



PUBLIC EMPLOYMENT RELATIONS COMMISSION

**REPORT TO THE
GOVERNOR
AND THE
LEGISLATURE**

**THE FIRST FIVE YEARS UNDER THE
“SCHOOL EMPLOYEES CONTRACT
RESOLUTION AND EQUITY ACT,”
P.L. 2003, c.126; N.J.S.A. 34:13A-31 et seq.**

EFFECTS ON NEGOTIATIONS AND SETTLEMENT

AUGUST 2008

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EXECUTIVE SUMMARY

The “School Employees Contract Resolution and Equity Act,” P.L. 2003, c. 126; N.J.S.A. 34:13A-31 et seq., “Chapter 126” (Appendix 1) prohibits school employers from unilaterally imposing or changing terms and conditions of employment while negotiating successor agreements. It also provides for a series of procedures if collective negotiations reach an impasse, including mandatory fact finding and appointments of super conciliators. Prior to the enactment of Chapter 126, a school employer could unilaterally impose its last best offer if it had exhausted the Commission’s impasse procedures and a genuine impasse persisted.

Chapter 126 took effect on July 10, 2003 and requires the Commission to submit a report on the effects of the Act on school negotiations and settlements together with any recommendations it may have to change the law. There have been no significant problems with implementing or administering the Act, and five years’ experience under the legislation indicates the following:

- There have been no unilateral impositions in New Jersey public schools.
- There has been no significant change in the number of school employee impasse cases filed with the Commission.
- There has been a significant increase in the use of fact finding.
- Most of the impasses that reach fact finding are settled without the issuance of a formal report.
- Very few impasses have required the appointment of a super conciliator.

- Every impasse that has reached super conciliation has resulted in a mediated settlement. No formal super conciliation report has been issued.
- There have been no teacher strikes.

Many factors besides Chapter 126 influence the demands placed on the Commission's impasse services. Those include the economy, legislative changes, and the relationship between local boards of education and the majority representatives of their employees.

To maintain a high level of excellence, the Commission has broadened its existing training program for labor relations professionals who perform mediation, fact finding and super conciliation. The Commission is not recommending any changes to Chapter 126.

INTRODUCTION

This report describes the Commission's actions to implement and administer Chapter 126 in an impartial manner and in accordance with the Legislature's direction. The report is submitted pursuant to Section 8 of Chapter 126, P.L. 2003, c. 126; N.J.S.A. 34:13A-38.

Chapter 126 prohibits school employers from unilaterally imposing, modifying, amending, deleting or altering any terms and conditions of employment, and provides for a series of procedures if collective negotiations between an employer and majority representative reach an impasse. Those procedures include mandatory participation in fact finding if mediation is unsuccessful, and the appointment of a super conciliator if no agreement is reached after the issuance of a fact finding report. The Act also directs the commission to promulgate related rules and regulations (P.L. 2003, c. 126, s.9; N.J.S.A. 34:13A-39) and to submit a report to the Governor and Legislature five years after its implementation concerning "the effects of the act on negotiations and settlement between school employees and their employers with any recommendation it may have for any changes in the law." P.L. 2003, c. 126, s.8; N.J.S.A. 34:13A-38.

Public employers covered by Chapter 126 include: "any local or regional school district, charter school and its board of trustees, vocational school district, educational services commission, jointure commission, county special services school district, community college, county college, or board or commission under the authority of the Commissioner of Education, the State Board of Education, or the New Jersey Commission on Higher

Education.” P.L. 2003, c. 126, s.2; N.J.S.A. 34:13A-32.

DISCUSSION AND ANALYSIS

School Employee Impasses Prior to Chapter 126

The Commission originally adopted rules for negotiations impasses on the authority of section 5.4(e) of the New Jersey Employer-Employee Relations Act, P.L. 1974, c. 123; N.J.S.A. 34:13A-1 et seq., which directed the Commission to adopt rules “to regulate the time of commencement of negotiations and the institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates.” Id.

