

**CHAPTER 105****ARBITRATION****Authority**

N.J.S.A. 34:1-20, 34:1A-3(e) and 34:13A-1 et seq., specifically 34:13A-11.

**Source and Effective Date**

R.1991 d.54, effective January 11, 1991.  
See: 22 N.J.R. 3616(a), 23 N.J.R. 310(c).

**Executive Order No. 66(1978) Expiration Date**

Pursuant to Executive Order No. 66(1978), Chapter 105, Arbitration, expires on January 11, 1996.

**Chapter Historical Note**

Chapter 105, Arbitration, was filed and became effective prior to September 1, 1969. Chapter 105 was repealed and replaced by R.1980 d.397, effective September 17, 1980. See: 12 N.J.R. 423(a), 12 N.J.R. 605(a). Pursuant to Executive Order No. 66(1978), Chapter 105 expired September 17, 1985 and new rules became effective January 21, 1986 as R.198 d.702. See: 17 N.J.R. 2526(b), 18 N.J.R. 198(a). Pursuant to Executive Order No. 66(1978), Chapter 105 was readopted by R.1991 d.54. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS****12:105-1.1 Rules incorporated in arbitration agreements**

(a) The rules and regulations contained in this chapter shall be deemed a part of an arbitration agreement between parties whenever in their collective bargaining agreements or submissions they have provided for arbitration through the New Jersey State Board of Mediation or under its rules.

(b) This chapter, or any amendments thereof, properly adopted by the board, shall apply in the form obtaining at the time the procedure is instituted.

**Case Notes**

Former employee, as third-party beneficiary of collective bargaining agreement, had right to bring action to compel arbitration on employee's claims against employer. *D'Arrigo v. New Jersey State Bd. of Mediation*, 228 N.J.Super. 189, 549 A.2d 451 (A.D.1988), certification granted 115 N.J. 73, 556 A.2d 1217, reversed 119 N.J. 74, 574 A.2d 44.

**12:105-1.2 Interpretation and application of rules**

(a) The arbitrator shall interpret and apply the rules in this chapter insofar as they relate to his powers and duties.

(b) If there is more than one arbitrator and a difference arises among them concerning the meaning or application of any such rules, it shall be decided by a majority vote.

(c) All other rules shall be interpreted by an authorized representative of the board.

**SUBCHAPTER 2. INITIATION OF ARBITRATION****12:105-2.1 Collective bargaining agreement designation**

(a) Arbitration proceedings may be instituted in any one of the following methods:

1. Under collective bargaining agreements wherein the board is designated as the agency through which action is to be taken as the final step of the grievance procedure.

2. Either party to such collective bargaining agreement may demand arbitration under the terms of the agreement by sending to the other party and to the board a statement outlining the nature of the dispute and the remedy sought. The statement to the board also should contain a copy of the collective bargaining agreement or of the contract grievance procedure.

#### Case Notes

Former employee could proceed with arbitration claim against employer, despite claim of failure to comply with collective bargaining agreement's express time limitations. *D'Arrigo v. New Jersey State Bd. of Mediation*, 228 N.J.Super. 189, 549 A.2d 451 (A.D.1988), certification granted 115 N.J. 73, 556 A.2d 1217, reversed 119 N.J. 74, 574 A.2d 44.

#### 12:105-2.2 Collective bargaining agreement non-designation

Request for arbitration may be made by either party under a general arbitration clause in a collective bargaining agreement where the parties have agreed by stipulation or otherwise to arbitrate under the administration and rules of the Board.

#### 12:105-2.3 Mutual request for arbitration

Arbitration may also be initiated by the board, whether or not a collective bargaining agreement exists, upon filing a copy of a written agreement by the parties to arbitrate under the rules and regulations of the board.

#### 12:105-2.4 Expedited arbitration

(a) Pursuant to written mutual agreement by the parties certain provisions of the arbitration appointment procedure (as prescribed in subchapter 3) may be modified in order to provide the expedited designation of an arbitrator.

(b) The board will endeavor to conform with the wishes of the parties wherever possible.

(c) Upon designation of an arbitrator, all rules and regulations not specifically modified shall remain in force.

(d) Pursuant to written mutual agreement by the parties in disputes where pension and welfare fund payments delinquencies is the sole issue alleged, the moving party may request an expedited designation of an arbitrator by proceeding directly to a "third list" panel (as prescribed in N.J.A.C. 12:105-3.1). The board will notify the employer representative of the claimed dispute and the request for expedited arbitration by certified mail, return receipt requested. Immediately thereafter, the board will proceed in accordance with the provisions of N.J.A.C. 12:105-3.1(c).

#### 12:105-2.5 Procedural determinations

(a) Should questions arise in connection with the request of either party to combine grievances to be heard before the arbitrator, said questions shall be determined by the arbitrator as a threshold issue and in no way will a determination be made by the board.

(b) Should questions arise in connection with arbitrability of a grievance, said questions shall be determined by the arbitrator as a threshold issue and in no way will a determination be made by the board.

