

CHAPTER 16

**NEGOTIATIONS, IMPASSE PROCEDURES AND
COMPULSORY INTEREST ARBITRATION OF
LABOR DISPUTES IN PUBLIC FIRE AND
POLICE 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.2001 d.215, effective June 4, 2001.
See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on December 1, 2006. See: 38 N.J.R. 1561(a).

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, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was repealed by R.1977 d.272. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a), effective August 2, 1977.

Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was adopted as new rules by R.1977 d.349, effective September 16, 1977. See: 9 N.J.R. 350(a), 9 N.J.R. 497(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.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, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, 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: 28 N.J.R. 2801(a), 28 N.J.R. 4598(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.2001 d.215, effective June 4, 2001. See: Source and Effective Date. See, also, section annotations.

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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 conventional arbitration, as set forth in N.J.S.A. 34:13A-16d(2).

(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".

Amended by R.2001 d.215, effective July 2, 2001.
See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

In (c), substituted "conventional arbitration, as" for "the final offer procedure".

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, PO Box 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 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

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 N.J.A.C. 19:13. This petition must be filed within 14 days of receipt of the notice of filing of 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 14 days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

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

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

Rewrote (a).

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

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

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

In (a), substituted "14" for "seven" and "notice of filing" for "petition"; in (c), substituted "N.J.A.C. 19:13" for "chapter 13 of these rules", substituted "14" for "10" and inserted "the notice of filing of" in the second sentence; in (d), substituted "14" for "10" and inserted "the notice of filing of" in the second sentence.

Case Notes

The agreement to submit all unresolved issues to compulsory interest arbitration when a party fails to file a scope-of-negotiations petition

need not preclude a challenge to negotiability made after the arbitration when Public Employment Relations Commission (PERC) decides to consider the issue. *Township of Teaneck v. Teaneck Firemen's Mutual Benevolent Association Local No. 42*, 353 N.J.Super. 289, 802 A.2d 569.

19:16-5.6 Appointment of an arbitrator or panel of arbitrators

(a) The Commission shall maintain a special panel of interest arbitrators. Members of this panel shall be appointed for three-year terms following a screening process as set forth in N.J.S.A. 34:13A-16(e) and pursuant to the standards set forth in N.J.A.C. 19:16-5.15. Reappointments to the panel shall also be contingent upon a similar screening process. The arbitrators appointed pursuant to this subchapter shall be from this special panel. All arbitrators appointed by the Commission shall be considered officers of the Commission while performing duties pursuant to this subchapter. The Commission may suspend, remove, or otherwise discipline an arbitrator for violating the Police and Fire Public Interest Arbitration Reform Act or for good cause in accordance with the procedures set forth at N.J.A.C. 19:16-5.16. Any arbitrator who fails to attend the Commission's annual continuing education program under section 4 of the Police and Fire Public Interest Arbitration Reform Act may be removed from the special panel. Any arbitrator who fails to participate in the continuing education program for two consecutive years shall be removed.

(b) Within 17 days of the filing of a joint petition, or a non-petitioning party's receipt of a notice of filing, the parties shall notify the Director of Arbitration in writing of any mutual agreement to select an arbitrator from the special panel of arbitrators. The parties may also jointly request the appointment of a particular arbitrator who is not a member of the Commission's special panel, and the Director of Arbitration may approve the appointment of that arbitrator to the special panel for that particular arbitration.

(c) In the event that the parties have agreed to a tripartite panel of arbitrators, each party shall communicate in writing to the Director of Arbitration indicating the name, address and telephone number of the arbitration representative designed to the panel. In all such circumstances, the arbitrator appointed by the Director of Arbitration from the Commission's special panel of interest arbitrators shall serve as chairman of the arbitration panel. The arbitration representatives designated by each of the parties need not be members of the Commission's special panel, and shall not be considered officers of the Commission.

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

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

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

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

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

Rewrote section.

Amended by R.1996 d.326, effective July 15, 1996.
Sec: 28 N.J.R. 2346(a), 28 N.J.R. 3618(a).

Amended by R.1997 d.152, effective April 7, 1997.
Sec: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

In (a), inserted references to N.J.A.C. 19:16-5.15 and 19:16-5.16.
Amended by R.2001 d.215, effective July 2, 2001.

Sec: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

In (b), substituted "17" for "10", inserted "joint" preceding "petition", and inserted "or a non-petitioning party's receipt of a notice of filing," preceding "the parties shall".

Case Notes

With interest arbitration. Public Employment Relations Commission provided arbitrators who were required to apply specific uniform criteria and adhere to strict deadlines. *Policeman's Benevolent Association, Local 292 v. Borough of North Haledon*, 158 N.J. 292, 730 A.2d 320 (N.J. 1999).

19:16-5.7 Conduct of the arbitration proceeding

(a) The conduct of the arbitration proceeding by an arbitrator or panel of arbitrators shall be under the exclusive jurisdiction and control of the arbitrator or arbitrators.

(b) The appointed arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement at any time throughout formal arbitration proceedings.

(c) Information disclosed by a party to an arbitrator while functioning in a mediatory capacity shall not be divulged by the arbitrator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by an arbitrator while serving in a mediatory capacity shall be classified as confidential. The arbitrator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the arbitrator, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas and shall entertain any motions to quash such subpoenas. Any hearings conducted shall not be public unless all parties agree to have them public.

(e) Unless a terminal procedure has been mutually agreed to by the parties and approved by the Director of Arbitration, the procedure to provide finality for the resolution of unsettled issues shall be conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in N.J.S.A. 34:13A-16g.

(f) The arbitrator, after appointment, shall communicate with the parties to arrange for a mutually satisfactory date, time and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time and place for a hearing. The arbitrator shall submit a written notice containing arrangements for a hearing within a reasonable time period before hearing. At least 10 days before the hearing, the parties shall submit to the arbitrator or tripartite panel of arbitrators and to each other their final offers on each economic and noneconomic issue in dispute. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.

(g) The arbitrator's authority shall be limited to those issues which are within the required scope of negotiations, unless the parties have mutually agreed to submit issues to the arbitrator which involve permissive subjects of negotiation.

(h) The arbitrator shall be permitted to take evidence, but shall not render a decision on any issue which is the subject of a petition for a scope of negotiations determination filed with the Commission or on any issue which is the subject of an issue definition proceeding pursuant to N.J.A.C. 19:16-6.

(i) The arbitrator shall have the authority to grant adjournments for good cause shown upon either party's application or the arbitrator's own motion.

(j) The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.