Commission rules (Appendix 2) require parties to begin negotiations no later than 120 days prior to the public employer’s budget submission date. N.J.A.C. 19:12-2.1. If the parties are unable to reach an agreement through direct negotiations, they may jointly or individually file a Notice of Impasse to petition the Director of Conciliation to appoint a mediator. N.J.A.C. 19:12-3.1. The Director conducts an investigation to determine whether an impasse exists. If an impasse does exist, the Director appoints a mediator whose function is “to assist parties to a voluntary agreement [by holding] separate or joint conferences to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties.” N.J.A.C. 19:12-3.3. Any information disclosed by a party to the mediator cannot be divulged voluntarily or by compulsion. Any files, records, reports or documents received or prepared by a mediator are confidential. The mediator cannot be

compelled to produce any confidential records or to testify about any mediation on behalf of any party in any proceeding brought under the New Jersey Employer-Employee Relations Act. N.J.A.C. 19:12-3.4. At the conclusion of the mediator's involvement in an impasse, the mediator prepares a confidential report to the Director of Conciliation detailing the number, dates and length of mediation sessions, the issues resolved, and any issues that remain unresolved. N.J.A.C. 19:12-3.5.

Based on the mediator's report of a continuing impasse, or by joint or separate petition of the parties, the Director may invoke fact finding. N.J.A.C. 19:12-4.1. While the Director has the authority to directly appoint a fact finder, standard practice is to send an identical list of three names of fact finders to the parties. Each party is permitted to indicate a preference by striking one name from the list and ranking the remaining two names. N.J.A.C. 19:12-4.2.

The fact finder usually begins his or her involvement in a case by continuing to assist the parties toward a mediated voluntary settlement. In this capacity, the fact finder is vested with the same privileges and responsibilities as a mediator concerning confidentiality and immunity. N.J.A.C. 19:12-4.3(c). The fact finder is authorized to conduct a hearing and issue a non-binding report that includes findings of fact and a recommended settlement. The fact finder may "subpoena witnesses, compel their attendance at a hearing, administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas duces tecum." N.J.A.C. 19:12-4.3(b).

After a fact finder issues a report, the parties are required to meet within five days to

try and reach an agreement. Prior to the passage of Chapter 126, if the impasse continued, the Director of Conciliation could “take whatever steps (were) deemed expedient to effect a voluntary settlement of the impasse.” *Id.* Often, this meant that the parties would continue negotiating on their own with the fact finder’s report as a guide. Occasionally, a third labor relations neutral, a “super mediator” or “conciliator,” would be appointed to further assist the parties to reach a settlement. On rare occasions, an impasse persisted even after these post-fact finding efforts. After the Commission’s impasse procedures were exhausted, boards of education could implement their “last best” offers.

Commission records indicate that on eleven occasions since 1977, boards of education unilaterally imposed terms and conditions of employment in New Jersey public school districts (agency records may not reflect all situations where an employer imposed its last best offer). Seven of these cases resulted in litigation before the Commission. In three of the litigated cases, the Commission found that boards had lawfully implemented salary guides after exhausting impasse procedures.¹ In three other litigated cases, the Commission found that boards violated a duty to negotiate in good faith by not exhausting impasse procedures,² or not implementing their “last best” offers.³ The seventh litigated case was an

¹Red Bank Bd. of Ed., P.E.R.C. No. 81-1, 6 NJPER 364 (¶11185 1980), aff’d NJPER Supp.2d 99 (¶81 App. Div. 1981); Bayonne Bd. of Ed., P.E.R.C. No. 91-3, 16 NJPER 433 (¶21184 1990); Readington Tp. Bd. of Ed., PERC No. 96-4, 21 NJPER 273 (¶26176 1995).

²Willingboro Tp. Bd. of Ed., P.E.R.C. No. 78-20, 3 NJPER 369 (1977).

