE ARBITRATION

Authority

N.J.S.A. 34:13A-6(d) and (e) and 34:13A-11.

Source and Effective Date

R.1996 d.364, effective July 12, 1996.
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

Executive Order No. 66(1978) Expiration Date

Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding and Grievance Arbitration, expires on July 12, 2001.

Chapter Historical Note

Chapter 12, Impasses, was filed and became effective prior to September 1, 1969. Subchapter 3, Arbitration, became effective December 18, 1974 as R.1974 d.345. See: 6 N.J.R. 457(b), 7 N.J.R. 35(c). Emergency R.1975 d.10, effective January 20, 1975, repealed Subchapter 1, Mediation, and Subchapter 2, Fact-Finding, recodified Subchapter 3, Arbitration, as Subchapter 5, and adopted Subchapters 1 through 4 as new rules. See: 7 N.J.R. 78(a). Chapter 12 was amended by R.1977 d.272, effective August 2, 1977. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a). Organizational amendments were made to Chapter 12 by R.1981 d.357. See: 13 N.J.R. 625(a). Pursuant to Executive Order No. 66(1978), Chapter 12 was readopted as R.1986 d.354, effective August 7, 1986. See: 18 N.J.R. 1357(a), 18 N.J.R. 1838(c). Pursuant to Executive Order No. 66(1978), Chapter 12, Negotiations and Impasse Procedure; Mediation, Fact-Finding and Arbitration, was readopted as R.1991 d.424, effective July 17, 1991. See: 23 N.J.R. 1296(b), 23 N.J.R. 2524(a). Pursuant to Executive Order No. 66(1978), Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding and Grievance Arbitration, was readopted as R.1996 d.364, effective July 12, 1996. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:12-1.1 Purpose of procedures

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 impasse prior to required budget submission dates. Further, N.J.S.A. 34:13A-6(b) provides that whenever negotiations between the public employer and exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission is empowered upon the request of either party 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 recommend or invoke fact-finding with recommendation for settlement. Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations, utilizing the public employer's required budget submission date as a definitive reference point to afford the parties a full opportunity for negotiations and resolution of impasses which are reached prior to the required budget submission date and for utilization of impasse procedures for parties who reach impasse during alternative time periods. N.J.A.C. 19:12-2.1 through 19:12-4.3 do not apply to negotiations between a public fire or police department as defined by N.J.S.A. 34:13A-15 and an exclusive representative. See N.J.A.C. 19:16.

Amended by R.1996 d.364, effective August 5, 1996.
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

Case Notes

Alternative time period cannot continue beyond required budget submission date. New Jersey State Policemen's Benevolent Assn. v. East Orange, 164 N.J.Super. 436, 396 A.2d 1158 (Ch.Div.1978).

SUBCHAPTER 2. COMMENCEMENT OF
NEGOTIATIONS

19:12-2.1 Commencement of negotiations

(a) The parties to a collective negotiations agreement shall commence negotiations for a successor agreement, or in the case of an agreed reopener provision shall commence negotiations pursuant to such reopener provision, no later than 120 days prior to the public employer's required budget

submission date. The term "required budget submission date" shall refer to the first budget implementing the successor agreement or the agreement pursuant to the reopen provision, as the case may be. 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 150 days prior to such date. The foregoing provisions shall not preclude the parties from agreeing to the automatic renewal of the 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 alternative 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 section 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. The filing party may utilize its own notification form or obtain "Intention to Commence Negotiations" forms supplied upon request. Address requests to: Public Employment Relations Commission, CN 429, Trenton, New Jersey 08625-0429.

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

Amended by R.1996 d.364, effective August 5, 1996.
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

Case Notes

Alternative time period cannot continue beyond required budget submission date. *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

19:12-3.1 Initiation of mediation

(a) In the event that a public employer and a certified or recognized employee representative have failed to achieve an agreement through direct negotiation, 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. The name and address of the public employer who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the employee representative who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;

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; and

8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

(b) A blank form for filing a request for the appointment of a mediator will be supplied upon request. Address requests to: Public Employment Relations Commission, CN 429, Trenton, New Jersey 08625-0429.

(c) Upon receipt of the notification and request, the Director of Conciliation shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach agreement through direct negotiation, and that an impasse exists in negotiations concerning the terms and conditions of the employment of the affected employees.

Amended by R.1996 d.364, effective August 5, 1996.
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

19:12-3.2 Appointment of mediator

The mediator appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation panel, or any other mediator, 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, but the Director of Conciliation shall have the express reserved authority to appoint a mediator without regard to the parties' joint request if such is deemed to best effectuate the purposes of the act. If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this subchapter shall not be reviewable.