

ASSEMBLY, No. 3393

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED OCTOBER 14, 2010

Sponsored by:

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/19/2010)

1 AN ACT concerning police and fire arbitration and amending
2 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 3 of P.L.1977, c.85 (C.34:13A-16) is amended to read
8 as follows:

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

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

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

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

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

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

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

21 (1) Conventional arbitration of all unsettled items.

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

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

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

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

42 (6) Arbitration under which the award on the economic issues in
43 dispute is confined to a choice between (a) the last offer of the
44 employer on the economic issues as a single package and (b) the
45 employee representative's last offer on the economic issues as a
46 single package; and, on any noneconomic issues in dispute, the
47 award is confined to a choice between (a) the last offer of the
48 employer on each issue in dispute and (b) the employee
49 representative's last offer on that issue.

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

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

10 (2) Upon receipt of such notification from either party or on the
11 commission's own motion, the procedure to provide finality for the
12 resolution of issues in dispute shall be binding arbitration under
13 which the award ~~【on the unsettled issues is determined by~~
14 ~~conventional arbitration】~~ on the economic issues in dispute shall be
15 confined to a choice between (a) the last offer of the employer on
16 such issues as a single package and (b) the employee
17 representative's last offer on such issues as a single package; and,
18 on the noneconomic issues in dispute, the award shall be confined
19 to a choice between (a) the last offer of the employer on each issue
20 in dispute and (b) the employee representative's last offer on such
21 issues. The arbitrator shall ~~【separately determine whether the total~~
22 ~~net annual economic changes for each year of the agreement are】~~ in
23 making the award, consider which last offer is the more reasonable
24 under the nine statutory criteria set forth in subsection g. of this
25 section.

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

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

42 In any proceeding where an assigned arbitrator is unable to serve
43 or, pursuant to the preceding paragraph, the two parties are unable
44 to mutually agree upon a replacement, the commission shall assign
45 a replacement arbitrator. The assignment shall be the responsibility
46 of the commission, independent of and without any participation by
47 either of the parties. The commission shall select the replacement
48 arbitrator for assignment by lot.】 The commission shall submit

1 simultaneously to each party a list of five proposed arbitrators
2 chosen by lot from the commission's special panel of arbitrators.
3 The list shall be submitted to the parties by mail. The parties shall
4 have 10 days from the date of mailing to review the list of proposed
5 arbitrators. Each party shall cross out any names on the list to
6 which it objects, numbering any remaining names in an order of
7 preference, and return the list to the commission.

8 If a party fails to return its list within the prescribed time period,
9 all the proposed arbitrators on the list shall be deemed acceptable to
10 that party.

11 The commission shall appoint an arbitrator based upon the
12 preferences enumerated by the two parties on their returned lists.

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

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

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

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

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

38 f. (1) At a time prescribed by the commission, the parties shall
39 submit to the arbitrator or tripartite panel of arbitrators **【**their final
40 offers on each economic and non-economic issue in dispute. The
41 offers submitted pursuant to this section shall be used by the
42 arbitrator for the purposes of determining an award pursuant to
43 paragraph (2) of subsection d. of this section**】** their final offers in
44 two separate parts (a) a single package containing all the economic
45 issues in dispute; and (b) the individual issues in dispute not
46 included in the economic package, each set forth separately by
47 issue. The commission shall promulgate rules and procedures
48 governing the submission of the offers required under this

1 paragraph, including when those offers shall be deemed final,
2 binding and irreversible.

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

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

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

17 (5) The decision of an arbitrator or panel of arbitrators shall
18 include an opinion and an award, and shall be rendered within 120
19 days of the selection of the arbitrator **[by the mutual agreement of**
20 **both parties or the commission's assignment of that arbitrator]** or
21 panel of arbitrators, as the case may be **[, pursuant to paragraph (1)**
22 **of subsection e. of this section]**; provided, however, the arbitrator
23 or panel of arbitrators, for good cause, may petition the commission
24 for an extension of not more than 60 days. The two parties, by
25 mutual consent, may agree to an extension. The parties shall notify
26 the arbitrator and the commission of any such agreement in writing.
27 The notice shall set forth the specific date on which the extension
28 shall expire. Any arbitrator or panel of arbitrators violating the
29 provisions of this paragraph may be subject to the commission's
30 powers under paragraph (2) of subsection e. of this section. The
31 decision shall be final and binding upon the parties and shall be
32 irreversible, except:

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

1 commission] an appeal panel to the Appellate Division of the
2 Superior Court.

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

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

9 g. The arbitrator or panel of arbitrators shall [decide the dispute
10 based on a reasonable determination of the issues, giving due
11 weight to those] . in making an award, consider which last offer is
12 the more reasonable based upon the factors listed below [that are
13 judged relevant for the resolution of the specific dispute]. In the
14 award, the arbitrator or panel of arbitrators shall indicate [which of
15 the factors are deemed relevant, satisfactorily explain why the
16 others are not relevant, and provide an analysis of the evidence on
17 each relevant factor] the role each factor played in determining
18 which last offer was the more reasonable:

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

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

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

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

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

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

43 (4) Stipulations of the parties.

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

1 (6) The financial impact on the governing unit, its residents, the
2 limitations imposed upon the local unit's property tax levy by
3 section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When
4 considering this factor in a dispute in which the public employer is
5 a county or a municipality, the arbitrator or panel of arbitrators shall
6 take into account, to the extent that evidence introduced, how the
7 award will affect the municipal or county purposes element, as the
8 case may be, of the local property tax; a comparison of the
9 percentage of the municipal purposes element or, in the case of a
10 county, the county purposes element, required to fund the
11 employees' contract in the preceding local budget year with that
12 required under the award for the current local budget year; the
13 impact of the award for each income sector of the property
14 taxpayers of the local unit; the impact of the award on the ability of
15 the governing body to (a) maintain existing local programs and
16 services, (b) expand existing local programs and services for which
17 public moneys have been designated by the governing body in a
18 proposed local budget, or (c) initiate any new programs and services
19 for which public moneys have been designated by the governing
20 body in a proposed local budget.

21 (7) The cost of living.

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

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

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

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

41

42 2. This act shall take effect on the first day of the fourth month
43 following enactment and shall apply to all collective negotiations
44 between public fire and police departments and the exclusive
45 representatives of their public employers except those formal
46 arbitration proceedings in which the arbitrator has, prior to the
47 effective date of this act, taken testimony from the parties;
48 provided, however, in any collective negotiation where there has
49 occurred, prior to the effective date of this act mediation,

1 factfinding, the selection of an arbitrator, or agreement of a terminal
2 procedure, those actions shall remain valid and in force for the
3 remainder of the collective negotiations, which shall be subject to
4 the provisions of this act.

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6

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STATEMENT

8

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

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

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

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

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

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

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

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

48 Finally, the bill modifies the appeal procedure. Currently, an
49 aggrieved party files its objection to an award with the commission.

1 The commission has the authority to affirm, modify, correct or
2 vacate an award and may, at its discretion, remand the award to the
3 same or another arbitrator for reconsideration. A party which is
4 dissatisfied with the commission's resolution an appeal may file an
5 appeal of the commission's action with the Appellate Division of
6 the Superior Court.

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