

[First Reprint]

ASSEMBLY, No. 5862

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 9, 2021

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SYNOPSIS

“Responsible Collective Negotiations Act.”

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 22, 2021, with amendments.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning public employment relations, amending
2 P.L.1967, c.310 and P.L. 2018, c.15, and supplementing Title 34
3 of the Revised Statutes.

4

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

7

8 1. (New section) This act shall be known and may be cited as
9 the “Responsible Collective Negotiations Act.”

10

11 2. (New section) It is hereby declared as the public policy of
12 this State that the public interest is best served in the prompt
13 settlement of labor disputes and in achieving cost effective and
14 creative solutions to ensure the efficient delivery of public services
15 and that policy is best achieved by entrusting democratically elected
16 government officials with broad authority to negotiate over the
17 terms of employment of their employees; that the constitutional
18 mandate that public employees have the right to organize and
19 present grievances to their employers will be promoted by the
20 establishment of an system of collective negotiations between
21 public employers and the representatives of public employees that
22 includes all matters that intimately and directly affect employee
23 work and welfare, unless a negotiated agreement would prevent
24 government from carrying out its statutory mission; and that when
25 public employers and employee representatives agree upon subjects
26 of collective negotiations, it is in the public interest that those
27 agreements are enforceable by both public employee organizations
28 and public employers and that the parties to a collective
29 negotiations agreement respect and abide by their mutual promises
30 and agreements.

31

32 3. (New section) Notwithstanding any provisions of the “New
33 Jersey Employer-Employee Relations Act,” P.L.1941, c.100
34 (C.34:13A-1 et seq.), or any other law to the contrary, as used in
35 sections 1 through 9 of P.L. , c. (C.)(¹ **now** ¹ pending
36 before the ¹ **legislature** Legislature ¹ as this bill):

37 a. The term “commission” means the New Jersey Public
38 Employment Relations Commission.

39 b. The term “employer” means the State of New Jersey, or the
40 several counties and municipalities thereof, or any other political
41 subdivision of the State, or any special district, or any county college,
42 or any authority, commission or board, or any branch or agency of the
43 public service, except that the term does not include any local or
44 regional school district, or board or commission under the authority of
45 the Commissioner of Education or the State Board of Education.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ABU committee amendments adopted June 22, 2021.

1 c. The term “employee” means an employee of an employer as
2 defined by subparagraph b above, but does not include firefighting
3 employees of public fire departments or employees engaged in
4 performing police services for public police departments as those
5 terms are defined by section 2 of P.L.1977, c.85 (C.34:13A-15)¹,
6 except that, for the purposes of sections 6 through 9 of P.L. , c. (C.)
7 (pending before the Legislature as this bill), the term “employee” also
8 includes firefighting employees of public fire departments or
9 employees engaged in performing police services for public police
10 departments as those terms are defined by section 2 of P.L.1977, c.85
11 (C.34:13A-15)¹.

12 d. ¹“Terms and conditions of employment” are all matters that
13 intimately and directly affect the work and welfare of public
14 employees. Examples of terms and conditions of employment include,
15 but are not limited to: compensation; hours and schedules of work;
16 fringe benefits; layoffs; subcontracting and privatization; criteria and
17 procedures for promotions, performance evaluations and hiring;
18 transfers of employees; assignments and reassignments of employees;
19 transfer of negotiations unit work; and job security, discipline disputes
20 and disciplinary review procedures.

21 e. “Disciplinary review procedures” are procedures to review all
22 forms of discipline, including but not limited to, oral and written
23 reprimands, written warnings, suspensions with and without pay, fines,
24 terminations, non-renewals, non-reappointments, demotions,
25 disciplinary transfers and all other adverse personnel actions based on
26 employee performance or conduct.

27 f.¹ The terms “employee organization” and “majority
28 representative”, unless otherwise specified, means the “exclusive
29 majority representative” either certified by the commission or
30 recognized by the public employer.

