

# ASSEMBLY, No. 3075

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 28, 2010

**Sponsored by:**

**Assemblyman GARY R. CHIUSANO**

**District 24 (Sussex, Hunterdon and Morris)**

**SYNOPSIS**

Implements Governor's "Tool Kit" proposals for public employer – public employee collective bargaining.

**CURRENT VERSION OF TEXT**

As introduced.

WITHDRAWN



A3075 CHIUSANO

2

1 AN ACT concerning public employer-public employee arbitration in  
2 certain cases, and amending P.L.1968, c.303 and P.L.1977, c.85.

3

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

6

7 1. Section 7 of P.L.1968, c.303 (C.34:13A-5.3) is amended to  
8 read as follows:

9 7. a. Except as hereinafter provided, public employees shall  
10 have, and shall be protected in the exercise of, the right, freely and  
11 without fear of penalty or reprisal, to form, join and assist any  
12 employee organization or to refrain from any such activity;  
13 provided, however, that this right shall not extend to elected  
14 officials, members of boards and commissions, managerial  
15 executives, or confidential employees, except in a school district the  
16 term managerial executive shall mean the superintendent of schools  
17 or his equivalent, nor, except where established practice, prior  
18 agreement or special circumstances dictate the contrary, shall any  
19 supervisor having the power to hire, discharge, discipline, or to  
20 effectively recommend the same, have the right to be represented in  
21 collective negotiations by an employee organization that admits  
22 nonsupervisory personnel to membership, and the fact that any  
23 organization has such supervisory employees as members shall not  
24 deny the right of that organization to represent the appropriate unit  
25 in collective negotiations; and provided further, that, except where  
26 established practice, prior agreement, or special circumstances  
27 dictate the contrary, no policeman shall have the right to join an  
28 employee organization that admits employees other than policemen  
29 to membership. The negotiating unit shall be defined with due  
30 regard for the community of interest among the employees  
31 concerned, but the commission shall not intervene in matters of  
32 recognition and unit definition except in the event of a dispute.

33 Representatives designated or selected by public employees for  
34 the purposes of collective negotiation by the majority of the  
35 employees in a unit appropriate for such purposes, by the majority  
36 of the employees voting in an election conducted by the  
37 commission as authorized by this act or, at the option of the  
38 representative in a case in which the commission finds that only one  
39 representative is seeking to be the majority representative, by a  
40 majority of the employees in the unit signing authorization cards  
41 indicating their preference for that representative, shall be the  
42 exclusive representatives for collective negotiation concerning the  
43 terms and conditions of employment of the employees in such unit.  
44 An authorization card indicating preference shall not be valid unless

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 it is printed in a language understood by the employees who signs  
2 it.

3 Nothing herein shall be construed to prevent any official from  
4 meeting with an employee organization for the purpose of hearing  
5 the views and requests of its members in such unit so long as (a) the  
6 majority representative is informed of the meeting; (b) any changes  
7 or modifications in terms and conditions of employment are made  
8 only through negotiation with the majority representative; and (c) a  
9 minority organization shall not present or process grievances.  
10 Nothing herein shall be construed to deny to any individual  
11 employee his rights under Civil Service laws or regulations. When  
12 no majority representative has been selected as the bargaining agent  
13 for the unit of which an individual employee is a part, he may  
14 present his own grievance either personally or through an  
15 appropriate representative or an organization of which he is a  
16 member and have such grievance adjusted.

17 b. A majority representative of public employees in an  
18 appropriate unit shall be entitled to act for and to negotiate  
19 agreements covering all employees in the unit and shall be  
20 responsible for representing the interest of all such employees  
21 without discrimination and without regard to employee organization  
22 membership. Proposed new rules or modifications of existing rules  
23 governing working conditions shall be negotiated with the majority  
24 representative before they are established. In addition, the majority  
25 representative and designated representatives of the public  
26 employer shall meet at reasonable times and negotiate in good faith  
27 with respect to grievances, disciplinary disputes, and other terms  
28 and conditions of employment. Nothing herein shall be construed  
29 as permitting negotiation of the standards or criteria for employee  
30 performance.

31 When an agreement is reached on the terms and conditions of  
32 employment, it shall be embodied in writing and signed by the  
33 authorized representatives of the public employer and the majority  
34 representative.

35 Whenever the public employer and the majority representative of  
36 public employees are unable to reach an agreement concerning the  
37 terms and conditions of employment through direct negotiation, the  
38 commission shall provide for the impartial selection of a mediator,  
39 factfinder, and arbitrator, as is necessary, from its panels. In the  
40 case of an arbitrator, the commission shall randomly select three  
41 names from its special panel of arbitrators and submit them to the  
42 parties. If the parties fail to mutually agree upon the selection of an  
43 arbitrator from the list of three within 10 days of their receipt of the  
44 list of names from the commission, the commission shall select the  
45 arbitrator for assignment by lot.