### SUBCHAPTER 3. APPOINTMENT OF ARBITRATORS

#### 12:105-3.1 Nomination of arbitrators

(a) First list:

1. Upon receipt of a Demand or submission for arbitration, the board shall submit simultaneously to the parties an identical list of 10 names chosen from the panel, including a biographical sketch and a per diem fee for each arbitrator.

2. Each party within 10 working days from the date of mailing said lists shall strike those names deemed unacceptable and return said list to the board. Parties may list a preference among those deemed acceptable.

3. The board shall designate as arbitrator a person available from those lists who is acceptable to both parties.

4. If either party objects to the complete list of 10 names as submitted, it may request that the board submit a new list of 10 names.

(b) Second list:

1. If requested, the board will forward a second list of 10 names to the parties.

2. Each party within five working days from the date of mailing said list shall strike those names deemed unacceptable and return said list to the board. Parties may list a preference among those deemed acceptable.

3. The board shall designate as arbitrator a person available from those lists who is acceptable to both parties.

4. If either party objects to the complete second list of 10 names as submitted, it may request a third and final list of three names.

(c) Third list:

1. If requested, the board will forward a third and final list of three names to the parties.

2. The parties shall have five working days from the date of mailing the third list to return it to the board.

3. The parties may strike one name; however, any name not stricken shall be deemed acceptable.

4. If the parties in writing make a joint request to waive the third list and authorize the board to appoint an arbitrator, the board shall honor such joint request.

(d) If at any point in the arbitrator appointment process:

1. Both parties fail to return a list within the specified time period, all arbitrators shall be deemed acceptable and the board shall be empowered to designate any arbitrator so listed.

2. One party fails to return a list within the specified time period, the board shall appoint an arbitrator from the list received, by the order of listing, if any.

(e) Where a collective bargaining agreement calls for an arbitration board as the final step of a grievance procedure and where the board is designated as the agency to appoint an impartial arbitrator in situations when the company and union appointed arbitrators cannot agree upon such arbitrator, the parties shall submit the names and addresses of their arbitrators in a letter addressed to the board. In such case, a list of 10 panel members will be sent to the parties or to their arbitrators, as requested, for selection as prescribed in this section.

#### Case Notes

Trial court had power to direct State Board of Mediation to forward names of arbitrators to employee after filing of grievance petition. *D'Arrigo v. New Jersey State Bd. of Mediation*, 228 N.J.Super. 189, 549 A.2d 451 (A.D.1988), certification granted 115 N.J. 73, 556 A.2d 1217, reversed 119 N.J. 74, 574 A.2d 44.

#### 12:105-3.2 Conflict of interest

A member of the panel shall not serve as arbitrator in any proceeding if he has any financial or personal interest in the result of the arbitration unless the parties, in writing, waive such disqualification.

#### 12:105-3.3 Vacancies

If after designation any arbitrator resigns, dies, withdraws, refuses or is unable to perform his duties, the board shall rescind the appointment and shall fill the vacancy in the same manner as the original appointment (as prescribed in section 1 of this subchapter) and the matter shall be heard in its entirety by the new arbitrator.

### SUBCHAPTER 4. THE HEARING

#### 12:105-4.1 Date, time and place

(a) An arbitrator, once appointed, shall communicate with the parties and endeavor to make satisfactory arrangements for the date, time and place of the hearing. In the event that satisfactory arrangements cannot be made with the parties, the arbitrator shall have the power to set the date and time.

(b) If satisfactory arrangements cannot be made as to the place of the hearing, the arbitrator may use the offices of the board subject to availability. Arbitrators are required to keep the board informed of arrangements made and of any changes.

#### 12:105-4.2 Oath of arbitrator

Prior to the hearing, arbitrators shall sign an oath of arbitrator. The arbitrator is required to provide the board with a signed oath.

#### 12:105-4.3 Submission

The parties to the arbitration shall sign an original and three copies of the submission form prior to arbitration. The original shall be retained by the board, the arbitrator and the parties to the dispute shall each retain a copy.

#### Case Notes

Statute requiring county improvement authority to submit unresolved collective bargaining dispute to binding arbitration was constitutional (citing former N.J.A.C. 12:105-5). *Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Authority*, 76 N.J. 245, 386 A.2d 1290 (1978).

#### 12:105-4.4 Status of arbitrator after appointment

After appointment, the legal relationship of an arbitrator is with the parties and not with the board.

#### 12:105-4.5 Postponements and adjournments

(a) The postponing of a scheduled hearing or the adjourning of a hearing is entirely within the discretion of the arbitrator.

(b) If either or both of the parties seek a postponement or cancellation with<sup>1</sup> 48 hours (two working days) of the time agreed upon for the conduct of a hearing or the continuance of a hearing, the party or parties responsible for the postponement or cancellation shall be liable for payment of the arbitrator's full fee for the cancelled or postponed day.

<sup>1</sup> So in original. Probably should read "within".

#### 12:105-4.6 Representation by counsel

Any party may be represented at the hearing by counsel, subject to existing state laws, provided that any party intending to be so represented shall notify the other party and the board at least three days prior to the date set for the hearing at which counsel is to first appear. When the initiation of any arbitration is made by counsel or the reply of the other party is given by counsel, such notice is deemed to have been given.