³Mount Holly Tp. Bd. of Ed., P.E.R.C. No. 84-27, 9 NJPER 596 (¶14252 1983); Fredon Tp. Bd. of Ed., P.E.R.C. No. 96-5, 21 NJPER 275 (¶26177 1995).

interlocutory proceeding that was eventually settled by the parties.⁴ The four remaining cases of the eleven eventually settled, two of them, Middletown and Manville, after strikes.

To place those numbers in perspective, there are nearly 600 school districts in the State of New Jersey and more than twice that number of collective negotiations units with contracts. Most collective agreements have three-year terms and about one-third of the agreements expire every year. The Commission averages about 120 Notices of Impasse filed annually from negotiations units of school employees.⁵

School Employee Impasses Under Chapter 126

Chapter 126 provides, that:

Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative. N.J.S.A. 34:13A-33.

Chapter 126 prohibits school employers from unilaterally imposing or changing terms and conditions of employment while negotiating successor agreements. Chapter 126 also

⁴Keansburg Bd. of Ed., I.R. No. 91-22, 17 NJPER 314 (¶22138 1991).

⁵The Commission also receives almost as many impasse cases from non-school employee negotiations units each year.

mandates participation in fact finding “in any case where the Commission’s mediation procedures have been exhausted with no final agreement reached.” N.J.S.A. 34:13A-34(a). The fact finder must be appointed no later than 30 days after the parties’ last meeting with the mediator. If the fact finder prepares a report recommending a settlement, it must be presented to the parties immediately after its issuance and be available to the public ten days later. If the parties do not reach a voluntary agreement within 20 days after the report issues, the Director of Conciliation must appoint a “super conciliator” to assist the parties, in accordance with the Commission rules. N.J.S.A. 34:13A-34(b) and (c).

The Commission adopted rules, effective July 20, 2004, implementing Chapter 126. Those rules allow the parties to jointly request the appointment of a particular super conciliator subject to the Director’s approval. Absent an approved joint request, the Director designates a super conciliator. N.J.A.C. 19:12-4.4(c). The super conciliator, while functioning in a mediatory role, is subject to and protected by the same rules as mediators concerning confidentiality. When appointed, the super conciliator is directed to promptly schedule investigatory proceedings to:

- a. Investigate and acquire all relevant information regarding the dispute between the parties;
- b. Discuss with the parties their differences, and utilize means and mechanisms, including but not limited to requiring 24-hour per day negotiations, until a voluntary settlement is reached, and provide recommendations to resolve the parties’ differences;
- c. Modify or amend the fact finder’s report for

reconsideration by the parties in a further effort to achieve a voluntary settlement by the parties; and

- d. Institute any other non-binding procedures deemed appropriate by the super conciliator. [N.J.S.A. 34:13A-35]

If the parties are unable to reach agreement with the assistance of a super conciliator, the super conciliator is required to issue a formal report to the parties that is to be made available to the public ten days later. N.J.S.A. 34:13A-36.

Since the enactment of Chapter 126 at the beginning of FY 2004, eleven impasses proceeded to super conciliation. Of the eleven cases, seven involved impasses filed in FY 2003, before the enactment of Chapter 126; one involved an impasse filed in FY 2004; two involved impasses filed in FY 2005; and one involved an impasse filed in FY 2006.

Analysis

The following chart reflects impasse filings and appointments from FY 1999 through FY 2008. It indicates the number of Notices of Impasse filed, the number of impasses settled in mediation, the number of impasses sent to fact finding, the number of impasses settled in fact finding pre-report, the number of fact finding reports issued, the number of conciliator (pre-Chapter 126) or super conciliator appointments and settlements, the percentage of impasses settled in mediation, the percentage of fact finding cases to impasses filed, the percentage of fact finding reports issued to fact finding cases and impasses, and the percentage of conciliator or super conciliator appointments to impasses filed. The fact