46 In any proceeding where an arbitrator selected by mutual  
47 agreement is unable to serve, the commission shall randomly select  
48 three names from its special panel of arbitrators and submit them to  
49 the parties. If the parties fail to mutually agree upon the selection

1 of an arbitrator from the list of three within 10 days of their receipt  
2 of the list of names from the commission, the commission shall  
3 select the arbitrator for assignment by lot.

4 In any proceeding where an assigned arbitrator is unable to  
5 serve, the commission shall randomly select three names from its  
6 special panel of arbitrators and submit them to the parties. If the  
7 parties fail to mutually agree upon the selection of an arbitrator  
8 from the list of three within 10 days of their receipt of the list of  
9 names from the commission, the commission shall select the  
10 replacement arbitrator for assignment by lot.

11 (1) No public employer or exclusive representative of public  
12 employees shall enter into a collective agreement concerning the  
13 terms and conditions of employment which, on an annual basis,  
14 exceeds an amount equal to 2.5 percent more than the aggregate  
15 expended by the public employer on economic issues for the  
16 members of the affected employee organization in the immediately  
17 preceding employment year. For the purposes of this paragraph,  
18 economic issues shall include wages, salaries, hours in relation to  
19 earnings, and other forms of compensation such as paid vacation,  
20 paid holidays, health and medical insurance and other economic  
21 benefits accruing to the employees represented by the affected  
22 employee organization.

23 (2) No mediator, factfinder, or arbitrator assigned by the  
24 commission shall recommend or award any collective negotiation  
25 settlement or agreement which exceeds the limitation set forth in  
26 paragraph (1) of this subsection.

27 (3) When deciding an award, the arbitrator shall base the  
28 decision on a reasonable determination of the issues, giving due  
29 weight to those factors listed below that are judged relevant for the  
30 resolution of the specific dispute. In the award, the arbitrator shall  
31 indicate which of the following factors are deemed relevant,  
32 satisfactorily explain why the others are not relevant, and provide  
33 an analysis of the evidence on each relevant factor:

34 (a) The interests and welfare of the public. Among the items  
35 the arbitrator deciding a dispute between a local government  
36 employer and the public employees of that local unit shall assess  
37 when considering this factor are the limitations imposed upon the  
38 employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

39 (b) Comparison of the wages, salaries, hours, and conditions of  
40 employment of the employees involved in the arbitration  
41 proceedings with the wages, hours, and conditions of employment  
42 of other employees performing the same or similar services and  
43 with other employees generally:

44 (i) In private employment in general; provided, however, each  
45 party shall have the right to submit additional evidence for the  
46 arbitrator's consideration.

47 (ii) In public employment in general; provided, however, each  
48 party shall have the right to submit additional evidence for the  
49 arbitrator's consideration.

1       (iii) In disputes between a local government employer and the  
2 public employees of that local unit, a comparison in public  
3 employment in the same or similar comparable jurisdictions, as  
4 determined in accordance with section 5 of P.L.1995, c.425  
5 (C.34:13A-16.2); provided, however, that each party shall have the  
6 right to submit additional evidence concerning the comparability of  
7 jurisdictions for the arbitrator's consideration.

8       (c) The overall compensation presently received by the  
9 employees, inclusive of direct wages, salary, vacations, holidays,  
10 excused leaves, insurance and pensions, medical and hospitalization  
11 benefits, and all other economic benefits received.

12       (d) Stipulations of the parties.

13       (e) The lawful authority of the employer. Among the items an  
14 arbitrator deciding a dispute between a local government employer  
15 and the public employees of that local unit shall assess when  
16 considering this factor are the limitations imposed upon the  
17 employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

18       (f) The financial impact on the governing unit, its residents and  
19 taxpayers. When considering this factor in a dispute in which the  
20 public employer is a county or municipality, the arbitrator shall take  
21 into account, to the extent that evidence is introduced, how the  
22 award will affect the municipal or county purposes element, as the  
23 case may be, of the local property tax; a comparison of the  
24 percentage of the municipal purposes element or, in the case of a  
25 county, the county purposes element, required to fund the  
26 employees' contract in the preceding local budget year with that  
27 required under the award for the current local budget year; the  
28 impact of the award for each income sector of the property  
29 taxpayers of the local unit; the impact of the award on the ability of  
30 the governing body to: (a) maintain existing local programs and  
31 services, (b) expand existing local programs and services for which  
32 public moneys have been designated by the governing body in a  
33 proposed local budget, or (c) initiate any new programs and services  
34 for which public moneys have been designated by the governing  
35 body in a proposed local budget.