#### 12:105-4.7 Taking of stenographic record

A stenographic record of arbitration proceedings may be taken. Should one of the parties desire to make such a record at its own expense and the other party refuses to

share in the cost, it shall not be necessary for the party arranging for such record to supply a copy to the other party, but a copy, if transcribed, shall be sent to the arbitrator.

#### 12:105-4.8 Attendance at hearings

(a) Persons having a direct interest in the arbitration are entitled to attend hearings, but it shall be discretionary with the arbitrator to determine the propriety of attendance of any other persons.

(b) Such arbitrator shall have the power to require the retirement of any witness or witnesses during the testimony of other witnesses.

(c) Failure of a party to appear at or participate in a hearing duly scheduled may be deemed by the arbitrator, at his discretion, as a waiver of the right to appear at or participate in such hearing. The arbitrator, at his discretion, may proceed with the hearing in the absence of or without participation of said party.

#### 12:105-4.9 Majority decision

Where more than one arbitrator is sitting in a case, all decisions of the arbitration board shall be by majority vote unless the power of making such decision is delegated to the chairman; all awards shall be by majority vote unless concurrence of all is specifically required in the arbitration agreement.

#### 12:105-4.10 Evidence

(a) At the arbitration hearing, the parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary. Conformance to legal rules of evidence is not necessary, and the arbitrator shall be the judge of the relevancy and materiality of the evidence offered.

(b) All evidence shall be taken in the presence of all of the arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

(c) The arbitrator may accept or require briefs to aid in his determination of the case where arrangement for exchange of such briefs are made at a hearing.

(d) Time limits for submission of such briefs shall be determined by the arbitrator and the right to submit briefs shall be waived unless they are submitted within the time limits or an extension of time is granted.

#### 12:105-4.11 Inspection

If the arbitrator deems it necessary, he may make an inspection in connection with the subject matter of the dispute after written notice to the parties who may, if they so desire, be present at such inspection.

#### 12:105-4.12 Close of hearings

(a) The arbitrator shall specifically ask the parties whether they have further evidence or witnesses to produce before terminating the hearings. If not, the arbitrator shall declare the hearings closed.

(b) The arbitrator shall declare the hearings closed as of the final date established for the submission of briefs or other evidence by the parties.

(c) In the absence of other agreements by the parties, the time limit within which the arbitrator is required to make and submit his award shall start as of the closing date.

#### 12:105-4.13 Reopening of hearings

The hearing may be reopened by the arbitrator upon his own motion or at the request of either party for good cause shown at any time before the award is made, with the arbitrator to be the sole judge of the sufficiency of the reason. When hearings are reopened, the effective date of closing the hearings shall be the closing date of the reopened hearings.

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### SUBCHAPTER 5. THE AWARD

#### 12:105-5.1 Time

(a) The award shall be made promptly within the time limit set in the agreement between the parties or a mutually agreed upon extension but in no case more than 30 days after the closing of hearing.

(b) If a decision is not rendered after 30 days, it is the obligation of the parties to contact the board so it can attempt to expedite a decision. If a decision is not rendered after 60 days either party can request in writing that the hearing be voided and another arbitrator be selected by means of the normal selection procedure; such a request will be automatically granted unless the parties individually agree to an extended award date. If the board invalidates a hearing due to a late decision, the parties shall not be obligated to pay the arbitrator's fee.

(c) The arbitrator shall not release arbitration decisions for publication or distribution without the written consent of the parties.

#### 12:105-5.2 Form

(a) The award shall be in writing, signed by the sole arbitrator or by the majority of an arbitration board, and the signature or signatures shall be witnessed by a qualified notary.

(b) The award may or may not be followed or accompanied by an opinion by the sole arbitrator or the majority of the arbitration board.

(c) An opinion, if written, shall set forth the findings of facts, conclusions and remedial actions.

(d) Dissenting opinion, if any, shall be mailed to the parties and the board.

#### **12:105-5.3 Award on settlement**

If a dispute is settled during the course of an arbitration, the arbitrator may, upon request of the parties, set forth the terms of the agreed settlement in an award.

#### **12:105-5.4 Delivery of the award**

The award shall be sent to the parties and to the board. The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mails addressed to such parties or their attorneys at their last known addresses. It is the responsibility of the parties to inform the arbitrator of the names and addresses of the persons to be served the award.

#### **12:105-5.5 Finality of the award**

After an award has been delivered to the parties, such award shall be final and binding upon them subject only to due process of law.

#### **Case Notes**

Statute requiring county improvement authority to submit unresolved collective bargaining dispute to binding arbitration was constitutional (citing former N.J.A.C. 12:105-6). Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Authority, 76 N.J. 245, 386 A.2d 1290 (1978).

#### **12:105-5.6 Arbitrator's status subsequent to rendering a decision**

An arbitrator becomes functus officio upon signing his award and he may not add to, subtract from or in any way explain, correct or modify his award unless all parties, in writing, agree to reinstate his authority.

#### **12:105-5.7 Waiver of right to object**

Any party who proceeds with an arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection thereto in writing shall be deemed to have waived his right to appeal.