

ASSEMBLY, No. 2123

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Makes various changes to interest arbitration procedures; repeals sunset provision.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/1/2017)

1 AN ACT concerning police and fire interest arbitration and
2 amending P.L.1977, c.85 and P.L.2010, c.105.

3

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

6

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

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

23 Prior to the expiration of their collective negotiation agreement,
24 either party may file an unfair practice charge with the commission
25 alleging that the other party is refusing to negotiate in good faith.
26 The charge shall be filed in the manner, form and time specified by
27 the commission in rule and regulation. If the charge is sustained,
28 the commission shall order that the respondent be assessed for all
29 legal and administrative costs associated with the filing and
30 resolution of the charge; if the charge is dismissed, the commission
31 shall order that the charging party be assessed for all legal and
32 administrative costs associated with the filing and resolution of the
33 charge. The filing and resolution of the unfair practice charge shall
34 not delay or impair the impasse resolution process.

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

41 b. (1) In the event of a failure to resolve the impasse by
42 mediation, the Division of Public Employment Relations, at the
43 request of either party, shall invoke factfinding with
44 recommendation for settlement of all issues in dispute unless the
45 parties reach a voluntary settlement prior to the issuance of the
46 factfinder's report and recommended terms of settlement.

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 Factfindings shall be limited to those issues that are within the
2 required scope of negotiations unless the parties to the factfinding
3 agree to factfinding on permissive subjects of negotiation.

4 (2) Notwithstanding the provisions of paragraph (2) of
5 subsection a. of this section or paragraph (1) of this subsection,
6 either party may petition the commission for arbitration on or after
7 the date on which their collective negotiation agreement expires.
8 The petition shall be filed in a manner and form prescribed by the
9 commission. The party filing the petition shall notify the other
10 party of its action. The notice shall be given in a manner and form
11 prescribed by the commission. Any mediation or factfinding
12 invoked pursuant to paragraph (2) of subsection a. of this section or
13 paragraph (1) of subsection b. of this section shall terminate
14 immediately upon the filing of a petition for arbitration.

15 c. (Deleted by amendment, P.L.2010, c.105)

16 d. The resolution of issues in dispute shall be binding
17 arbitration under which the award on the unsettled issues is
18 determined by conventional arbitration. The arbitrator shall
19 determine whether the total net annual economic changes for each
20 year of the agreement are reasonable under the nine statutory
21 criteria set forth in subsection g. of this section and shall adhere to
22 the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-
23 16.7). The non-petitioning party, within five days of receipt of the
24 petition, shall separately notify the commission in writing of all
25 issues in dispute. The filing of the written response shall not delay,
26 in any manner, the interest arbitration process.

27 e. (1) The commission shall take measures to assure the
28 impartial selection of an arbitrator or arbitrators from its special
29 panel of arbitrators. On the first business day following receipt of
30 an interest arbitration petition, the commission shall, independent of
31 and without any participation by either of the parties, randomly
32 select an arbitrator from its special panel of arbitrators. The
33 selection by the commission shall be final and shall not be subject
34 to review or appeal.

35 (2) Applicants for initial appointment to the commission's
36 special panel of arbitrators shall be chosen based on their
37 professional qualifications, knowledge, and experience, in
38 accordance with the criteria and rules adopted by the commission.
39 Such rules shall include relevant knowledge of local government
40 operations and budgeting. Appointment to the commission's special
41 panel of arbitrators shall be for a three-year term, with
42 reappointment contingent upon a screening process similar to that
43 used for determining initial appointments. Arbitrators currently
44 serving on the panel shall demonstrate to the commission their
45 professional qualification, knowledge and experience, in accordance
46 with the criteria and rules adopted by the commission, within one
47 year of the effective date of this act. Any arbitrator who does not

1 satisfactorily demonstrate such to the commission within the
2 specified time shall be disqualified.