36       (g) The cost of living.

37       (h) The continuity and stability of employment including  
38 seniority rights and such other factors not confined to the foregoing  
39 which are ordinarily or traditionally considered in the determination  
40 of wages, hours, and conditions of employment through collective  
41 negotiations and collective bargaining between the parties in the  
42 public service and in private employment.

43       (i) Statutory restrictions imposed on the employer. Among the  
44 items an arbitrator in a dispute between a local government  
45 employer and the public employees of that local unit shall assess  
46 when considering this factor are the limitations imposed upon the  
47 employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

48       Public employers shall negotiate written policies setting forth  
49 grievance and disciplinary review procedures by means of which

1 their employees or representatives of employees may appeal the  
2 interpretation, application or violation of policies, agreements, and  
3 administrative decisions, including disciplinary determinations,  
4 affecting them, provided that such grievance and disciplinary  
5 review procedures shall be included in any agreement entered into  
6 between the public employer and the representative organization.  
7 Such grievance and disciplinary review procedures may provide for  
8 binding arbitration as a means for resolving disputes. Except as  
9 otherwise provided herein, the procedures agreed to by the parties  
10 may not replace or be inconsistent with any alternate statutory  
11 appeal procedure nor may they provide for binding arbitration of  
12 disputes involving the discipline of employees with statutory  
13 protection under tenure or civil service laws, except that such  
14 procedures may provide for binding arbitration of disputes  
15 involving the minor discipline of any public employees protected  
16 under the provisions of section 7 of P.L.1968, c.303 (C.34:13A-  
17 5.3), other than public employees subject to discipline pursuant to  
18 R.S.53:1-10. Grievance and disciplinary review procedures  
19 established by agreement between the public employer and the  
20 representative organization shall be utilized for any dispute covered  
21 by the terms of such agreement. For the purposes of this section,  
22 minor discipline shall mean a suspension or fine of less than five  
23 days unless the employee has been suspended or fined an aggregate  
24 of 15 or more days or received more than three suspensions or fines  
25 of five days or less in one calendar year.

26 Where the State of New Jersey and the majority representative  
27 have agreed to a disciplinary review procedure that provides for  
28 binding arbitration of disputes involving the major discipline of any  
29 public employee protected under the provisions of this section,  
30 other than public employees subject to discipline pursuant to  
31 R.S.53:1-10, the grievance and disciplinary review procedures  
32 established by agreement between the State of New Jersey and the  
33 majority representative shall be utilized for any dispute covered by  
34 the terms of such agreement. For the purposes of this section, major  
35 discipline shall mean a removal, disciplinary demotion, suspension  
36 or fine of more than five days, or less where the aggregate number  
37 of days suspended or fined in any one calendar year is 15 or more  
38 days or unless the employee received more than three suspensions  
39 or fines of five days or less in one calendar year.

40 In interpreting the meaning and extent of a provision of a  
41 collective negotiation agreement providing for grievance  
42 arbitration, a court or agency shall be bound by a presumption in  
43 favor of arbitration. Doubts as to the scope of an arbitration clause  
44 shall be resolved in favor of requiring arbitration. The commission  
45 shall take measures to assure the impartial selection of an arbitrator  
46 for grievance arbitration and Special Disciplinary Arbitration from  
47 its special panel of arbitrators. The commission shall randomly  
48 select three names from its special panel of arbitrators and submit  
49 them to the parties. If the parties fail to mutually agree upon the

1 selection of an arbitrator from the list of three within 10 days of  
2 their receipt of the list of names from the commission, the  
3 commission shall select the arbitrator for assignment by lot.

4 In any proceeding where an arbitrator selected by mutual  
5 agreement is unable to serve, the commission shall randomly select  
6 three names from its special panel of arbitrators and submit them to  
7 the parties. If the parties fail to mutually agree upon the selection  
8 of an arbitrator from the list of three within 10 days of their receipt  
9 of the list of names from the commission, the commission shall  
10 select the arbitrator for assignment by lot.

11 In any proceeding where an assigned arbitrator is unable to  
12 serve, the commission shall randomly select three names from its  
13 special panel of arbitrators and submit them to the parties. If the  
14 parties fail to mutually agree upon the selection of an arbitrator  
15 from the list of three within 10 days of their receipt of the list of  
16 names from the commission, the commission shall select the  
17 replacement arbitrator for assignment by lot.

18 c. The parties shall share equally the costs of arbitration  
19 entered into under this section subject to a fee schedule approved by  
20 the commission.