31
32 ¹4. (New section) Notwithstanding any provisions of the “New
33 Jersey Employer-Employee Relations Act,” P.L.1941, c.100
34 (C.34:13A-1 et seq.), or any other law to the contrary:

35 a. Permissive subjects for collective negotiation involving the
36 several counties and municipalities, and any authorities, boards,
37 commissions or other instrumentalities of the several counties or
38 municipalities, shall include all terms and conditions of employment
39 that are not otherwise mandatorily negotiable and that intimately and
40 directly affect employee work and welfare, unless those subjects are
41 specifically exempted from collective negotiations by State statute,
42 or unless a negotiated agreement would prevent government from
43 carrying out its statutory mission. Mandatory subjects for collective
44 negotiation involving public employers other than the several
45 counties and municipalities, and any authorities, boards,
46 commissions or other instrumentalities of the several counties and
47 municipalities, shall include terms and conditions of employment

1 that intimately and directly affect the work and welfare of public
2 employees and that are not specifically exempted from collective
3 negotiations by State statute, unless a negotiated agreement would
4 prevent government from carrying out its statutory mission.
5 Statutes and administrative regulations that set terms and conditions
6 of employment or that grant public employers authority over terms
7 and conditions of employment do not preempt collective
8 negotiations and do not supersede the provisions of any negotiated
9 agreement, except that terms and conditions of employment set by
10 statutes and regulations shall not be diminished by a negotiated
11 agreement.

12 b. Parties may agree to submit disputes about whether a matter is
13 within the scope of collective negotiations to the commission, pursuant
14 to the authority vested in it by subsection d. of section 1 of P.L. 1974,
15 c.123 (C.34:13A-5.4).

16 c. Grievance procedures shall provide for binding arbitration as
17 the means for resolving disputes over the application, interpretation or
18 violation of the terms of a collective negotiations agreement entered
19 into by the parties. With respect to the discipline of employees without
20 statutory protection under tenure or civil service laws, binding
21 arbitration shall be the final dispute resolution mechanism of any
22 dispute regarding whether there is just cause for a disciplinary dispute,
23 including, but not limited to, reprimands, withholding of increments,
24 termination or non-renewal of an employment contract, expiration or
25 lapse of an employment contract or term, or lack of continuation of
26 employment, irrespective of the reason for the employer's action or
27 failure to act. In arbitration, the burden of proof shall be on the
28 employer. Parties may negotiate alternative disciplinary review
29 procedures that may provide for binding arbitration as the means for
30 resolving disputes involving discipline of employees with statutory
31 protection under tenure or civil service laws. For any collective
32 negotiations agreement in effect on the effective date of
33 P.L. , c. (C.)(pending before the Legislature as this bill), subsection
34 c. of this section, shall become effective upon the expiration of that
35 collective negotiations agreement.

36 d. Notwithstanding the expiration of a collective negotiations
37 agreement, an impasse in negotiations, an exhaustion of the
38 Commission's impasse procedures, or the utilization or completion
39 of the procedures required by of P.L. , c. (C.)(pending
40 before the Legislature as this bill) to resolve disputes involving
41 collective negotiations, and notwithstanding any law or regulation
42 to the contrary, no public employer, its representatives, or its agents
43 shall unilaterally impose, modify, amend, delete or alter any terms
44 and conditions of employment as set forth in the expired or expiring
45 collective negotiations agreement, or unilaterally impose, modify,
46 amend, delete, or alter any other negotiable terms and conditions of
47 employment, without the specific written agreement of the majority
48 representative. Following contract expiration, and notwithstanding

1 any law or regulation to the contrary, absent express language in a
2 collective negotiations agreement providing that a specific term of
3 the agreement will not continue after the expiration of the collective
4 negotiations agreement, all terms and conditions of the agreement,
5 including, but not limited to the payment of salary increments, shall
6 remain in effect following the agreement's expiration until the
7 parties reach agreement on a successor collective negotiations
8 agreement.

9 e. Notwithstanding any provision of this section, the Legislature
10 retains the right to exempt from collective negotiations subjects that
11 would otherwise be mandatory subjects of negotiations.

