

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 Chapter 16 was repealed by R.1977 d.272.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.

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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 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, 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 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;

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, PO Box 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.

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

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

Rewrote (a).

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

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

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

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

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

(c) In the event that the parties have agreed to a tripartite panel of arbitrators, each party shall communicate in writing to the Director of Arbitration indicating the name, address and telephone number of the arbitration representative 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 repre-

sentatives designated by each of the parties need not be members of the Commission's special panel, and shall not be considered officers of the Commission.

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

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

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

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

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

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

Rewrote section.

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

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

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

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

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

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, rec-

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

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

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

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

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

(h) The arbitrator shall be permitted to take evidence, but shall not render a decision on any issue which is the subject of a petition for a scope of negotiations determination filed with the Commission or on any issue which is the subject of an issue definition proceeding pursuant to N.J.A.C. 19:16-8.1 et seq.

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

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

(k) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not exceed 30 days from the close of the hearing. Briefs shall be submitted to the arbitrator along with submission of proof of service on all parties. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

Amended by R.1986, d.355, effective September 8, 1986.

See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).

Deleted text in (a) "issue definition pursuant" and substituted "issue definition proceeding pursuant"; also added to (k) "but brief period . . . of the hearing."

Petition for Rulemaking: Petitioner proposes that interest arbitration proceedings be public upon request of either the public employer or majority representative.

See: 21 N.J.R. 3567(a), 21 N.J.R. 3677(a), 22 N.J.R. 260(a).

Amended by R.1990 d.221, effective May 7, 1990.

See: 22 N.J.R. 330(a), 22 N.J.R. 1380(a).

Arbitrator's consent to public hearing removed.

Amended by R.1991 d.425, effective August 19, 1991.

See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Reference to the New Jersey Employer-Employee Relations Act added.

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

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

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

Last-offer alternative; encouraging parties to negotiate reasonably. *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 644 A.2d 564 (1994).

Deeming factor irrelevant in compulsory interest arbitration. *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 644 A.2d 564 (1994).

Production of evidence on each statutory factor. *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 644 A.2d 564 (1994).

"Financial impact on the governing unit, its residents and taxpayers," does not equate with municipality's ability to pay. *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 644 A.2d 564 (1994).

Consideration of wages and salaries in comparable areas of private employment. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Vacating award. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

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

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

Regulation upheld permitting revision of offers during hearing at arbitrator's discretion; meaning of "final offer" in statute. Newark Firemen's Mutual Benevolent Assn. v. Newark, 177 N.J.Super. 239, 426 A.2d 78 (App.Div.1981), affirmed 90 N.J. 44, 447 A.2d 130 (1982).

19:16-5.8 Stenographic record

A stenographic record shall not be a procedural requirement for the conduct of a hearing. However, any party shall have the right to a stenographic record taken of the arbitration proceeding. The arrangements for a stenographic record must be made by the requesting party after the appointment of the arbitrator. The cost of such record shall be paid by the party requesting it or divided equally between the parties if both make such a request. If a stenographic record is requested by either or both parties, the party or parties making the request shall provide at its/their cost a copy of a transcript to the arbitrator.

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

19:16-5.9 Opinion and award

If the impasse is not otherwise resolved, the arbitrator or arbitrators shall decide the dispute and issue a written opinion and award within 120 days of the Director of Arbitration's assignment of that arbitrator. The arbitrator or panel of arbitrators, for good cause, may petition the Director of Arbitration for an extension of not more than 60 days. The arbitrator shall notify the parties in writing of such a petition and the Director shall notify the parties and the arbitrator in writing of whether the petition has been granted or denied. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the Director of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this section may be subject to suspension, removal or discipline under N.J.A.C. 19:16-5.6. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16(g) which are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The opinion and award shall set forth the reasons for the result reached. Copies of the opinion and award shall be submitted directly to the Director of Arbitration who will then serve the parties simultaneously.

Amended by R.1986 d.355, effective September 8, 1986.
See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).

Deleted "as expeditiously as possible after the closing of hearing" and substituted "within 45 days after the filing of briefs"; also deleted served simultaneously on the parties of the commission" and substituted "submitted directly to . . . the parties simultaneously."

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

Rewrote section.

Case Notes

Arbitrator's opinion. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Deeming factor irrelevant in compulsory interest arbitration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Production of evidence on each statutory factor. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

"Financial impact on the governing unit, its residents and taxpayers;" does not equate with municipality's ability to pay. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Consideration of wages and salaries in comparable areas of private employment. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Vacating award. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994).