3 (3) Arbitrators serving on the commission's special panel shall
4 be guided by and subject to the objectives and principles set forth in
5 the "Code of Professional Responsibility for Arbitrators of Labor-
6 Management Disputers" of the National Academy of Arbitrators,
7 the American Arbitration Association, and the Federal Mediation
8 and Conciliation Service.

9 (4) Arbitrators shall be required to complete annual training
10 offered by the State Ethics Commission. Any arbitrator failing to
11 satisfactorily complete the annual training shall be immediately
12 removed from the special panel.

13 The commission may suspend, remove, or otherwise discipline
14 an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.),
15 section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause.
16 An arbitrator who fails to render an award within the time
17 requirements set forth in this section shall be fined \$1,000 for each
18 day that the award is late.

19 f. (1) At a time prescribed by the commission, the parties shall
20 submit to the arbitrator their final offers on each economic and non-
21 economic issue in dispute. The offers submitted pursuant to this
22 section shall be used by the arbitrator for the purposes of
23 determining an award pursuant to subsection d. of this section.

24 (2) In the event of a dispute, the commission shall have the
25 power to decide which issues are economic issues. Economic
26 issues include those items which have a direct relation to employee
27 income including wages, salaries, hours in relation to earnings, and
28 other forms of compensation such as paid vacation, paid holidays,
29 health and medical insurance, and other economic benefits to
30 employees.

31 (3) Throughout formal arbitration proceedings the chosen
32 arbitrator may mediate or assist the parties in reaching a mutually
33 agreeable settlement.

34 All parties to arbitration shall present, at the formal hearing
35 before the issuance of the award, written estimates of the financial
36 impact of their last offer on the taxpayers of the local unit to the
37 arbitrator with the submission of their last offer.

38 (4) Arbitration shall be limited to those subjects that are within
39 the required scope of collective negotiations, except that the parties
40 may agree to submit to arbitration one or more permissive subjects
41 of negotiation.

42 (5) The decision of an arbitrator or panel of arbitrators shall
43 include an opinion and an award, and shall be rendered within **[45]**
44 90 days of the commission's assignment of that arbitrator.

45 Each arbitrator's decision shall be accompanied by a written
46 report explaining how each of the statutory criteria played into the
47 arbitrator's determination of the final award. The report shall

1 certify that the arbitrator took the statutory limitations imposed on
2 the local levy cap into account in making the award.

3 Any arbitrator violating the provisions of this paragraph may be
4 subject to the commission's powers under paragraph (3) of
5 subsection e. of this section. The decision shall be final and
6 binding upon the parties and shall be irreversible, except:

7 (a) Within ~~seven~~ 14 days of receiving an award, an aggrieved
8 party may file notice of an appeal of an award to the commission on
9 the grounds that the arbitrator failed to apply the criteria specified
10 in subsection g. of this section or violated the standards set forth in
11 N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form
12 and manner prescribed by the commission. In deciding an appeal,
13 the commission, pursuant to rule and regulation and upon petition,
14 may afford the parties the opportunity to present oral arguments.
15 The commission may affirm, modify, correct or vacate the award or
16 may, at its discretion, remand the award to the same arbitrator or to
17 another arbitrator, selected by lot, for reconsideration. The
18 commission's decision shall be rendered no later than ~~30~~ 60 days
19 after the filing of the appeal with the commission.

20 Arbitration appeal decisions shall be accompanied by a written
21 report explaining how each of the statutory criteria played into their
22 determination of the final award. The report shall certify that in
23 deciding the appeal, the commission took the local levy cap into
24 account in making the award.

25 An aggrieved party may appeal a decision of the commission to
26 the Appellate Division of the Superior Court.

27 (b) An arbitrator's award shall be implemented immediately.

28 (6) The parties shall share equally the costs of arbitration
29 subject to a fee schedule approved by the commission. The fee
30 schedule shall provide that the cost of services provided by the
31 arbitrator shall not exceed \$1,000 per day. The total cost of
32 services of an arbitrator shall not exceed ~~\$7,500~~ \$10,000. If the
33 parties cancel an arbitration proceeding without good cause, the
34 arbitrator may impose a fee of not more than \$500. The parties
35 shall share equally in paying that fee if the request to cancel or
36 adjourn is a joint request. Otherwise, the party causing such
37 cancellation shall be responsible for payment of the entire fee.