12 f. Notwithstanding any provision of this section, the resolution of
13 disputes concerning negotiations over terms and conditions of
14 employment shall not be subject to compulsory interest arbitration as
15 set forth in P.L. 1995, c. 425 (C.34:13A-14a et seq.).¹

16
17 ¹5. (New section) The communications between a majority
18 representative of employees and its unit members regarding
19 collective negotiations, the administration of collective negotiations
20 agreements, the investigation of grievances, other workplace related
21 complaints and issues, or any other matters that are within the scope
22 of a majority representative's duty of fair representation, and
23 internal union matters involving the governance or business of the
24 union, shall be treated as confidential communications and shall not
25 be subject to disclosure under the discovery rules of New Jersey
26 administrative agencies, including, but not limited to the Office of
27 Administrative Law and the Commission, or pursuant to section 17
28 of P.L.2003, c.95 (C.2A:23B-17), and other applicable state laws
29 authorizing arbitrators, presiding at labor arbitrations, to issue
30 subpoenas.¹

31
32 ¹[4.] ¹6. (New section) Notwithstanding any provisions of the
33 "New Jersey Employer-Employee Relations Act," P.L.1941, c.100
34 (C.34:13A-1 et seq.), or any other law to the contrary, if an
35 employee who does not pay dues to a majority representative
36 requests that the majority representative represent the employee in
37 arbitration proceedings to enforce the terms of the collective
38 negotiations agreement between the majority representative and the
39 public employer, including arbitration proceedings involving the
40 resolution of disciplinary disputes, the majority representative may
41 charge an employee for the cost of representing the employee in the
42 arbitration proceedings, and may decline to represent an employee
43 in the arbitration unless the employee agrees to pay for the cost of
44 the representation.

45
46 ¹[5.] ¹7. (New section) Only the parties to a collective
47 negotiations agreement shall have the authority to invoke the

1 arbitration procedures of the agreement and the public employer
2 and the employee organization shall be the only parties to the
3 arbitration proceeding invoked pursuant to the collective
4 negotiations agreement.

5
6 **1[6.] 8.1** (New section) An authorization card or petition
7 submitted to the Commission for purposes of conducting an election
8 to select a majority representative or certifying an employee
9 organization as the exclusive majority representative based on a
10 majority of employees in the unit signing authorization cards or a
11 petition, may bear the electronic signature of the employee, as the
12 term electronic signature is defined in section 2 of P.L. 2001, c.
13 116, (C. 12A:12-2).

14
15 **1[7.** (New section) Notwithstanding any provisions of the “New
16 Jersey Employer-Employee Relations Act,” P.L.1941, c.100
17 (C.34:13A-1 et seq.), or any other law to the contrary:

18 a. Mandatory subjects for collective negotiation in public
19 employment shall include terms and conditions of employment of
20 public employees that are not specifically exempted from collective
21 negotiations by State statute, unless a negotiated agreement would
22 prevent government from carrying out its statutory mission.
23 Statutes and administrative regulations that set terms and conditions
24 of employment or that grant public employers authority over terms
25 and conditions of employment do not preempt collective
26 negotiations and do not supersede the provisions of any negotiated
27 agreement, except that terms and conditions of employment set by
28 statutes and regulations shall not be diminished by a negotiated
29 agreement.

30 b. Grievance and disciplinary review procedures shall provide
31 for binding arbitration as a means for resolving disputes involving
32 mandatory subjects for collective negotiations.

