Establishes “fair and final” as terminal procedure for police and fire contract arbitration.

As introduced.
AN ACT concerning police and fire arbitration and amending P.L.1977, c.85.

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

1. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to read as follows:
   3. a. (1) Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation 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 negotiation 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 negotiation agreement is to expire. A violation of this paragraph shall constitute an unfair practice and the violator shall be subject to the penalties prescribed by the commission pursuant to rule and regulation.
   (2) Whenever those negotiations concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion take such steps, including the assignment of a mediator, as it may deem expedient to effect a voluntary resolution of the impasse.
   b. (1) In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke factfinding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the factfinder's report and recommended terms of settlement. Factfindings shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation. In the event of a continuing failure to resolve an impasse by means of the procedure set forth in this paragraph, and notwithstanding the fact that such procedures have not been exhausted, the parties shall notify the commission, at a time and in a manner prescribed by the commission, as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to

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.
writing, provide for finality in resolving the issues in dispute, and
shall be submitted to the commission for approval.

(2) Notwithstanding the provisions of paragraph (2) of
subsection a. of this section or paragraph (1) of this subsection,
either party may petition the commission for arbitration on or after
the date on which their collective negotiation agreement expires.
The petition shall be filed in a manner and form prescribed by the
commission. The party filing the petition shall notify the other
party of its action. The notice shall be given in a manner and form
prescribed by the commission.

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

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

(1) Conventional arbitration of all unsettled items.

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

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

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

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

(6) Arbitration under which the award on the economic issues in
dispute is confined to a choice between (a) the last offer of the
employer on the economic issues as a single package and (b) the
employee representative's last offer on the economic issues as a
single package; and, on any noneconomic issues in dispute, the
award is confined to a choice between (a) the last offer of the
employer on each issue in dispute and (b) the employee
representative's last offer on that issue.
d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the commission in writing, indicating all issues in dispute and the reasons for their inability to agree on the procedure. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

(2) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award [on the unsettled issues is determined by conventional arbitration] on the economic issues in dispute shall be confined to a choice between (a) the last offer of the employer on such issues as a single package and (b) the employee representative’s last offer on such issues as a single package; and, on the noneconomic issues in dispute, the award shall be confined to a choice between (a) the last offer of the employer on each issue in dispute and (b) the employee representative’s last offer on such issues. The arbitrator shall [separately determine whether the total net annual economic changes for each year of the agreement are] in making the award, consider which last offer is the more reasonable under the nine statutory criteria set forth in subsection g. of this section.

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its special panel of arbitrators. [Unless the parties, in a time and manner prescribed by the commission, mutually agree upon the selection of an arbitrator from the commission's special panel of arbitrators and so notify the commission in writing of that selection, the assignment of any arbitrator for the purposes of this act shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the arbitrator for assignment by lot.]

In any proceeding where an arbitrator selected by mutual agreement is unable to serve, the two parties shall be afforded an opportunity to select a replacement. If the two parties are unable to mutually agree upon the selection of a replacement within a time period prescribed by the commission, the commission shall select the replacement in the manner hereinafter provided.

In any proceeding where an assigned arbitrator is unable to serve or, pursuant to the preceding paragraph, the two parties are unable to mutually agree upon a replacement, the commission shall assign a replacement arbitrator. The assignment shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the replacement arbitrator for assignment by lot.] The commission shall submit
simultaneously to each party a list of five proposed arbitrators chosen by lot from the commission’s special panel of arbitrators. The list shall be submitted to the parties by mail. The parties shall have 10 days from the date of mailing to review the list of proposed arbitrators. Each party shall cross out any names on the list to which it objects, numbering any remaining names in an order of preference, and return the list to the commission. If a party fails to return its list within the prescribed time period, all the proposed arbitrators on the list shall be deemed acceptable to that party.

The commission shall appoint an arbitrator based upon the preferences enumerated by the two parties on their returned lists. If the enumerated preferences of the parties do not result in an agreement upon any of the proposed arbitrators, the commission shall submit a second list consisting of three proposed arbitrators chosen by lot from the commission’s special panel of arbitrators. The parties shall have 10 days from the date of the mailing to review this second list of proposed arbitrators. Each party shall enumerate the three in order of preference and return the list to the commission. The commission shall appoint an arbitrator based upon the preferences enumerated by the parties on their returned lists.

If the arbitrator appointed pursuant to this paragraph declines or is unable to serve, the commission shall, independent of and without any participation by either of the parties, select an arbitrator from those not previously rejected by either party. The decision of the commission shall be final and shall not be subject to review or appeal.

If the parties agree to a method of appointment that differs from the forgoing, the terms of that agreement shall be followed.

(2) Appointment to the commission’s special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments.

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

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator or tripartite panel of arbitrators their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to paragraph (2) of subsection d. of this section. Their final offers in two separate parts (a) a single package containing all the economic issues in dispute; and (b) the individual issues in dispute not included in the economic package, each set forth separately by issue. The commission shall promulgate rules and procedures governing the submission of the offers required under this
paragraph, including when those offers shall be deemed final, binding and irreversible.