38 g. The arbitrator shall decide the dispute based on a reasonable
39 determination of the issues, giving due weight to those factors listed
40 below that are judged relevant for the resolution of the specific
41 dispute. In the award, the arbitrator or panel of arbitrators shall
42 indicate which of the factors are deemed relevant, satisfactorily
43 explain why the others are not relevant, and provide an analysis of
44 the evidence on each relevant factor; provided, however, that in
45 every interest arbitration proceeding, the parties shall introduce
46 evidence regarding the factor set forth in paragraph (6) of this
47 subsection and the arbitrator shall analyze and consider the factors
48 set forth in paragraph (6) of this subsection in any award:

- 1 (1) The interests and welfare of the public. Among the items
2 the arbitrator or panel of arbitrators shall assess when considering
3 this factor are the limitations imposed upon the employer by
4 P.L.1976, c.68 (C.40A:4-45.1 et seq.).
- 5 (2) Comparison of the wages, salaries, hours, and conditions of
6 employment of the employees involved in the arbitration
7 proceedings with the wages, hours, and conditions of employment
8 of other employees performing the same or similar services and
9 with other employees generally:
 - 10 (a) In private employment in general; provided, however, each
11 party shall have the right to submit additional evidence for the
12 arbitrator's consideration.
 - 13 (b) In public employment in general; provided, however, each
14 party shall have the right to submit additional evidence for the
15 arbitrator's consideration.
 - 16 (c) In public employment in the same or similar comparable
17 jurisdictions, as determined in accordance with section 5 of
18 P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each
19 party shall have the right to submit additional evidence concerning
20 the comparability of jurisdictions for the arbitrator's consideration.
- 21 (3) The overall compensation presently received by the
22 employees, inclusive of direct wages, salary, vacations, holidays,
23 excused leaves, insurance and pensions, medical and hospitalization
24 benefits, and all other economic benefits received.
- 25 (4) Stipulations of the parties.
- 26 (5) The lawful authority of the employer. Among the items the
27 arbitrator or panel of arbitrators shall assess when considering this
28 factor are the limitations imposed upon the employer by P.L.1976,
29 c.68 (C.40A:4-45.1 et seq.).
- 30 (6) The financial impact on the governing unit, its residents, the
31 limitations imposed upon the local unit's property tax levy pursuant
32 to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers.
33 When considering this factor in a dispute in which the public
34 employer is a county or a municipality, the arbitrator or panel of
35 arbitrators shall take into account, to the extent that evidence is
36 introduced, how the award will affect the municipal or county
37 purposes element, as the case may be, of the local property tax; a
38 comparison of the percentage of the municipal purposes element or,
39 in the case of a county, the county purposes element, required to
40 fund the employees' contract in the preceding local budget year with
41 that required under the award for the current local budget year; the
42 impact of the award for each income sector of the property
43 taxpayers of the local unit; the impact of the award on the ability of
44 the governing body to (a) maintain existing local programs and
45 services, (b) expand existing local programs and services for which
46 public moneys have been designated by the governing body in a
47 proposed local budget, or (c) initiate any new programs and services

1 for which public moneys have been designated by the governing
2 body in a proposed local budget.

3 (7) The cost of living.

4 (8) The continuity and stability of employment including
5 seniority rights and such other factors not confined to the foregoing
6 which are ordinarily or traditionally considered in the determination
7 of wages, hours, and conditions of employment through collective
8 negotiations and collective bargaining between the parties in the
9 public service and in private employment.