33 c. Notwithstanding the expiration of a collective negotiations
34 agreement, an impasse in negotiations, an exhaustion of the
35 Commission’s impasse procedures, or the utilization or completion
36 of the procedures required by of P.L. , c. (C.)(now
37 pending before the legislature as this bill) to resolve disputes
38 involving collective negotiations, and notwithstanding any law or
39 regulation to the contrary, no public employer, its representatives,
40 or its agents shall unilaterally impose, modify, amend, delete or
41 alter any terms and conditions of employment as set forth in the
42 expired or expiring collective negotiations agreement, or
43 unilaterally impose, modify, amend, delete, or alter any other
44 negotiable terms and conditions of employment, without the
45 specific written agreement of the majority representative.
46 Following contract expiration, and notwithstanding any law or
47 regulation to the contrary, absent express language in a collective
48 negotiations agreement providing that a specific term of the

1 agreement will not continue after the expiration of the collective
2 negotiations agreement, all terms and conditions of the agreement,
3 including, but not limited to the payment of salary increments, shall
4 remain in effect following the agreement's expiration until the
5 parties reach agreement on a successor collective negotiations
6 agreement. **】¹**

7
8 ¹**【8.(New section) The communications between a majority**
9 **representative of employees and its unit members regarding**
10 **collective negotiations, the administration of collective negotiations**
11 **agreements, the investigation of grievances, other workplace related**
12 **complaints and issues, or any other matters that are within the scope**
13 **of a majority representative's duty of fair representation, and**
14 **internal union matters involving the governance or business of the**
15 **union, shall be treated as confidential communications and shall not**
16 **be subject to disclosure under the discovery rules of New Jersey**
17 **administrative agencies, including, but not limited to the Office of**
18 **Administrative Law and the Commission, or pursuant to section 17**
19 **of P.L.2003, c.95 (C.2A:23B-17), and other applicable state laws**
20 **authorizing arbitrators, presiding at labor arbitrations, to issue**
21 **subpoenas. **】¹****

22
23 9. (New section) Complaints issued based on a violation of
24 paragraph (3) of subsection (a) of section 1 of P.L.1974, c.123
25 (C.34:13A-5.4) shall be scheduled for hearing within 60 to 90
26 calendar days from date of complaint issuance, unless the parties
27 agree to extend the time for complaint issuance. Within 60 calendar
28 days of the filing of an unfair practice charge alleging the violation
29 the commission shall decide whether or not to issue a complaint.
30 The commission shall promulgate rules to provide for discovery
31 prior to the commencement of a hearing.

32
33 10. Section 5 of P.L.2018, c.15 (C.34:13A-5.15) is amended to
34 read as follows:

35 5. a. All regular full-time and part-time employees of the
36 public employer who perform negotiations unit work shall be
37 included in the negotiations unit represented by the exclusive
38 representative employee organization.

39 b. Negotiations unit work means work that is performed by any
40 employees who are included in a negotiations unit represented by an
41 exclusive representative employee organization without regard to
42 job title, job classification or number of hours worked, except that
43 employees who are confidential employees or managerial
44 executives, as those terms are defined by section 1 of P.L.1941,
45 c.100 (C.34:13A-3), or elected officials, members of boards and
46 commissions, or casual employees, may be excluded from the
47 negotiations unit. Casual employees are employees who work an

1 average of fewer than four hours per week over a period of 90
2 calendar days.

3 c. Every 120 calendar days beginning on January 1 following
4 the effective date of P.L. , c. (C.)(now pending before the
5 legislature as this bill), public employers shall provide to an
6 exclusive representative employee organization in an Excel file
7 format or other format agreed to by the exclusive representative
8 employee organization, the following information for all employees
9 not represented by any exclusive representative employee
10 organization: name, job title, worksite location, work email and
11 work phone number. Within 30 days of a request by an exclusive
12 representative employee organization, a public employer shall
13 provide a job description for each non-represented employee,
14 including the names and job titles of all employees supervised by
15 the employer subject to the request.

16 d. Employees who are performing negotiations unit work and
17 who are not included in a negotiations unit because they did not
18 meet the threshold of hours or percent of time worked as set forth in
19 a certification of representative, recognition clause or other
20 provision in a collective negotiations agreement, shall be included
21 in the negotiations unit by operation of this act, within 90 calendar
22 days from the effective date of this act.

23 **[d.]** e. The Public Employment Relations Commission shall
24 promulgate rules to implement this section, including rules to
25 resolve disputes over the inclusion of employees performing
26 negotiations unit work in the appropriate negotiations unit. The
27 rules promulgated by the commission shall provide for the
28 resolution of disputes that arise under this section, within 60
29 calendar days from the submission of the dispute to the commission
30 by either the exclusive representative employee organization or the
31 public employer.