21 The fee schedule shall provide that the costs of services provided  
22 by the arbitrator, be it a grievance arbitration or one concerning the  
23 terms and conditions of employment, shall not exceed \$1,000 per  
24 day. The commission may increase this fee by an amount not to  
25 exceed 2.5 percent biennially.

26 If the parties cancel an arbitration procedure at least 15 days, but  
27 less than 31 days prior to its scheduled commencement, the  
28 commission may impose a fee of not more than \$500. The parties  
29 shall share equally in paying that fee.

30 If the parties cancel an arbitration procedure more than 30 days  
31 prior to its scheduled commencement, the commission shall impose  
32 no fee.

33 d. Applicants for appointment to the commission's special  
34 panel of arbitrators shall be chosen based on their professional  
35 qualifications, knowledge, and experience, in accordance with the  
36 criteria and rules adopted by the commission.

37 e. Arbitrators serving on the commission's special panel shall  
38 be guided by and subject to the objectives and principles set forth in  
39 the "Code of Professional Responsibility for Arbitrators of Labor-  
40 Management Disputes" of the National Academy of Arbitrators,  
41 The American Arbitration Association, and the Federal Mediation  
42 and Conciliation Service.

43 f. Within 90 days of the effective date of P.L. , c. (C. )  
44 (pending before the Legislature as this bill), the commission shall  
45 adopt rules and regulations consistent with the ethical standards,  
46 disclosure requirements, and limits on contributions to candidates,  
47 political parties and committees otherwise set forth in law. A  
48 person violating those rules and regulations shall not be eligible for  
49 appointment to the commission's special panel of arbitrators. Any

1 member of the commission's special panel of arbitrators who  
2 violates those rules and regulations shall be removed from the  
3 special panel.

4 (cf: P.L.2005, c.380, s.1)

5

6 2. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to  
7 read as follows:

8 3. a. (1) Negotiations between a public fire or police  
9 department and an exclusive representative concerning the terms  
10 and conditions of employment shall begin at least 120 days prior to  
11 the day on which their collective negotiation agreement is to expire.  
12 The parties shall meet at least three times during that 120-day  
13 period. The first of those three meetings shall take place no later  
14 than the 90th day prior to the day on which their collective  
15 negotiation agreement is to expire. By mutual consent, the parties  
16 may agree to extend the period during which the second and third  
17 meetings are required to take place beyond the day on which their  
18 collective negotiation agreement is to expire. A violation of this  
19 paragraph shall constitute an unfair practice and the violator shall  
20 be subject to the penalties prescribed by the commission pursuant to  
21 rule and regulation.

22 (2) Whenever those negotiations concerning the terms and  
23 conditions of employment shall reach an impasse, the commission,  
24 through the Division of Public Employment Relations shall, upon  
25 the request of either party, or upon its own motion take such steps,  
26 including the assignment of a mediator, as it may deem expedient to  
27 effect a voluntary resolution of the impasse.

28 b. (1) In the event of a failure to resolve the impasse by  
29 mediation, the Division of Public Employment Relations, at the  
30 request of either party, shall invoke factfinding with  
31 recommendation for settlement of all issues in dispute unless the  
32 parties reach a voluntary settlement prior to the issuance of the  
33 factfinder's report and recommended terms of settlement.  
34 Factfindings shall be limited to those issues that are within the  
35 required scope of negotiations unless the parties to the factfinding  
36 agree to factfinding on permissive subjects of negotiation. In the  
37 event of a continuing failure to resolve an impasse by means of the  
38 procedure set forth in this paragraph, and notwithstanding the fact  
39 that such procedures have not been exhausted, the parties shall  
40 notify the commission, at a time and in a manner prescribed by the  
41 commission, as to whether or not they have agreed upon a terminal  
42 procedure for resolving the issues in dispute. Any terminal  
43 procedure mutually agreed upon by the parties shall be reduced to  
44 writing, provide for finality in resolving the issues in dispute, and  
45 shall be submitted to the commission for approval.

46 (2) Notwithstanding the provisions of paragraph (2) of  
47 subsection a. of this section or paragraph (1) of this subsection,  
48 either party may petition the commission for arbitration on or after  
49 the date on which their collective negotiation agreement expires.

1 The petition shall be filed in a manner and form prescribed by the  
2 commission. The party filing the petition shall notify the other  
3 party of its action. The notice shall be given in a manner and form  
4 prescribed by the commission.