FILINGS AND APPOINTMENTS IN SCHOOL EMPLOYEE IMPASSES BY FISCAL YEAR 1999-2008

	Pre-Act					Post-Act					Average	
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Pre-Act	Post-Act
Notices of Impasse Filed	141	125	116	111	129	122	117	129	107	118	124.4	118.6
Settled in Mediation	117	103	108	98	82	86	69	85	79	76	101.6	79.0
Impasses sent to Fact Finding	41	25	14	19	25	45	38	45	28	35	24.8	38.2
Settled in FF (Pre-Report)	19	19	14	13	16	23	33	25	22	27	16.2	26.0
Fact Finding Reports Issued	8	8	5	3	4	13	15	9	6	5	5.6	9.6
Conciliators / Super Conciliators Appointed	0	0	1	1	1	7	1	2	0	1	0.6	2.2
Settled in Conciliation or Super Conciliation	0	0	1	1	0	4	5	1	1	0	0.4	2.2
Percentage of Impasses Settled in Mediation	83%	82%	93%	88%	64%	70%	59%	66%	74%	64%	82%	67%
Percentage of Impasses sent to Fact Finding	29%	20%	12%	17%	19%	37%	32%	35%	26%	30%	20%	32%
Percentage of FF Cases Where Report Issued	20%	32%	36%	16%	16%	29%	39%	20%	21%	14%	24%	25%
Percentage of Impasses Where FF Report Issues	6%	6%	4%	3%	3%	11%	13%	7%	6%	4%	4%	8%
Percentage of Impasses Reaching Conciliation or Super Conciliation	0.0%	0.0%	0.9%	0.9%	0.8%	5.7%	0.9%	1.6%	0.0%	0.8%	0.5%	1.8%

finding and conciliation appointments are not necessarily derived from impasse cases filed in the same fiscal years.

The chart shows that over the last ten years the number of school employee Notices of Impasse ranged from 107 to 141 annually. Prior to the enactment of Chapter 126, approximately 20% of all impasse cases moved to fact finding. Since the enactment, approximately 32% of all impasse cases moved to fact finding. The percentage of impasse cases requiring fact finding reports has doubled from 4% to 8%, due largely to activity during the first two years of Chapter 126. The number of fact finding cases that settle without a report remained at approximately 75%. Our experience indicates that impasses resolved in fact finding typically require nearly twice the time as those resolved in mediation.

A total of eleven super conciliators have been appointed since Chapter 126 was enacted, seven during its first year. From FY 2005 through FY 2008, the Commission has averaged one appointment annually. To date, every super conciliation has been resolved with a mediated settlement, without the need for a formal report.

The trends noted in the chart cannot be attributed exclusively to Chapter 126. A number of factors influence the demands placed on the Commission's impasse procedures. Perhaps the most important is the relationship that exists locally between boards of education and the majority representatives of their employees. Parties with a good negotiations history and stable labor relations are less likely to reach impasse, and when they do, are more likely to settle earlier in the process. The economy also influences negotiations for successor

agreements. Currently, conditions include rising fuel and grain prices; unstable credit and housing markets; and successive quarters of slow growth or a contracting economy. It is more difficult to reach agreements when faced with both inflationary and recessionary pressures.

Recent legislation also affects negotiations. Over the past three years, in response to rising property taxes, the Legislature has imposed spending limits and levy caps; encouraged shared services, joint meetings, and mergers and consolidations; and redefined State Health Benefits Plans. See P.L. 2007, c.62 and c.63. Proposed Department of Education Accountability Regulations are also likely to affect negotiations over related terms and conditions of employment.

Finally, the availability and expertise of the Commission's staff mediators and its ad hoc panels of mediators and fact finders play a role in how effectively and expeditiously they can assist the parties at impasse to reach settlement. From FY 2003 to FY 2006, the Commission had only two full-time staff mediators. The Commission now employs four full-time staff mediators. With the added staff, the Commission can offer parties at impasse earlier dates for first mediation sessions and shorter delays between sessions.

To maintain a high level of excellence for its staff and ad hoc panels, the Commission has broadened its education program for the labor relations professionals who provide mediation, fact finding and super conciliation. The latest training session was held on June 9, 2008. Consistent with the Commission's neutrality and its statutory mission to prevent or

promptly resolve labor disputes, the training addressed recent legislative changes concerning health benefits, school district and local government budgets, tax levy caps, funding formulas, and shared services, joint meetings and mergers and consolidations.

