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ASSEMBLY, No. 980

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

**By Assemblymen GEIST, ASSELTA, Dalton, Assemblywoman Turner,
Assemblymen Gusciora, Azzolina, 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

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 membership. The negotiating unit shall be defined with due regard for
2 the community of interest among the employees concerned, but the
3 commission shall not intervene in matters of recognition and unit
4 definition except in the event of a dispute.

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

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

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

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

1 Public employers shall negotiate written policies setting forth
2 grievance and disciplinary review procedures by means of which their
3 employees or representatives of employees may appeal the
4 interpretation, application or violation of policies, agreements, and
5 administrative decisions, including disciplinary determinations,
6 affecting them, provided that such grievance and disciplinary review
7 procedures shall be included in any agreement entered into between
8 the public employer and the representative organization. Such
9 grievance and disciplinary review procedures may provide for binding
10 arbitration as a means for resolving disputes. The procedures agreed
11 to by the parties may not replace or be inconsistent with any alternate
12 statutory appeal procedure nor may they provide for binding
13 arbitration of disputes involving the discipline of employees with
14 statutory protection under tenure or civil service laws. Grievance and
15 disciplinary review procedures established by agreement between the
16 public employer and the representative organization shall be utilized
17 for any dispute covered by the terms of such agreement.
18 (cf: P.L.1982, c.103, s.1)]¹

19

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

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

45 Representatives designated or selected by public employees for the
46 purposes of collective negotiation by the majority of the employees in

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

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

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

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

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

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

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

22

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

25 1. a. Public employers, their representatives or agents are
26 prohibited from:

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

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

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

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

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

41 (6) Refusing to reduce a negotiated agreement to writing and to
42 sign such agreement.

43 (7) Violating any of the rules and regulations established by the
44 commission.

45 (8) Changing the terms and conditions of employment prior to
46 reaching agreement with a majority representative, notwithstanding

1 that a prior collective bargaining agreement has expired, that the
2 parties are at impasse, or that the parties have exhausted the
3 commission's impasse procedures.

4 b. Employee organizations, their representatives or agents are
5 prohibited from:

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

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

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

15 (4) Refusing to reduce a negotiated agreement to writing and to
16 sign such agreement.

17 (5) Violating any of the rules and regulations established by the
18 commission.

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

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

46 d. The commission shall at all times have the power and duty, upon

1 the request of any public employer or majority representative, to make
2 a determination as to whether a matter in dispute is within the scope
3 of collective negotiations. The commission shall serve the parties with
4 its findings of fact and conclusions of law. Any determination made
5 by the commission pursuant to this subsection may be appealed to the
6 Appellate Division of the Superior Court.

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

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

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

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22 3. This act shall take effect immediately.

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26

27 Prohibits a public employer from changing the terms and conditions of
28 employment prior to reaching agreement with a public employee
29 representative.