5 Within 10 days of the receipt of the notice by the non-petitioning  
6 party, the parties shall notify the commission as to whether or not  
7 they have agreed upon a terminal procedure for resolving the issues  
8 in dispute. Any terminal procedure mutually agreed upon by the  
9 parties shall be reduced to writing, provide for finality in resolving  
10 the issues in dispute, and shall be submitted to the commission for  
11 approval. If the parties fail to agree on a terminal procedure, they  
12 shall be subject to the provisions of subsection d. of this section.

13 c. Terminal procedures that are approvable include, but shall  
14 not be limited to the following:

15 (1) Conventional arbitration of all unsettled items.

16 (2) Arbitration under which the award by an arbitrator or panel  
17 of arbitrators is confined to a choice between (a) the last offer of the  
18 employer and (b) the last offer of the employees' representative, as  
19 a single package.

20 (3) Arbitration under which the award is confined to a choice  
21 between (a) the last offer of the employer and (b) the last offer of  
22 the employees' representative, on each issue in dispute, with the  
23 decision on an issue-by-issue basis.

24 (4) If there is a factfinder's report with recommendations on the  
25 issues in dispute, the parties may agree to arbitration under which  
26 the award would be confined to a choice among three positions: (a)  
27 the last offer of the employer as a single package, (b) the last offer  
28 of the employees' representative as a single package, or (c) the  
29 factfinder's recommendations as a single package.

30 (5) If there is a factfinder's report with a recommendation on  
31 each of the issues in dispute, the parties may agree to arbitration  
32 under which the award would be confined to a choice on each issue  
33 from among three positions: (a) the last offer of the employer on  
34 the issue, (b) the employee representative's last offer on the issue,  
35 or (c) the factfinder's recommendation on the issue.

36 (6) Arbitration under which the award on the economic issues in  
37 dispute is confined to a choice between (a) the last offer of the  
38 employer on the economic issues as a single package and (b) the  
39 employee representative's last offer on the economic issues as a  
40 single package; and, on any noneconomic issues in dispute, the  
41 award is confined to a choice between (a) the last offer of the  
42 employer on each issue in dispute and (b) the employee  
43 representative's last offer on that issue.

44 d. The following procedure shall be utilized if parties fail to  
45 agree on a terminal procedure for the settlement of an impasse  
46 dispute:

47 (1) In the event of a failure of the parties to agree upon an  
48 acceptable terminal procedure the parties shall separately so notify  
49 the commission in writing, indicating all issues in dispute and the

1 reasons for their inability to agree on the procedure. The substance  
2 of a written notification shall not provide the basis for any delay in  
3 effectuating the provisions of this subsection.

4 (2) Upon receipt of such notification from either party or on the  
5 commission's own motion, the procedure to provide finality for the  
6 resolution of issues in dispute shall be binding arbitration under  
7 which the award on the unsettled issues is determined by  
8 conventional arbitration. The arbitrator shall separately determine  
9 whether the total net annual economic changes for each year of the  
10 agreement are reasonable under the nine statutory criteria set forth  
11 in subsection g. of this section.

12 e. (1) The commission shall take measures to assure the  
13 impartial selection of an arbitrator or arbitrators from its special  
14 panel of arbitrators. [Unless the parties, in a time and manner  
15 prescribed by the commission, mutually agree upon the selection of  
16 an arbitrator from the commission's special panel of arbitrators and  
17 so notify the commission in writing of that selection, the  
18 assignment of any arbitrator for the purposes of this act shall be the  
19 responsibility of the commission, independent of and without any  
20 participation by either of the parties.] The commission shall  
21 randomly select three names from its special panel of arbitrators  
22 and submit them to the parties. If the parties fail to mutually agree  
23 upon the selection of an arbitrator from the list of three within 10  
24 days of their receipt of the list of names from the commission, the  
25 commission shall select the arbitrator for assignment by lot.

26 In any proceeding where an arbitrator selected by mutual  
27 agreement is unable to serve, [the two parties shall be afforded an  
28 opportunity to select a replacement. If the two parties are unable to  
29 mutually agree upon the selection of a replacement within a time  
30 period prescribed by the commission,] the commission shall [select  
31 the replacement in the manner hereinafter provided] randomly  
32 select three names from its special panel of arbitrators and submit  
33 them to the parties. If the parties fail to mutually agree upon the  
34 selection of an arbitrator from the list of three within 10 days of  
35 their receipt of the list of names from the commission, the  
36 commission shall select the arbitrator for assignment by lot.

37 In any proceeding where an assigned arbitrator is unable to serve  
38 [or, pursuant to the preceding paragraph, the two parties are unable  
39 to mutually agree upon a replacement, the commission shall assign  
40 a replacement arbitrator. The assignment shall be the responsibility  
41 of the commission, independent of and without any participation by  
42 either parties. The] , the commission shall randomly select three  
43 names from its special panel of arbitrators and submit them to the  
44 parties. If the parties fail to mutually agree upon the selection of an  
45 arbitrator from the list of three within 10 days of their receipt of the  
46 list of names from the commission, the commission shall select the  
47 replacement arbitrator for assignment by lot.

