

## 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), 34:13A-11 and 34:13A-16.5.

## Source and Effective Date

R.1996 d.365, effective July 12, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(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 12, 2001.

## Chapter 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 Chapter 16 was repealed by R.1977 d.272.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, effective July 17, 1991. See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a). Subchapter 8, Appeals, was adopted as R.1996 d.240, effective May 20, 1996. See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.1996 d.365, effective July 12, 1996. See: Source and Effective Date. See, also, section annotations.

## CHAPTER TABLE OF CONTENTS

## SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

SUBCHAPTER 2. COMMENCEMENT OF  
NEGOTIATIONS

19:16-2.1 Commencement of negotiations

## SUBCHAPTER 3. MEDIATION

19:16-3.1 Initiation of mediation  
19:16-3.2 Appointment of a mediator  
19:16-3.3 Mediator's function  
19:16-3.4 Mediator's confidentiality  
19:16-3.5 Mediator's report

## SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding  
19:16-4.2 Appointment of a fact-finder  
19:16-4.3 Fact-finder's function

SUBCHAPTER 5. COMPULSORY INTEREST  
ARBITRATION

19:16-5.1 Scope of compulsory interest arbitration  
19:16-5.2 Initiation of compulsory interest arbitration  
19:16-5.3 Contents of the petition requesting the initiation of compulsory interest arbitration; proof of service  
19:16-5.4 Notification of terminal procedure requirement  
19:16-5.5 Response to the petition requesting the initiation of compulsory interest arbitration  
19:16-5.6 Appointment of an arbitrator or panel of arbitrators  
19:16-5.7 Conduct of the arbitration proceeding  
19:16-5.8 Stenographic record  
19:16-5.9 Opinion and award  
19:16-5.10 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes  
19:16-5.11 Cost of arbitration  
19:16-5.12 Fees for filing and processing interest arbitration petitions  
19:16-5.13 Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders  
19:16-5.14 Comparability guidelines  
19:16-5.15 Standards for appointment and reappointment to the special panel  
19:16-5.16 Suspension, removal or discipline of members of the special panel  
19:16-5.17 Interlocutory rulings; appeal on special permission

SUBCHAPTER 6. DETERMINATION OF DISPUTES  
OVER ISSUE DEFINITION

19:16-6.1 Purpose of procedure  
19:16-6.2 Procedure

SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR  
OTHER DOCUMENT

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

## SUBCHAPTER 8. APPEALS

19:16-8.1 Appeals and cross-appeals  
19:16-8.2 Oral argument  
19:16-8.3 Action by the Commission

## SUBCHAPTER 1. PURPOSE OF PROCEDURES

## 19:16-1.1 Purpose of procedures

(a) The rules of this chapter provide for implementation of the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c.425, 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, and section 8 of the Police and Fire Public Interest Arbitration Reform Act provides that the Commission shall adopt rules and regulations to effectuate the purposes of that Act. 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 and appeals of arbitration awards. Also provided is a procedure for Commission determination of disputes regarding the identification of issues as economic or non-economic.

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

Added references to the Act and in (d) inserted "and appeals of arbitration awards".

## 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, at least 120 days prior to the day on which their collective negotiations agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiations agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective negotiations agreement is to expire. A violation of these requirements shall constitute an unfair practice and the violator shall be subject to an interim relief order requiring such negotiations and any other relief the Commission deems appropriate. 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.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this subchapter, 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. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, CN 429, Trenton, NJ 08625-0429.

(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.

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).

#### 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. The name and address of the public employer that 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 exclusive representative that 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;
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); and

9. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.

(b) A blank form for filing a request for mediation 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 an agreement through direct negotiations, and that an impasse exists in negotiations.

(d) 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.

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

### 19:16-3.2 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, but the Director of Conciliation shall have the authority to appoint a mediator without regard to the parties' joint request. 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 in any other proceeding before the Commission.

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

### 19:16-3.3 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 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 in any type of proceeding, under the New Jersey Employer-Employee Re-

lations 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.