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

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

22 (cf: P.L.2010, c.105, s.1)

23

24 2. Section 4 of P.L.2010, c.105 (C.34:13A-16.9) is amended to
25 read as follows:

26 4. This act shall take effect January 1, 2011【; provided
27 however, section 2】 and shall apply 【only】 to collective
28 negotiations between a public employer and the exclusive
29 representative of a public police department or public fire
30 department that relate to a negotiated agreement expiring on that
31 effective date or any date thereafter 【until April 1, 2014, whereupon
32 the provisions of section 2 shall become inoperative for all parties
33 except those whose collective negotiations agreements expired prior
34 to April 1, 2014 but for whom a final settlement has not been
35 reached. When final settlement between the parties in all such
36 negotiations is reached, the provisions of section 2 of this act shall
37 expire. In the case of a party that entered into a contract that
38 expires on the effective date of this act or any date thereafter until
39 April 1, 2014, and where the terms of that contract otherwise meet
40 the criteria set forth in section 2 of this act, that party shall not be
41 subject to the provisions of section 2 when negotiating a future
42 contract】. This act also applies to collective negotiations between a
43 public employer and the exclusive representative of a public police
44 or public fire department where there had been no prior collective
45 negotiations agreement between the parties as of the effective date
46 of the act.

47 (cf: P.L.2010, c.105, s.4)

1 3. This act shall take effect immediately.

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3

4

STATEMENT

5

6 The two-percent cap on base salary increases in interest
7 arbitration awards in police and fire contract disputes was enacted
8 in 2010 shortly after enactment of the two-percent cap on increases
9 in the property tax levy. The arbitration award cap was one of the
10 most significant tools provided to local governments to keep
11 expenses in check in order to comply with the property tax cap.
12 The Legislature recognized that the arbitration system in place
13 when the two-percent property tax cap was enacted often forced
14 increases of greater than two percent in the largest single portion of
15 many local budgets.

16 Since its enactment, experience has shown that the arbitration
17 award cap is indispensable to the effectiveness of the property tax
18 cap. It is mathematically unsustainable to force a local
19 government to increase its largest budgetary line item by an amount
20 greater than its rate of revenue increase. Therefore, in order for the
21 property tax cap to remain viable, the arbitration award cap must be
22 retained.

23 The bill makes permanent the two-percent cap on base salary
24 increases in interest arbitration awards. This bill also makes
25 various other changes to the State's interest arbitration procedures
26 for settling contractual impasses between public employers and
27 their police and fire departments.

28 Under current law, any time after a collective negotiation
29 agreement between a public employer and a public police or fire
30 department expires, either party may petition the New Jersey Public
31 Employment Relations Commission (PERC) for arbitration.
32 Arbitrators in these cases are required to render their decision
33 within 45 days of the case being assigned to them. This bill extends
34 the time to render the decision to 90 days to allow arbitrators
35 sufficient time to consider the disputed issues. Current law allows
36 an aggrieved party seven days to file notice of appeal of the
37 decision. This bill extends this time to appeal to 14 days.

38 The bill also increases the time frame within which PERC has to
39 render its decision in an appeal of an arbitration award from 30 to
40 60 days and increases the maximum amount arbitrators can be
41 compensated for their services from \$7,500 to \$10,000.

42 The bill also repeals the "sunset" provision established in
43 P.L.2010, c.105 that provides for the expiration of the two-percent
44 cap on base salary increases in arbitration awards on April 1, 2014.
45 The cap applies to collective negotiated agreements that expire
46 between the effective date of the act, January 1, 2011, and April 1,
47 2014. The two-percent cap applies to arbitration cases involving
48 agreements that expire during this period, even if the arbitrator's

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1 award was not rendered until after the “sunset” date of April 1,
2 2014. Parties that entered into contracts that expire during the
3 sunset period currently are not subject to the two-percent cap when
4 negotiating future contracts under this current law. This bill repeals
5 the sunset provision set forth in P.L.2010, c.105, effectively making
6 permanent the two-percent cap.

7 Finally, the bill further clarifies that the two-percent cap applies
8 not only to expiring contracts, but also to all police and fire
9 collective negotiations, including those cases in which there was no
10 initial collective negotiations agreement prior to the effective date
11 of P.L.2010, c.105.