1       (2) Applicants for initial appointment to the commission's  
2 special panel of arbitrators shall be chosen based on their  
3 professional qualifications, knowledge, and experience, in  
4 accordance with the criteria and rules adopted by the commission.  
5 Appointment to the commission's special panel of arbitrators shall  
6 be for a three-year term, with reappointment contingent upon a  
7 screening process similar to that used for determining initial  
8 appointments.

9       (3) Arbitrators serving on the commission's special panel shall  
10 be guided by and subject to the objectives and principles set forth in  
11 the "Code of Professional Responsibility for Arbitrators of Labor-  
12 Management Disputes" of the National Academy of Arbitrators,  
13 The American Arbitration Association, and the Federal Mediation  
14 and Conciliation Service.

15       (4) Within 90 days of the effective date of P.L. , c. (C. )  
16 (pending before the Legislature as this bill), the commission shall  
17 adopt rules and regulations consistent with the ethical standards,  
18 disclosure requirements, and limits on contributions to candidates,  
19 political parties and committees otherwise set forth in law. A  
20 person violating those rules and regulations shall not be eligible for  
21 appointment to the commission's special panel of arbitrators. Any  
22 member of the commission's special panel of arbitrators who  
23 violates those rules and regulations shall be removed from the  
24 special panel.

25       The commission may suspend, remove, or otherwise discipline  
26 an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.),  
27 section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause.

28       f. (1) At a time prescribed by the commission, the parties shall  
29 submit to the arbitrator or tripartite panel of arbitrators their final  
30 offers on each economic and non-economic issue in dispute. The  
31 offers submitted pursuant to this section shall be used by the  
32 arbitrator for the purposes of determining an award pursuant to  
33 paragraph (2) of subsection d. of this section. The commission  
34 shall promulgate rules and procedures governing the submission of  
35 the offers required under this paragraph, including when those  
36 offers shall be deemed final, binding and irreversible.

37       (2) In the event of a dispute, the commission shall have the  
38 power to decide which issues are economic issues. Economic  
39 issues include those items which have a direct relation to employee  
40 income including wages, salaries, hours in relation to earnings, and  
41 other forms of compensation such as paid vacation, paid holidays,  
42 health and medical insurance, and other economic benefits to  
43 employees.

44       (3) Throughout formal arbitration proceedings the chosen  
45 arbitrator or panel of arbitrators may mediate or assist the parties in  
46 reaching a mutually agreeable settlement.

47       (4) Arbitration shall be limited to those subjects that are within  
48 the required scope of collective negotiations, except that the parties

1 may agree to submit to arbitration one or more permissive subjects  
2 of negotiation.

3 (5) The decision of an arbitrator or panel of arbitrators shall  
4 include an opinion and an award, and shall be rendered within 120  
5 days of the selection of the arbitrator by the mutual agreement of  
6 both parties or the commission's assignment of that arbitrator or  
7 panel of arbitrators, as the case may be, pursuant to paragraph (1) of  
8 subsection e. of this section; provided, however, the arbitrator or  
9 panel of arbitrators, for good cause, may petition the commission  
10 for an extension of not more than 60 days. The two parties, by  
11 mutual consent, may agree to an extension. The parties shall notify  
12 the arbitrator and the commission of any such agreement in writing.  
13 The notice shall set forth the specific date on which the extension  
14 shall expire. Any arbitrator or panel of arbitrators violating the  
15 provisions of this paragraph may be subject to the commission's  
16 powers under paragraph (2) of subsection e. of this section. The  
17 decision shall be final and binding upon the parties and shall be  
18 irreversible, except:

19 (a) Within 14 days of receiving an award, an aggrieved party  
20 may file notice of an appeal of an award to the commission on the  
21 grounds that the arbitrator failed to apply the criteria specified in  
22 subsection g. of this section or violated the standards set forth in  
23 N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form  
24 and manner prescribed by the commission. In deciding an appeal,  
25 the commission, pursuant to rule and regulation and upon petition,  
26 may afford the parties the opportunity to present oral arguments.  
27 The commission may affirm, modify, correct or vacate the award or  
28 may, at its discretion, remand the award to the same arbitrator or to  
29 another arbitrator, selected by lot, for reconsideration. An  
30 aggrieved party may appeal a decision of the commission to the  
31 Appellate Division of the Superior Court.