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

### 19:16-3.5 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 the 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.

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

## SUBCHAPTER 4. FACT-FINDING

### 19:16-4.1 Initiation of fact-finding

(a) If the parties fail 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. The name and address of the public employer that 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 exclusive representative that 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 exclusive representative;

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); and

11. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.

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

(c) 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 such issue is not within the required scope of negotiations; and

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

(d) 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.

(e) 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.

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

#### 19:16-4.2 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 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' preferences. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding these provisions, the Director of Conciliation shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties whenever he or she deems it necessary to effectuate the purposes of the Act.

(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 purposes of assisting the parties to effect a voluntary settlement and/or making findings of fact and recommending the terms of settlement. If an appointed fact-finder 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.

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

#### 19:16-4.3 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 other steps deemed 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 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 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) The parties shall meet within five days after receipt of the fact-finder's findings of fact and recommended terms of settlement, to exchange statements of position and to have an opportunity 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.

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

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

## 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. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, CN 429, Trenton, NJ 08625-0429.

2. On or after the date on which their collective negotiations agreement expires, and notwithstanding N.J.A.C. 19:16-3.1 and 4.1, either party may file a petition with the Director of Arbitration requesting the initiation of compulsory interest arbitration.

3. On or after the expiration of a collective negotiations agreement, 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.

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

Provided for a petition for arbitration in place of a terminal procedure agreement.

### 19:16-5.3 Contents of the petition requesting the initiation of compulsory interest arbitration; proof of service

(a) An original and four copies of a petition requesting the initiation of compulsory interest arbitration shall be filed with the Director of Arbitration. This document shall be signed and dated and contain the following information:

1. Name and address of the public employer that 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. Name and address of the exclusive representative that 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 exclusive representative;

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); and

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

(b) In the absence of a joint petition, the petitioner shall file proof of service of a copy of the petition on the other party.

Recodified from 19:16-5.4 and amended by R.1996 d.240, effective May 20, 1996.

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

Section was "Notification requirement".

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

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

#### 19:16-5.4 Notification of terminal procedure requirement

(a) Within 10 days after the filing of a joint petition or the receipt of a petition by the non-petitioning party, the parties shall notify the Director of Arbitration 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. 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.

(c) If the parties have failed to agree upon a terminal procedure, each party shall file a statement with the Director of Arbitration within 10 days after the filing or receipt of the petition indicating the reasons for its 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.

(d) At any time before the arbitrator takes testimony or evidence, the parties may submit a mutually agreed-upon modification of the terminal procedure to the Director of Arbitration for approval. At any time after the arbitrator takes testimony or evidence, but before the close of the hearing, the parties may submit an agreed-upon modification of the terminal procedure to the assigned arbitrator for approval.

New Rule, R.1996 d.240, effective May 20, 1996.

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

Former N.J.A.C. 19:16-5.4 "Contents of the notification or petition requesting the initiation of compulsory interest arbitration", recodified to 19:16-5.3.

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

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party shall file within seven days of receipt of a 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 such issue is 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.

5. Formal educational attainments, teaching positions, and professional publications demonstrating knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings.

i. This consideration simply augments the considerations in (c)1 through 3 above.

6. Other labor relations, arbitration, governmental or fiscal experience.

i. This consideration simply augments the considerations in (c)1 through 3 above.

(d) Every applicant shall complete an application form prepared by the Director of Conciliation and Arbitration. That form is designed to solicit information concerning the foregoing requirements and considerations. The form also allows an applicant the opportunity to submit any other information he or she deems relevant. The Director shall review all applications and make a recommendation to the Commission regarding each one within 60 days. The Commission shall notify an applicant in writing of any action taken upon an application.

(e) In addition to the requirements and considerations listed in (c) above, an applicant seeking reappointment shall have demonstrated successful service during the terms of his or her previous appointments to the special panel, as measured by:

1. The issuance of well-reasoned, legally sound, and timely awards;
2. Compliance with statutory standards and deadlines; case law requirements; agency regulations, rules, policies, administrative memoranda, and reporting procedures; and
3. Any other applicable requirements.