All of the factors discussed above influence the degree to which parties seek assistance from the Commission's impasse process. Without the possibility of unilateral imposition there is no longer a reluctance on the part of some majority representatives to move to fact finding when an impasse persists through mediation. There has not been a teacher strike in a New Jersey public school since Chapter 126 was enacted.

It is difficult to predict how the process will be used over the next few years. Given the external factors discussed above, it seems likely that more parties will need the assistance of the Commission's impasse procedures. The Commission expects more parties to file Notices of Impasse and it anticipates that the number of mediation sessions needed to resolve impasses may increase. It is likely that more impasse cases may require fact finding or even super conciliation appointments. These trends would be likely to occur regardless of the enactment of Chapter 126.

Section 8 of Chapter 126 invited the Commission to make recommendations "for any changes in the law." The implementation and administration of Chapter 126 has posed no significant problems. Accordingly, the Commission is not recommending any changes to Chapter 126.

APPENDIX 1

(Corrected Copy)
CHAPTER 126

AN ACT concerning collective negotiations for school employees and supplementing P.L.1941, c.100 (C.34:13A-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.34:13A-31 Short title.

1. This act shall be known and may be cited as the "School Employees Contract Resolution and Equity Act."

C.34:13A-32 Definitions relative to school employee collective negotiations.

2. For the purposes of this act:

"Employer" or "public employer" means any local or regional school district, charter school and its board of trustees, vocational school district, educational services commission, jointure commission, county special services school district, community college, county college, or board or commission under the authority of the Commissioner of Education, the State Board of Education, or the New Jersey Commission on Higher Education.

"Majority representative" means the majority representative of the employees in a collective bargaining unit which is recognized or certified as the majority representative as the result of recognition or certification procedures under the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), or is voluntarily recognized by the employer.

"Commission" means the New Jersey Public Employment Relations Commission.

C.34:13A-33 Terms, conditions of employment under expired agreements.

3. Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative.

C.34:13A-34 Participation in mandatory fact finding; report; appointment of super conciliator.

4. a. In any case in which collective negotiations between an employer and a majority representative have failed to result in the parties reaching agreement on the terms of a negotiated agreement and the commission's mediation procedures have been exhausted with no final agreement having been reached, the parties shall be required to participate in mandatory fact finding, which shall be conducted by a fact finder under the jurisdiction of the commission, subject to procedures established by the commission pursuant to regulation. The fact finder shall be appointed no later than 30 days after the last meeting between the parties and the mediator in connection with the mediation pursuant to this act.

b. Following completion of such fact finding, the fact finder's report shall be made available to the parties immediately after its issuance, and to the public 10 days thereafter.

c. If the employer and the majority representative do not reach a voluntary negotiated agreement within 20 days after the issuance of the fact finder's report, the commission shall appoint a super conciliator to assist the parties, based upon procedures and subject to qualifications established by the commission pursuant to regulation.

C.34:13A-35 Investigatory proceedings.

5. The super conciliator shall promptly schedule investigatory proceedings. The purpose of the proceedings shall be to:

a. Investigate and acquire all relevant information regarding the dispute between the parties;

b. Discuss with the parties their differences, and utilize means and mechanisms, including but not limited to requiring 24-hour per day negotiations, until a voluntary settlement is reached, and provide recommendations to resolve the parties' differences;

c. Modify or amend the fact finder's report for reconsideration by the parties in a further

P.L. 2003, CHAPTER 126

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effort to achieve a voluntary settlement by the parties; and

d. Institute any other non-binding procedures deemed appropriate by the super conciliator.

C.34:13A-36 Final report.

6. If the actions taken by the super conciliator fail to resolve the dispute, the super conciliator shall issue a final report, which shall be provided to the parties promptly and made available to the public within 10 days thereafter.

C.34:13A-37 Confidentiality; exceptions.

