

(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.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote (a).

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

19:16-5.6 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) and pursuant to the standards set forth in N.J.A.C. 19:16-5.15. 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. The Commission may suspend, remove, or otherwise discipline an arbitrator for violating the Police and Fire Public Interest Arbitration Reform Act or for good cause in accordance with the procedures set forth at N.J.A.C. 19:16-5.16. Any arbitrator who fails to attend the Commission's annual continuing education program under section 4 of the Police and Fire Public Interest Arbitration Reform Act may be removed from the special panel. Any arbitrator who fails to participate in the continuing education program for two consecutive years shall be removed.

(b) Within 10 days of the filing of a petition, the parties shall notify the Director of Arbitration in writing of any mutual agreement to select an arbitrator from the special panel of arbitrators. The parties may also jointly request the appointment of a particular arbitrator who is not a member of the Commission's special panel, and the Director of Arbitration may approve the appointment of that arbitrator to the special panel for that particular arbitration.

(c) 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 designated 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.

(d) Unless an arbitrator has been mutually selected by the parties, the Director of Arbitration shall select the arbitrator by lot. Once such selection has been made by the Director, the parties may not mutually select a different arbitrator.

(e) If an arbitrator selected by mutual agreement is unable to serve and the parties are unable to mutually agree on a replacement arbitrator within 10 days of the date the

arbitrator became unable to serve, the Director of Arbitration shall select the replacement by lot.

(f) If an arbitrator assigned by lot is unable to serve and the parties are unable to agree on a replacement arbitrator within 10 days of the date the arbitrator became unable to serve, the Director of Arbitration shall select the replacement arbitrator by lot.

(g) Any motion to disqualify an interest arbitrator shall be filed with the Commission, together with proof of service of a copy on the other party and the arbitrator. Any response to such motion shall be filed with the Commission within five days of service of the motion, together with proof of service of a copy on the other party and the arbitrator. The Chairman or some other Commission designee shall then either decide the motion or refer it to the arbitrator or the full Commission.

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.

Amended by R.1996 d.326, effective July 15, 1996.

See: 28 N.J.R. 2346(a), 28 N.J.R. 3618(a).

Amended by R.1997 d.152, effective April 7, 1997.

See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

In (a), inserted references to N.J.A.C. 19:16-5.15 and 19:16-5.16.

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 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, and require the attendance of such 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 unsettled issues shall be conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in N.J.S.A. 34:13A-16g.

(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 before hearing. At least 10 days before the hearing, the parties shall submit to the arbitrator or tripartite panel of arbitrators and to each other their final offers on each economic and noneconomic issue in dispute. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, finding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.

(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 either party's application or 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 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.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote (e), and in (f) added provision for agreements before the close of the hearing.

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

Law Review and Journal Commentaries

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

Case Notes

Information learned by arbitrator during mediation process, but not presented at arbitration hearing, could not be considered by arbitrator in rendering final decision. *Township of Aberdeen v. Patrolmen's Benev. Ass'n*, Local 163, 286 N.J.Super. 372, 669 A.2d 291 (A.D.1996).

Last-offer alternative; encouraging parties to negotiate reasonably. *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).

Rules of Evidence; application in arbitration proceedings. *Fox v. Morris County Policemen's Ass'n*, 266 N.J.Super. 501, 630 A.2d 318 (A.D.1993), certification denied 137 N.J. 311, 645 A.2d 140.

Public sector arbitrators; factors considered. *Fox v. Morris County Policemen's Ass'n*, 266 N.J.Super. 501, 630 A.2d 318 (A.D.1993), certification denied 137 N.J. 311, 645 A.2d 140.

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).