(f) An applicant for reappointment shall also have abided by the Code of Professional Responsibility for Interest Arbitrators adopted by the New Jersey Public Employment Relations Commission; the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes adopted by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service; and the Code of Professional Conduct for Labor Mediators adopted by the Association of Labor Relations Agencies and the Federal Mediation and Conciliation Service. An applicant for reappointment shall also have attended the Commission's continuing education programs, as directed, per N.J.S.A. 34:13A-16.1.

(g) Satisfying one or more of the considerations listed in (c) above does not necessarily qualify an applicant for appointment or reappointment to the special panel. An appointment or reappointment depends upon the Commission's overall expert assessment of an applicant's ability to

handle the most complex and demanding interest arbitration assignments.

(h) No applicant shall be appointed to the panel who, in the three years prior to the application date, has:

1. Served as an advocate for labor or management in the public or private sector;
2. Been elected or appointed to a political office or a governing body; or
3. Has served in a partisan political capacity.

New Rule, R.1997 d.152, effective April 7, 1997.  
See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

#### **19:16-5.16 Suspension, removal or discipline of members of the special panel**

(a) Pursuant to N.J.S.A. 34:13A-16(e), this section provides a procedure to be followed by the Commission in deciding whether to suspend, remove, or otherwise discipline an arbitrator during his or her three-year term.

(b) If it appears that suspension, removal, or discipline may be warranted, the Director of Conciliation and Arbitration shall provide a written statement to the arbitrator specifying the reasons for the action being considered. The arbitrator shall have an opportunity to submit a prompt written response to the Director. The arbitrator shall also be given an opportunity to meet with the Director to discuss the matter.

(c) If a suspension or removal is being contemplated, if the arbitrator requests a hearing, and if it appears to the Director that substantial and material facts are in dispute, the Director may designate a hearing officer to conduct a hearing and make findings of fact.

(d) The Director may temporarily suspend an arbitrator from the panel pending any hearing.

(e) After receiving the arbitrator's response, meeting with the arbitrator, and considering the facts found at any hearing, the Director may decide to reprimand, suspend, or remove an arbitrator or may decide that no action is warranted. The Director shall send a written decision to the arbitrator.

(f) Within 14 days of receiving the Director's decision, an arbitrator may file a written appeal of that decision with the Commission. Such appeal shall specify the grounds for disagreeing with the Director's decision.

(g) A temporary suspension may be continued pending that appeal.

(h) The Commission or its designee may sustain, modify, or reverse the action taken by the Director and shall provide the arbitrator with a written statement explaining the basis for that decision.

New Rule, R.1997 d.152, effective April 7, 1997.  
See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

### 19:16-5.17 Interlocutory rulings; appeal on special permission

(a) Interlocutory rulings or orders issued before the arbitrator's final written opinion and award under N.J.S.A. 34:13A-16(f)(5) and N.J.A.C. 19:16-5.9 shall not be appealed to the Commission except by special permission to appeal. All such rulings and orders shall become part of the record of the arbitration proceedings and shall be reviewed by the Commission in considering any appeal or cross-appeal from an arbitrator's final award, provided exception to the ruling or order is included in the notice of appeal or cross-appeal filed with the Commission pursuant to N.J.A.C. 19:16-8.1 through 8.3.

(b) A request for special permission to appeal shall be filed in writing within five days from the service of written rulings or statements of oral rulings, and shall briefly state the grounds for granting special permission to appeal and the grounds for reversing or modifying the ruling or order in question. An original and nine copies of the request shall be filed with the Chair, together with the \$25.00 fee required under N.J.A.C. 19:16-5.13 and proof of service of a copy of the request on all other parties and the arbitrator assigned to the case. A party opposing the request may file an original and nine copies of a statement in opposition within five days of service on it of the request for special permission to appeal and shall briefly state the grounds for denying special permission to appeal and the grounds for affirming the ruling or order in question. An original and nine copies of the statement shall be filed with the Chair, together with proof of service of a copy on all other parties and the arbitrator assigned to the case.