7. The mediator, fact finder, or super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by him or to testify with regard to mediation conducted by him under this act. Nothing contained herein shall exempt an individual from disclosing information relating to the commission of a crime.

C.34:13A-38 Report to Governor, Legislature.

8. Five years after the effective date of this act, the commission shall submit a report to the Governor and to the Legislature on the effects of this act on the negotiations and settlement between school employees and their employers with any recommendations it may have for any changes in the law.

C.34:13A-39 Rules, regulations.

9. The commission, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) shall promulgate rules and regulations to effectuate the purposes of this act.

10. This act shall take effect immediately.

Approved July 10, 2003.

CHAPTER 12

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

Authority

N.J.S.A. 34:13A-6(b), 34:13A-5.4(c) and 34:13A-11.

Source and Effective Date

R.2006 d.285, effective July 14, 2006.
See: 38 N.J.R. 1559(a), 38 N.J.R. 3184(a).

Executive Order No. 66(1978) Expiration Date

Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding, Super Conciliation, and Grievance Arbitration, expires on July 14, 2011.

Chapter Historical Note

Chapter 12, originally Impasses, was filed and became effective prior to September 1, 1969. Subchapter 3, Arbitration, was replaced by a new Subchapter 3, Arbitration, by R.1974 d.345, effective December 18, 1974. See: 6 N.J.R. 457(b), 7 N.J.R. 35(c). Subchapter 1, Mediation, was repealed, and Subchapter 1, Purpose of Procedures, was adopted as emergency new rules, Subchapter 2, Fact-Finding, was repealed, and Subchapter 2, Commencement of Negotiations, was adopted as emergency new rules, Subchapter 3, Arbitration, was recodified as Subchapter 5, and Subchapter 3, Mediation, and Subchapter 4, Fact-Finding, were adopted as emergency new rules, by R.1975 d.10, effective January 20, 1975. See: 7 N.J.R. 78(a). Pursuant to Executive Order No. 66(1978), Chapter 12, Negotiations and Impasse Procedures, 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: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a). Pursuant to Executive Order No. 66(1978), Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding and Grievance Arbitration, was readopted as R.2001 d.214, effective June 4, 2001. See: 33 N.J.R. 1169(a), 33 N.J.R. 2281(a). Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding, Super Conciliation, and Grievance Arbitration, was readopted by R.2006 d.285, effective July 14, 2006. See: Source and Effective Date. See, also, section annotation.

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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).

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 reopener 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.

(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).
Amended by R.2001 d.214, effective July 2, 2001.
See: 33 N.J.R. 1169(a), 33 N.J.R. 2281(a).
Rewrote (b).

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, PO Box 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.

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

19:12-3.3 Mediator's function

The function of a mediator shall be to assist all parties to come to 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. In the absence of an agreement between the parties, the mediator, at any time after appointment, may recommend to the Director of Conciliation that fact-finding procedures should be invoked.

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

19:12-3.4 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 Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

Amended by R.1991 d.424, effective August 19, 1991.
See: 23 N.J.R. 1296(a), 23 N.J.R. 2524(a).

Reference to the New Jersey Employer-Employee Relations Act added.
Amended by R.1996 d.364, effective August 5, 1996.
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

19:12-3.5 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;
5. A recommendation as to whether or not the Director of Conciliation should invoke fact-finding with recommendations for settlement.

(b) The confidential report(s) submitted by the mediator may be utilized by the Director of Conciliation in considering whether or not fact-finding with recommendations for settlement should be invoked. Such reports shall not be considered in any other proceedings before the Commission or be made available or disclosed to any party or any other tribunal.

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

SUBCHAPTER 4. FACT-FINDING

19:12-4.1 Initiation of fact-finding

(a) Upon a mediator's report of a failure to resolve the impasse by mediation, the Director of Conciliation may invoke fact-finding with recommendations for settlement and appoint a fact-finder. The public employer, the employee representative, or the parties jointly, may request the Director of Conciliation, in writing, to invoke fact-finding. An original and four copies of such 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 exclusive 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. The name of the mediator;
4. The number and duration of mediation sessions;
5. The date of the last mediation effort;
6. The unresolved issues to be submitted to a fact-finder; and
7. Whether the request is a joint request.