32 (b) An award that is not appealed to the commission shall be  
33 implemented immediately. An award that is appealed and not set  
34 aside by the commission shall be implemented within 14 days of the  
35 receipt of the commission's decision absent a stay.

36 (6) The parties shall **[bear]** share equally the costs of arbitration  
37 subject to a fee schedule approved by the commission. The fee  
38 schedule shall provide that the costs of services provided by the  
39 arbitrator, be it an interest or grievance arbitration case, shall not  
40 exceed \$1,000 per day. The commission may increase this fee by  
41 an amount not to exceed 2.5 percent biennially.

42 If the parties cancel an arbitration procedure at least 15 days, but  
43 less than 31 days prior to its scheduled commencement, the  
44 commission may impose a fee of not more than \$500. The parties  
45 shall share equally in paying that fee.

46 If the parties cancel an arbitration procedure more than 30 days  
47 prior to its scheduled commencement, the commission shall impose  
48 no fee.

1 g. The arbitrator or panel of arbitrators shall decide the dispute  
2 based on a reasonable determination of the issues, giving due  
3 weight to those factors listed below that are judged relevant for the  
4 resolution of the specific dispute. In the award, the arbitrator or  
5 panel of arbitrators shall indicate which of the factors are deemed  
6 relevant, satisfactorily explain why the others are not relevant, and  
7 provide an analysis of the evidence on each relevant factor;  
8 provided, however, that the arbitrator or panel of arbitrators shall  
9 not render any award, and no public employer or exclusive  
10 representative of public employees shall enter into any agreement,  
11 which, on an annual basis, exceeds an amount equal to 2.5 percent  
12 more than of the aggregate expended by the public employer on  
13 economic issues for the members of the affected employee  
14 organization in the immediately preceding employment year. For  
15 the purposes of this paragraph, economic issues shall include  
16 wages, salaries, hours in relation to earnings, and other forms of  
17 compensation such as paid vacation, paid holidays, health and  
18 medical insurance and other economic benefits accruing to the  
19 employees represented by the affected employee organization:

20 (1) The interests and welfare of the public. Among the items  
21 the arbitrator or panel of arbitrators shall assess when considering  
22 this factor are the limitations imposed upon the employer by  
23 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

24 (2) Comparison of the wages, salaries, hours, and conditions of  
25 employment of the employees involved in the arbitration  
26 proceedings with the wages, hours, and conditions of employment  
27 of other employees performing the same or similar services and  
28 with other employees generally:

29 (a) In private employment in general; provided, however, each  
30 party shall have the right to submit additional evidence for the  
31 arbitrator's consideration.

32 (b) In public employment in general; provided, however, each  
33 party shall have the right to submit additional evidence for the  
34 arbitrator's consideration.

35 (c) In public employment in the same or similar comparable  
36 jurisdictions, as determined in accordance with section 5 of  
37 P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each  
38 party shall have the right to submit additional evidence concerning  
39 the comparability of jurisdictions for the arbitrator's consideration.

40 (3) The overall compensation presently received by the  
41 employees, inclusive of direct wages, salary, vacations, holidays,  
42 excused leaves, insurance and pensions, medical and hospitalization  
43 benefits, and all other economic benefits received.

44 (4) Stipulations of the parties.

45 (5) The lawful authority of the employer. Among the items the  
46 arbitrator or panel of arbitrators shall assess when considering this  
47 factor are the limitations imposed upon the employer by P.L.1976,  
48 c.68 (C.40A:4-45.1 et seq.).

1 (6) The financial impact on the governing unit, its residents and  
2 taxpayers. When considering this factor in a dispute in which the  
3 public employer is a county or a municipality, the arbitrator or  
4 panel of arbitrators shall take into account, to the extent that  
5 evidence is introduced, how the award will affect the municipal or  
6 county purposes element, as the case may be, of the local property  
7 tax; a comparison of the percentage of the municipal purposes  
8 element or, in the case of a county, the county purposes element,  
9 required to fund the employees' contract in the preceding local  
10 budget year with that required under the award for the current local  
11 budget year; the impact of the award for each income sector of the  
12 property taxpayers of the local unit; the impact of the award on the  
13 ability of the governing body to (a) maintain existing local  
14 programs and services, (b) expand existing local programs and  
15 services for which public moneys have been designated by the  
16 governing body in a proposed local budget, or (c) initiate any new  
17 programs and services for which public moneys have been  
18 designated by the governing body in a proposed local budget.

19 (7) The cost of living.

20 (8) The continuity and stability of employment including  
21 seniority rights and such other factors not confined to the foregoing  
22 which are ordinarily or traditionally considered in the determination  
23 of wages, hours, and conditions of employment through collective  
24 negotiations and collective bargaining between the parties in the  
25 public service and in private employment.