(c) The Chair has the authority to grant or deny special permission to appeal. If the Chair grants special permission to appeal, the arbitration proceeding shall not be stayed unless otherwise ordered by the Chair. The Commission shall consider an appeal on the papers submitted to the Chair, or on such further submission as it may require.

New Rule, R.1997 d.221, effective May 19, 1997.  
See: 29 N.J.R. 857(a), 29 N.J.R. 2467(c).

## 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. A blank form for filing a request for issue definition will be supplied upon request. Address requests to: Public Employment Relations Commission, CN 429, Trenton, New Jersey 08625-0429.

(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 and address of the public employer that 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 exclusive representative that 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 exclusive representative;
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.
6. A list of any other actions before the Commission or any other administrative agency, arbitrator or court which the petitioner(s) knows about and which involve the same or similar issues;
7. Whether the request is a joint request.

(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) To expedite the resolution of a petition for issue definition determination, determinations pursuant to this proceeding normally will be made on the basis of written submissions without a hearing. However, a hearing may be requested by one or both of the parties or the Chairman or such other Commission designee. 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.

(f) Based upon the parties' submissions, the Chairman or other such Commission designee 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.

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

## 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.

## SUBCHAPTER 8. APPEALS

### 19:16-8.1 Appeals and cross-appeals

(a) Within 14 days after receiving an award forwarded by the Director of Arbitration, an aggrieved party may file an original and nine copies of a notice of appeal to the Commission.

1. The notice shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A.

34:13A-16g and each alleged violation of the standards set forth in N.J.S.A. 2A:24-8 or 2A:24-9.

2. If a stenographic record of the hearing was prepared, the appellant shall provide a copy of the transcript to the Commission.

3. Filings shall be accompanied by proof of service of a copy on the other party.

4. The appellant shall also file a copy of the notice on the arbitrator.

5. Within 14 days after filing a notice of appeal, the appellant shall file an original and nine copies of a brief in support of the appeal, together with proof of service of a copy on the other party. The appellant shall simultaneously file an original and nine copies of an appendix containing those parts of the record the appellant considers necessary to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.

(b) Within seven days after the service of an appeal, the respondent may file a notice of cross-appeal to the Commission.

1. The notice shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16g and each alleged violation of the standards set forth in N.J.S.A. 2A:24-8 or 2A:24-9.

2. Filings shall be accompanied by proof of service of a copy on the other party.

3. The cross-appellant shall also file a copy of the notice of cross-appeal on the arbitrator.

4. Within 14 days after filing a notice of cross-appeal, the cross-appellant shall file an original and nine copies of a brief in support of the cross-appeal and in response to the appeal, together with proof of service of a copy on the other party. The respondent/cross-appellant may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's appendix that the respondent/cross-appellant considers necessary to the proper consideration of the issues.

(c) Where no cross-appeal is being filed, within seven days after the service of a brief in support of the appeal, the respondent shall file an original and nine copies of an answering brief limited to the issues raised in the appeal and the brief in support of the appeal. The respondent may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's appendix that the respondent considers necessary to the proper consideration of the issues. Filings shall be accompanied by proof of service of a copy on the other party.

(d) Where a cross-appeal has been filed, within seven days after the service of the brief in support of the cross-appeal, the appellant/cross-respondent may file an original and nine copies of an answering brief limited to the issues raised in the cross-appeal and the brief in support of the cross-appeal. The appellant/cross-respondent may also file an appendix containing those parts of the record not included in any earlier appendix that the appellant/cross-respondent considers necessary to the proper consideration of the issues raised in the cross-appeal. Filing shall be accompanied by the proof of service of a copy on the other party.

(e) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on the other party.

#### **19:16-8.2 Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and shall be filed simultaneously with the appeal or cross-appeal, together with proof of service of a copy on the other party. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

#### **19:16-8.3 Action by the Commission**

The Commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator for reconsideration. If the parties are unable to agree upon a replacement arbitrator within 10 days of the remand order, the arbitrator shall be selected by lot.