32 (cf: P.L.2018, c.15, s.5)

33

34 11. Section 1 of P.L.1967, c.310 (C.52:14-15.9e) is amended to
35 read as follows:

36 1. Whenever any person holding employment, whose
37 compensation is paid by this State or by any county, municipality,
38 board of education or authority in this State, or by any board, body,
39 agency or commission thereof shall indicate in writing, including by
40 electronic communications, and which writing or communication
41 may be evidenced by the electronic signature of the employee, as
42 the term electronic signature is defined in section 2 of P.L.2001,
43 c.116 (C.12A:12-2), to the proper disbursing officer his desire to
44 have any deductions made from his compensation, for the purpose
45 of paying the employee's dues to a bona fide employee
46 organization, designated by the employee in such request, and of
47 which said employee is a member, such disbursing officer shall
48 make such deduction from the compensation of such person and

1 such disbursing officer shall transmit the sum so deducted to the
2 employee organization designated by the employee in such request.

3 Employees who have authorized the payroll deduction of fees to
4 employee organizations prior to the effective date of the
5 “Workplace Democracy Enhancement Act”, P.L. 2018, c.15
6 (C.34:13A-5.11 et seq.), may revoke such authorization by
7 providing written notice to their public employer consistent with the
8 terms of the authorization by the employee to have any deductions
9 made from the employee’s compensation for the purpose of paying
10 the employee's dues to a bona fide employee organization, as those
11 terms are set forth on the writing signed by the employee
12 authorizing the payroll deduction of dues, provided the writing was
13 consistent with the law at the time the authorization was given. If
14 the writing was not consistent with law, the revocation of
15 authorization shall be effective on the dates provided by law at the
16 time the authorization was given.

17 Employees who have authorized the payroll deduction of fees to
18 employee organizations on or after the effective date of the
19 “Workplace Democracy Enhancement Act”, P.L. 2018, c.15
20 (C.34:13A-5.11 et seq.), may revoke such authorization by
21 providing written notice to their public employer **【during the 10**
22 **days following each anniversary date of their employment】**. Within
23 five days of receipt of notice from an employee of revocation of
24 authorization for the payroll deduction of fees, the public employer
25 shall provide notice to the employee organization of an employee's
26 revocation of such authorization. An employee's notice of
27 revocation of authorization for the payroll deduction of employee
28 organization fees shall be effective on the 30th day after the
29 anniversary date of employment.

30 Within five days of receipt of notice from an employee of
31 revocation of authorization for the payroll deduction of fees, the
32 public employer shall provide notice to the employee organization
33 of an employee’s revocation of such authorization.

34 Nothing herein shall preclude a public employer and a duly
35 certified majority representative from entering into a collectively
36 negotiated written agreement which provides that employees
37 included in the negotiating unit may only request deduction for the
38 payment of dues to the duly certified majority representative. Such
39 collectively negotiated agreement may include a provision that
40 existing written authorizations for payment of dues to an employee
41 organization other than the duly certified majority representative be
42 terminated. Such collectively negotiated agreement may also
43 include a provision specifying the effective date of a termination in
44 deductions as of the July 1 next succeeding the date on which notice
45 of withdrawal is filed by an employee with the public employer's
46 disbursing officer.

1 This authorization for negotiation of exclusive dues deduction
2 provisions shall not apply to any negotiating unit which includes
3 employees of any local school district or county college.

4 As used in this section, dues shall mean all moneys required to
5 be paid by the employee as a condition of membership in an
6 employee organization and any voluntary employee contribution to
7 a committee or fund established by such organization, including but
8 not limited to welfare funds, political action committees, charity
9 funds, legal defense funds, educational funds, and funds for
10 donations to schools, colleges, and universities.

11 (cf: P.L.2018, c.15, s.6)

12

13 12. This act shall take effect immediately.