

ASSEMBLY, No. 980

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman GEIST

1 AN ACT concerning public employer and employee relations and  
2 amending P.L.1968, c.303 and P.L.1974, c.123.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 7 of P.L.1968, c.303 (C.34:13A-5.3) is amended to read  
8 as follows:

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

32 Representatives designated or selected by public employees for the

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

**Matter underlined thus is new matter.**

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

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

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

37 A public employer shall not unilaterally change the terms and  
38 conditions of employment before agreement is reached with a majority  
39 representative, notwithstanding that a collective bargaining agreement  
40 may have expired, that the parties are at impasse in negotiations, or  
41 that the parties have exhausted the commission's impasse procedures.

42 Public employers shall negotiate written policies setting forth  
43 grievance and disciplinary review procedures by means of which their  
44 employees or representatives of employees may appeal the  
45 interpretation, application or violation of policies, agreements, and  
46 administrative decisions, including disciplinary determinations,

1 affecting them, provided that such grievance and disciplinary review  
2 procedures shall be included in any agreement entered into between  
3 the public employer and the representative organization. Such  
4 grievance and disciplinary review procedures may provide for binding  
5 arbitration as a means for resolving disputes. The procedures agreed  
6 to by the parties may not replace or be inconsistent with any alternate  
7 statutory appeal procedure nor may they provide for binding  
8 arbitration of disputes involving the discipline of employees with  
9 statutory protection under tenure or civil service laws. Grievance and  
10 disciplinary review procedures established by agreement between the  
11 public employer and the representative organization shall be utilized  
12 for any dispute covered by the terms of such agreement.

13 (cf: P.L.1982, c.103, s.1)

14

15 2. Section 1 of P.L.1974, c.123 (C.34:13A-5.4) is amended to read  
16 as follows:

17 1. a. Public employers, their representatives or agents are  
18 prohibited from:

19 (1) Interfering with, restraining or coercing employees in the  
20 exercise of the rights guaranteed to them by this act.

21 (2) Dominating or interfering with the formation, existence or  
22 administration of any employee organization.

23 (3) Discriminating in regard to hire or tenure of employment or any  
24 term or condition of employment to encourage or discourage  
25 employees in the exercise of the rights guaranteed to them by this act.

26 (4) Discharging or otherwise discriminating against any employee  
27 because he has signed or filed an affidavit, petition or complaint or  
28 given any information or testimony under this act.

29 (5) Refusing to negotiate in good faith with a majority  
30 representative of employees in an appropriate unit concerning terms  
31 and conditions of employment of employees in that unit, or refusing to  
32 process grievances presented by the majority representative.

33 (6) Refusing to reduce a negotiated agreement to writing and to  
34 sign such agreement.

35 (7) Violating any of the rules and regulations established by the  
36 commission.

37 (8) Changing the terms and conditions of employment prior to  
38 reaching agreement with a majority representative, notwithstanding  
39 that a prior collective bargaining agreement has expired, that the  
40 parties are at impasse, or that the parties have exhausted the  
41 commission's impasse procedures.

42 b. Employee organizations, their representatives or agents are  
43 prohibited from:

44 (1) Interfering with, restraining or coercing employees in the  
45 exercise of the rights guaranteed to them by this act.

46 (2) Interfering with, restraining or coercing a public employer in the

1 selection of his representative for the purposes of negotiations or the  
2 adjustment of grievances.

3 (3) Refusing to negotiate in good faith with a public employer, if  
4 they are the majority representative of employees in an appropriate  
5 unit concerning terms and conditions of employment of employees in  
6 that unit.

7 (4) Refusing to reduce a negotiated agreement to writing and to  
8 sign such agreement.

9 (5) Violating any of the rules and regulations established by the  
10 commission.

11 c. The commission shall have exclusive power as hereinafter  
12 provided to prevent anyone from engaging in any unfair practice listed  
13 in subsections a. and b. above. Whenever it is charged that anyone has  
14 engaged or is engaging in any such unfair practice, the commission, or  
15 any designated agent thereof, shall have authority to issue and cause  
16 to be served upon such party a complaint stating the specific unfair  
17 practice charged and including a notice of hearing containing the date  
18 and place of hearing before the commission or any designated agent  
19 thereof; provided that no complaint shall issue based upon any unfair  
20 practice occurring more than 6 months prior to the filing of the charge  
21 unless the person aggrieved thereby was prevented from filing such  
22 charge in which event the 6-month period shall be computed from the  
23 day he was no longer so prevented.

24 In any such proceeding, the provisions of the Administrative  
25 Procedure Act P.L.1968, c.410 (C.52:14B-1 et seq.) shall be  
26 applicable. Evidence shall be taken at the hearing and filed with the  
27 commission. If, upon all the evidence taken, the commission shall  
28 determine that any party charged has engaged or is engaging in any  
29 such unfair practice, the commission shall state its findings of fact and  
30 conclusions of law and issue and cause to be served on such party an  
31 order requiring such party to cease and desist from such unfair  
32 practice, and to take such reasonable affirmative action as will  
33 effectuate the policies of this act. All cases in which a complaint and  
34 notice of hearing on a charge is actually issued by the commission,  
35 shall be prosecuted before the commission or its agent, or both, by the  
36 representative of the employee organization or party filing the charge  
37 or his authorized representative.

38 d. The commission shall at all times have the power and duty, upon  
39 the request of any public employer or majority representative, to make  
40 a determination as to whether a matter in dispute is within the scope  
41 of collective negotiations. The commission shall serve the parties with  
42 its findings of fact and conclusions of law. Any determination made  
43 by the commission pursuant to this subsection may be appealed to the  
44 Appellate Division of the Superior Court.

45 e. The commission shall adopt such rules as may be required to  
46 regulate the conduct of representation elections, and to regulate the

1 time of commencement of negotiations and of institution of impasse  
2 procedures so that there will be full opportunity for negotiations and  
3 the resolution of impasses prior to required budget submission dates.

4 f. The commission shall have the power to apply to the Appellate  
5 Division of the Superior Court for an appropriate order enforcing any  
6 order of the commission issued under subsection c. or d. hereof, and  
7 its findings of fact, if based upon substantial evidence on the record as  
8 a whole, shall not, in such action, be set aside or modified; any order  
9 for remedial or affirmative action, if reasonably designed to effectuate  
10 the purposes of this act, shall be affirmed and enforced in such  
11 proceeding.

12 (cf: P.L.1979, c.477, s.1)

13

14 3. This act shall take effect immediately.

15

16

17

#### STATEMENT

18

19 This bill prohibits public employers from unilaterally changing the  
20 terms and conditions of employment before agreement is reached with  
21 a majority representative of a public employee group, notwithstanding  
22 that a collective bargaining agreement may have expired, that the  
23 parties are at impasse in negotiations, or that the parties have  
24 exhausted the New Jersey Public Employment Relations Commission's  
25 impasse procedures. The bill also makes it an unlawful practice under  
26 the "New Jersey Employer-Employee Relations Act" for a public  
27 employer to unilaterally change the terms and conditions of  
28 employment before agreement is reached with a majority  
29 representative of a public employee group.

30

31

32

33

34 Prohibits a public employer from changing the terms and conditions of  
35 employment prior to reaching agreement with a public employee  
36 representative.