Borough should not have been required to show substantially detrimental result from adopting union's offer. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Parties to public interest arbitration are required to submit evidence on all statutory factors. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Comparison with police salary increases in other municipalities was not dispositive of comparison factor for public interest arbitration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Cost of living factor was relevant in police officer public interest arbitration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Arbitrators are required to give weight to the statutory factors in public sector arbitration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Arbitrators in public interest arbitrations are required to discuss relevant and irrelevant factors and provide analysis. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Arbitrator was required to relate implication of arbitration award on other municipal budget items. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

Inadequacy of consideration of statutory factors warranted remand of public interest arbitration award. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 622 A.2d 872 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, affirmed in part, reversed in part 137 N.J. 71, 644 A.2d 564, affirmed as modified 137 N.J. 88, 644 A.2d 573.

19:16-5.10 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes

The arbitrator shall be guided by the objectives and principles set forth in the "Code of Professional Responsi-

bility for Arbitrators of Labor-Management Disputes” of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

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

19:16-5.11 Cost of arbitration

(a) The costs of services performed by the arbitrator shall be borne equally by the parties in accordance with the following fee schedule:

1. For arbitrators assigned by lot, pursuant to N.J.S.A. 34:13A-16e(1), the fee shall be \$800.00 per day;

2. For arbitrators mutually selected by the parties, the fee shall be a per diem rate, not to exceed \$1,000 per day, set by the arbitrator and filed with the Director of Arbitration.

(b) Should the parties use an arbitration panel with an appointee of each of the parties, as permitted by N.J.A.C. 19:16-5.6(c), each appointee's fee shall be paid by the party making the appointment. The costs of the services of the special panel member who chairs the panel shall be borne equally by the parties. The fee for the chair of the panel shall be as set forth in (a)1 or 2 above, depending on whether the arbitrator is assigned by lot or mutually selected by the parties.

Amended by R.1998 d.156, effective April 6, 1998.
See: 30 N.J.R. 29(a), 30 N.J.R. 1303(a).

Rewrote the section.

19:16-5.12 Fees for filing and processing interest arbitration petitions

At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a \$150.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a \$150.00 fee upon filing the petition and the non-petitioning party shall pay a \$150.00 fee upon filing its response to the petition pursuant to N.J.A.C. 19:16-5.5. Fees shall be paid by checks made payable to the “State of New Jersey”; purchase orders may be submitted.

New Rule, R.1996 d.275, effective June 17, 1996.
See: 28 N.J.R. 1610(a), 28 N.J.R. 3174(a).

19:16-5.13 Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a \$135.00 fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a \$135.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or ruling, the party shall pay a \$25.00 fee. Fees shall be paid by checks made payable to the “State of New Jersey”; purchase orders may be submitted.

New Rule, R.1996 d.275, effective June 17, 1996.
See: 28 N.J.R. 1610(a), 28 N.J.R. 3174(a).
Amended by R.1997 d.221, effective May 19, 1997.
See: 29 N.J.R. 857(a), 29 N.J.R. 2467(c).

Amended the section name and inserted the third sentence.

19:16-5.14 Comparability guidelines

(a) N.J.S.A. 34:13A-16g identifies eight factors that an interest arbitrator must consider in reviewing the parties' proposals. The arbitrator must indicate which of the factors listed in that subsection are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor. N.J.S.A. 34:13A-16g(2)(c) lists as a factor “public employment in the same or similar comparable jurisdictions...” Subsection a of section 5 of P.L. 1995, c.425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

(b) The guidelines set forth in (c) and (d) below are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. The guidelines are intended to be instructive but not exhaustive. The arbitrator shall consider any and all evidence submitted pursuant to the comparability guidelines and shall apply these guidelines in addressing the comparability criterion.

1. The Public Employment Relations Commission recognizes that the extent to which a party to an arbitration proceeding asserts that comparisons to public employment in the same or similar comparable jurisdictions are relevant to that proceeding is a matter to be determined by that party. The Commission also recognizes that it is the responsibility of each party to submit evidence and argument with respect to the weight to be accorded any such evidence.

2. The Commission further recognizes that it is the arbitrator's responsibility to consider all the evidence submitted and to determine the weight of any evidence submitted based upon the guidelines in (c) and (d) below and to determine the relevance or lack of relevance of comparability in relationship to all eight factors set forth in N.J.S.A. 34:13A-16g. Promulgation of these guidelines is not intended to require that any party submit evidence on all or any of the elements set forth in (c) and (d) below or assert that the comparability factor should or should not be deemed relevant or accorded any particular weight in any arbitration proceeding. Nothing in this section shall preclude the arbitrator from supplementing the factual record by issuing subpoenas to require the attendance of witnesses and the production of documents. Nor does anything in this section prevent the arbitrator from requesting the parties to supplement their presentations in connection with this factor or any other factor set forth in the law.

(c) The following are comparability considerations within the same jurisdiction:

1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;
2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;
3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;

4. History of negotiations:

i. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and

ii. History of differentials between uniformed and non-uniformed employees;

5. Pattern of salary and benefit changes; and

(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.