(b) Forms for filing a petition to request a fact-finding will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 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 refuses to submit any of the issues listed on the request to invoke fact-finding on the ground that they are not within the required scope of negotiations; and
3. 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.

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

19:12-4.2 Appointment of fact-finder

(a) Upon the invocation of fact-finding pursuant to this subsection, 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 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 the foregoing 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 or employee of the Commission, a member of the Commission's fact-finding panel, or any other fact-finder, 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.

Amended by R.1986 d.354, effective September 8, 1986.
See 18 N.J.R. 1357(a), 18 N.J.R. 1838(c).
Amended by R.1996 d.364, effective August 5, 1996.
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

19:12-4.3 Fact-finder's function

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or other 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 his or her function.

(b) For the purposes 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, 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, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible.

(e) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties and the Director of Conciliation.

(f) All individually incurred costs shall be borne by the party incurring them. The cost of the services of the fact-finder, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, and any other necessary expenses of the fact-finding proceeding, shall be borne by the Commission unless mandated otherwise by subsequent legislation.

(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 try to reach an agreement. In the event of a continuing impasse, the Commission or the Director of Conciliation may take whatever steps are deemed expedient to effect a voluntary settlement of the impasse, including the appointment of a super conciliator.

Amended by R.1991 d.424, effective August 19, 1991.
See: 23 N.J.R. 1296(a), 23 N.J.R. 2524(a).

Confidentiality requirements added at (c).
Amended by R.1996 d.364, effective August 5, 1996.
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).
Amended by R.2004 d.30, effective January 20, 2004.
See: 35 N.J.R. 4049(a), 36 N.J.R. 531(b).

In (g), inserted "including the appointment of a super conciliator" at the end of the second sentence.

19:12-4.4 Appointment of a super conciliator

(a) In proceedings conducted pursuant to P.L. 2003, c.126 (N.J.S.A. 34:13A-31 et seq.), if the employer and the majority representative do not reach a voluntary negotiated agreement within 20 days after the issuance of the fact-finder's report, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation, in writing, to invoke super conciliation. An original and four copies of such 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 exclusive 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; and

3. Whether the request is a joint request.

(b) Forms for filing a petition to request a super conciliator will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c) The parties may jointly request the appointment of a particular super conciliator, subject to the approval of the Director of Conciliation. Absent an approved joint request, the Director shall designate a super conciliator.

(d) The super conciliator 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 or fact-finding panel, or any other super conciliator approved by the Director of Conciliation, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement. If an appointed super conciliator cannot proceed pursuant to the appointment, another super conciliator shall be appointed. The appointment of a super conciliator pursuant to this subchapter is not reviewable.

(e) The super conciliator shall have the authority to exercise the powers granted by P.L. 2003, c.126 to institute non-binding procedures deemed appropriate to resolve the parties' negotiations impasse.

(f) The super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by him or her or to testify with regard to mediation conducted under the Act. Nothing contained in this section shall exempt an individual from disclosing information relating to the commission of a crime.

New Rule, R.2004 d.30, effective January 20, 2004.
See: 35 N.J.R. 4049(a), 36 N.J.R. 531(b).

SUBCHAPTER 5. GRIEVANCE ARBITRATION

19:12-5.1 Function of the Commission

The Commission deems it in the interests of the public to maintain an arbitration panel whose members are available to assist in the arbitration of unresolved labor relations grievances. Arbitration of such disputes is governed by N.J.S.A. 2A:24-1 et seq., not N.J.S.A. 2A:23B-1 et seq., the statute applicable to arbitration of non-labor disputes. The availability of the Commission's arbitration service is intended to comply with the requirement of N.J.S.A. 2A:24-5 that the method for naming or appointing an arbitrator provided in the parties' agreement