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

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

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

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 120 days of the selection of the arbitrator [by the mutual agreement of both parties or the commission's assignment of that arbitrator] or panel of arbitrators, as the case may be [, pursuant to paragraph (1) of subsection e. of this section]; provided, however, the arbitrator or panel of arbitrators, for good cause, may petition the commission for an extension of not more than 60 days. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the commission 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 paragraph may be subject to the commission's powers under paragraph (2) of subsection e. of this section. The decision shall be final and binding upon the parties and shall be irreversible, except:

(a) Within 14 days of receiving an award, an aggrieved party may file notice of an appeal of an award to [the commission] an appeal panel, consisting of two arbitrators selected by lot and a member of the Local Finance Board chosen by the chair of that board, on the grounds that the arbitrator failed to [apply] fully consider the criteria specified in subsection g. of this section or violated the standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form and manner prescribed by the commission. In deciding an appeal, the [commission] appeal panel, pursuant to rule and regulation and upon petition, may afford the parties the opportunity to present oral arguments. The [commission] appeal panel may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator, selected by lot, for reconsideration. An aggrieved party may appeal a decision of [the
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commission] an appeal panel to the Appellate Division of the Superior Court.

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

(6) The parties shall bear the costs of arbitration subject to a fee schedule approved by the commission.

g. The arbitrator or panel of arbitrators shall [decide the dispute based on a reasonable determination of the issues, giving due weight to those] , in making an award, consider which last offer is the more reasonable based upon the factors listed below [that 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 role each factor played in determining which last offer was the more reasonable:

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

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

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

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

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

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).
(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit’s property tax levy by section 10 of P.L. 2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees’ contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

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

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

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

2. This act shall take effect on the first day of the fourth month following enactment and shall apply to all collective negotiations between public fire and police departments and the exclusive representatives of their public employers except those formal arbitration proceedings in which the arbitrator has, prior to the effective date of this act, taken testimony from the parties; provided, however, in any collective negotiation where there has occurred, prior to the effective date of this act mediation,
factfinding, the selection of an arbitrator, or agreement of a terminal
procedure, those actions shall remain valid and in force for the
remainder of the collective negotiations, which shall be subject to
the provisions of this act.

STATEMENT

This bill establishes “fair and final” as the terminal procedure for
resolving contractual impasses between public employers and their
police and fire departments.

Under current law, these contractual impasses are resolved
through conventional arbitration. In conventional arbitration, the
arbitrator reviews the contract offers of each party and then has the
authority to freely construct the various elements that make up the
final award.

In “fair and final,” the arbitrator must select the final contract
offer of one of the parties; basing the selection on the offer the
arbitrator deems the “fairer” of the two. The arbitrator’s decision is
binding on the parties.

The bill also changes the procedure for selecting an arbitrator.
Currently, if the parties are unable to mutually agree upon the
selection of an arbitrator, the Public Employment Relations
Commission (PERC) selects the arbitrator by lot. Under this bill,
PERC would send the disputing parties a list of five prospective
arbitrators. The arbitrators on the list would be selected by lot from
PERC’s special panel of arbitrators. The parties would have 10
days to review the list. Before returning the list to PERC, each
party is to cross out any names they object to and enumerate any
remaining names in an order of preference.

If PERC is unable to appoint an arbitrator based upon the
preferences enumerated by the two parties, the commission is to
generate a second list consisting of three proposed arbitrators, again
chosen by lot. Each party is to enumerate the proposed arbitrators
in their order of preference. The commission is to appoint an
arbitrator based on the preferences enumerated by the parties. The
decision of the commission is final and is not subject to review or
appeal.

The bill contains a clause that provides that if the parties agree to
a method of appointment that differs from the formal procedure set
forth in the bill, the terms of that agreement are to be followed.

The selection procedure outlined in this bill is patterned on that
used in grievance arbitration.

In addition, the bill mandates that an arbitrator must take into
consideration the statutory limitations imposed on a local
governmental unit’s property tax levy when evaluating the
reasonableness of each party’s last offer.

Finally, the bill modifies the appeal procedure. Currently, an
aggrieved party files its objection to an award with the commission.
The commission has the authority to affirm, modify, correct or vacate an award and may, at its discretion, remand the award to the same or another arbitrator for reconsideration. A party which is dissatisfied with the commission’s resolution an appeal may file an appeal of the commission’s action with the Appellate Division of the Superior Court.

Under this bill, the initial appeal by an aggrieved party would be filed with an appeal panel. This panel would be made up of two arbitrators, selected by lot, and a member of the Local Finance Board, chosen by the chair of that board. The appeal panel would have all the powers and authority currently assigned the commission in hearing and resolving appeals of awards, particularly in determining whether an arbitrator fully considered the specific factors outlined in subsection g. of section 3 of P.L.1977, c.85 (C.34:13A-16). A party aggrieved by a decision of this appeal panel would, as is current practice, file its appeal with the Appellate Division of the Superior Court.