26 (9) Statutory restrictions imposed on the employer. Among the  
27 items the arbitrator or panel of arbitrators shall assess when  
28 considering this factor are the limitations imposed upon the  
29 employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

30 h. A mediator, factfinder, or arbitrator while functioning in a  
31 mediatory capacity shall not be required to disclose any files,  
32 records, reports, documents, or other papers classified as  
33 confidential received or prepared by him or to testify with regard to  
34 mediation, conducted by him under this act on behalf of any party  
35 to any cause pending in any type of proceeding under this act.  
36 Nothing contained herein shall exempt such an individual from  
37 disclosing information relating to the commission of a crime.

38 (cf: P.L.2007, c.62, s.14)

39  
40 3. This act shall take effect first day of the fourth month  
41 following enactment.

42  
43  
44 STATEMENT

45  
46 This bill implements the Governor's "Tool Kit" proposals for  
47 public employer - public employee arbitration.

48 The first section of the bill focuses on public employer – public  
49 employee arbitration in general.

1 The “Tool Kit” proposal adds a procedure for selecting  
2 arbitrators for both contract negotiations and grievance disputes.  
3 Under this procedure, the Public Employee Relations Commission  
4 (PERC) is to randomly select three arbitrators from its special panel  
5 of arbitrators and submit them to the disputing parties for  
6 consideration. If the parties are unable to mutually agree on one of  
7 the three arbitrators within 10 days, PERC is to select the arbitrator  
8 by lot.

9 The proposal also imposes a 2.5 percent cap on arbitration  
10 awards and collective bargaining agreements. The new language  
11 specifically prohibits any mediator, factfinder or arbitrator from  
12 recommending or awarding any settlement that would exceed by  
13 more than 2.5 percent the aggregate amount expended by the public  
14 employer on economic issues for the members of the affected  
15 employee organization in the immediately preceding employment  
16 year. The proposal further provides that no public employer or  
17 public employee organization can enter into any agreement on  
18 economic issues that exceed the 2.5 percent cap. Economic issues  
19 are defined as wages, salaries, hours in relation to earnings, and  
20 other forms of compensation, such as paid vacation, paid holidays,  
21 health and medical insurance, and other economic benefits accruing  
22 to the employees represented by the affected employee  
23 organization.

24 In addition, the proposal sets forth specific criteria an arbitrator  
25 is to consider when deciding an arbitration award. Those criteria  
26 include consideration of the impact the award would have on local  
27 property taxes, the restrictions imposed on local government  
28 employers by the “cap law,” a comparison of public and private  
29 sector wages, benefits and conditions of employment, and the  
30 general public interest and welfare.

31 The second section of the bill focuses on a particular type of  
32 public employer – public employee arbitration: arbitration between  
33 local units and the police and fire unions. This particular type of  
34 arbitration is commonly known as interest arbitration.

35 The “Tool Kit” proposal makes a slight change to the current  
36 procedure disputing local governments and their police and fire  
37 unions follow in selecting an arbitrator. Under existing law, the  
38 disputing parties are permitted to consider all the members of  
39 PERC’s special panel when attempting to select an arbitrator. The  
40 proposal provides that PERC randomly select three arbitrators for  
41 the disputing parties to consider. If they fail to agree on an  
42 arbitrator within 10 days, PERC is to assign the arbitrator as it  
43 currently does—by lot.

44 The proposal also imposes the 2.5 percent cap restriction on  
45 parties involved in interest arbitration. As in the section concerning  
46 general public employers – public employee negotiations, the new  
47 interest arbitration language specifically prohibits any mediator,  
48 factfinder or arbitrator from recommending or awarding any  
49 settlement that would exceed by more than 2.5 percent the

1 aggregate amount expended by the public employer on economic  
2 issues for the members of the affected police or fire union  
3 organization in the immediately preceding employment year. The  
4 proposal further provides that no public employer or police or fire  
5 union can enter into any agreement on economic issues that exceed  
6 the 2.5 percent cap. Economic issues are defined as wages, salaries,  
7 hours in relation to earnings, and other forms of compensation, such  
8 as paid vacation, paid holidays, health and medical insurance, and  
9 other economic benefits accruing to the members of the police or  
10 fire union.

11 There are several elements of the "Tool Kit" proposal that apply  
12 to both types of arbitration. They include stipulations concerning  
13 the professional qualifications for appointment, the adoption of  
14 rules concerning ethical standards and political activities, the  
15 implementation of a fee schedule for arbitration services, and a  
16 clarification that the parties are to share equally the costs of any  
17 arbitration.

WITHDRAWN