

[First Reprint]
ASSEMBLY, No. 980

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen GEIST, Dalton, Assemblywoman Turner,
Assemblymen Gusciora, Azzolina, Asselta and Bucco

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted March 13, 1997.

1 definition except in the event of a dispute.

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

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

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

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

44 Public employers shall negotiate written policies setting forth
45 grievance and disciplinary review procedures by means of which their
46 employees or representatives of employees may appeal the

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

15 (cf: P.L.1982, c.103, s.1)]¹

16

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

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

42 Representatives designated or selected by public employees for the
43 purposes of collective negotiation by the majority of the employees in
44 a unit appropriate for such purposes or by the majority of the
45 employees voting in an election conducted by the commission as
46 authorized by this act shall be the exclusive representatives for

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

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

29 When an agreement is reached on the terms and conditions of
30 employment, it shall be embodied in writing and signed by the
31 authorized representatives of the public employer and the majority
32 representative.

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

38 Public employers shall negotiate written policies setting forth
39 grievance and disciplinary review procedures by means of which their
40 employees or representatives of employees may appeal the
41 interpretation, application or violation of policies, agreements, and
42 administrative decisions, including disciplinary determinations,
43 affecting them, provided that such grievance and disciplinary review
44 procedures shall be included in any agreement entered into between
45 the public employer and the representative organization. Such
46 grievance and disciplinary review procedures may provide for binding

1 arbitration as a means for resolving disputes. The procedures agreed
2 to by the parties may not replace or be inconsistent with any alternate
3 statutory appeal procedure nor may they provide for binding
4 arbitration of disputes involving the discipline of employees with
5 statutory protection under tenure or civil service laws, except that
6 such procedures may provide for binding arbitration of disputes
7 involving the minor discipline of any public employees protected under
8 the provisions of section 7 of P.L.1968, c.303 (C.34:13A-5.3), other
9 than public employees subject to discipline pursuant to R.S.53:1-10.
10 Grievance and disciplinary review procedures established by agreement
11 between the public employer and the representative organization shall
12 be utilized for any dispute covered by the terms of such agreement.
13 For the purposes of this section, minor discipline shall mean a
14 suspension or fine of less than five days unless the employee has been
15 suspended or fined an aggregate of 15 or more days or received more
16 than three suspensions or fines of five days or less in one calendar
17 year.¹

18 (cf: P.L.1996, c.115, s.4)

19

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

22 1. a. Public employers, their representatives or agents are
23 prohibited from:

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

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

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

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

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

38 (6) Refusing to reduce a negotiated agreement to writing and to
39 sign such agreement.

40 (7) Violating any of the rules and regulations established by the
41 commission.

42 (8) Changing the terms and conditions of employment prior to
43 reaching agreement with a majority representative, notwithstanding
44 that a prior collective bargaining agreement has expired, that the
45 parties are at impasse, or that the parties have exhausted the
46 commission's impasse procedures.

1 b. Employee organizations, their representatives or agents are
2 prohibited from:

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

5 (2) Interfering with, restraining or coercing a public employer in
6 the selection of his representative for the purposes of negotiations or
7 the adjustment of grievances.

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

12 (4) Refusing to reduce a negotiated agreement to writing and to
13 sign such agreement.

14 (5) Violating any of the rules and regulations established by the
15 commission.

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

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

43 d. The commission shall at all times have the power and duty, upon
44 the request of any public employer or majority representative, to make
45 a determination as to whether a matter in dispute is within the scope
46 of collective negotiations. The commission shall serve the parties with

1 its findings of fact and conclusions of law. Any determination made
2 by the commission pursuant to this subsection may be appealed to the
3 Appellate Division of the Superior Court.

4 e. The commission shall adopt such rules as may be required to
5 regulate the conduct of representation elections, and to regulate the
6 time of commencement of negotiations and of institution of impasse
7 procedures so that there will be full opportunity for negotiations and
8 the resolution of impasses prior to required budget submission dates.

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

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

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19 3. This act shall take effect immediately.

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24 Prohibits a public employer from changing the terms and conditions of
25 employment prior to reaching agreement with a public employee
26 representative.