

[Passed Both Houses]

ASSEMBLY, No. 1965

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1996

By Assemblymen DiGAETANO and PASCRELL

1 AN ACT concerning compulsory arbitration for public fire and police
2 departments and amending P.L.1977, c.85.

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

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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 which
12 their collective negotiation agreement is to expire. The parties shall
13 meet at least three times during that 120-day period. The first of those
14 three meetings shall take place no later than the 90th day prior to the
15 day on which their collective negotiation agreement is to expire. By
16 mutual consent, the parties may agree to extend the period during
17 which the second and third meetings are required to take place beyond
18 the day on which their collective negotiation agreement is to expire.
19 A violation of this paragraph shall constitute an unfair practice and the
20 violator shall be subject to the penalties prescribed by the commission
21 pursuant to rule and regulation.

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

28 b. (1) In the event of a failure to resolve the impasse by mediation,
29 the Division of Public Employment Relations, at the request of either
30 party, shall invoke factfinding with recommendation for settlement of
31 all issues in dispute unless the parties reach a voluntary settlement

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 prior to the issuance of the factfinder's report and recommended terms
2 of settlement. Factfindings shall be limited to those issues that are [e]
3 within the required scope of negotiations unless the parties to the
4 factfinding agree to factfinding on permissive subjects of negotiation.
5 [The cost of factfinding shall be borne by the commission.] In the
6 event of a continuing failure to resolve an impasse by means of the
7 procedure set forth in this paragraph, and notwithstanding the fact that
8 such procedures have not been exhausted, the parties shall notify the
9 commission, at a time and in a manner prescribed by the commission,
10 as to whether or not they have agreed upon a terminal procedure for
11 resolving the issues in dispute. Any terminal procedure mutually
12 agreed upon by the parties shall be reduced to writing, provide for
13 finality in resolving the issues in dispute, and shall be submitted to the
14 commission for approval.

15 (2) Notwithstanding the provisions of paragraph (2) of subsection
16 a. of this section or paragraph (1) of this subsection, either party may
17 petition the commission for arbitration on or after the date on which
18 their collective negotiation agreement expires. The petition shall be
19 filed in a manner and form prescribed by the commission. The party
20 filing the petition shall notify the other party of its action. The notice
21 shall be given in a manner and form prescribed by the commission.

22 Within 10 days of the receipt of the notice by the non-petitioning
23 party, the parties shall notify the commission as to whether or not they
24 have agreed upon a terminal procedure for resolving the issues in
25 dispute. Any terminal procedure mutually agreed upon by the parties
26 shall be reduced to writing, provide for finality in resolving the issues
27 in dispute, and shall be submitted to the commission for approval. If
28 the parties fail to agree on a terminal procedure, they shall be subject
29 to the provisions of subsection d. of this section.

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

32 (1) Conventional arbitration of all unsettled items.

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

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

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

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

7 (6) Arbitration under which the award on the economic issues in
8 dispute is confined to a choice between (a) the last offer of the
9 employer on the economic issues as a single package and (b) the
10 employee representative's last offer on the economic issues as a single
11 package; and, on any noneconomic issues in dispute, the award is
12 confined to a choice between (a) the last offer of the employer on each
13 issue in dispute and (b) the employee representative's last offer on that
14 issue.

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

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

23 (2) Upon receipt of such notification from either party or on the
24 commission's own motion, the procedure to provide finality for the
25 resolution of issues in dispute shall be binding arbitration under which
26 the award on the unsettled issues is determined by conventional
27 arbitration. The arbitrator shall separately determine whether the total
28 net annual economic changes for each year of the agreement are
29 reasonable under the eight statutory criteria set forth in subsection g.
30 of this section.

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

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

1 In any proceeding where an assigned arbitrator is unable to serve
2 or, pursuant to the preceding paragraph, the two parties are unable to
3 mutually agree upon a replacement, the commission shall assign a
4 replacement arbitrator. The assignment shall be the responsibility of
5 the commission, independent of and without any participation by either
6 of the parties. The commission shall select the replacement arbitrator
7 for assignment by lot.

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

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

15 f. (1) At a time prescribed by the commission, the parties shall
16 submit to the arbitrator or tripartite panel of arbitrators their final
17 offers on each economic and non-economic issue in dispute. The
18 offers submitted pursuant to this section shall be used by the arbitrator
19 for the purposes of determining an award pursuant to paragraph (2) of
20 subsection d. of this section. The commission shall promulgate rules
21 and procedures governing the submission of the offers required under
22 this paragraph, including when those offers shall be deemed final,
23 binding and irreversible.

24 (2) In the event of a dispute, the commission shall have the power
25 to decide which issues are economic issues. Economic issues include
26 those items which have a direct relation to employee income including
27 wages, salaries, hours in relation to earnings, and other forms of
28 compensation such as paid vacation, paid holidays, health and medical
29 insurance, and other economic benefits to employees.

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

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

37 (5) The decision of an arbitrator or panel of arbitrators shall
38 include an opinion and an award, and shall be rendered within 120
39 days of the selection of the arbitrator by the mutual agreement of both
40 parties or the commission's assignment of that arbitrator or panel of
41 arbitrators, as the case may be, pursuant to paragraph (1) of
42 subsection e. of this section; provided, however, the arbitrator or panel
43 of arbitrators, for good cause, may petition the commission for an
44 extension of not more than 60 days. The two parties, by mutual
45 consent, may agree to an extension. The parties shall notify the
46 arbitrator and the commission of any such agreement in writing. The

1 notice shall set forth the specific date on which the extension shall
2 expire. Any arbitrator or panel of arbitrators violating the provisions
3 of this paragraph may be subject to the commission's powers under
4 paragraph (2) of subsection e. of this section. The decision shall be
5 final and binding upon the parties and shall be irreversible, except:

6 (a) Within 14 days of receiving an award, an aggrieved party may
7 file notice of an appeal of an award to the commission on the grounds
8 that the arbitrator failed to apply the criteria specified in subsection g.
9 of this section or violated the standards set forth in N.J.S.2A:24-8 or
10 N.J.S.2A:24-9. The appeal shall be filed in a form and manner
11 prescribed by the commission. In deciding an appeal, the commission,
12 pursuant to rule and regulation and upon petition, may afford the
13 parties the opportunity to present oral arguments. The commission
14 may affirm, modify, correct or vacate the award or may, at its
15 discretion, remand the award to the same arbitrator or to another
16 arbitrator, selected by lot, for reconsideration. An aggrieved party
17 may appeal a decision of the commission to the Appellate Division of
18 the Superior Court.

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

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

25 g. The arbitrator or panel of arbitrators shall decide the dispute
26 based on a reasonable determination of the issues, giving due weight
27 to those factors listed below that are judged relevant for the resolution
28 of the specific dispute. In the award, the arbitrator or panel of
29 arbitrators shall indicate which of the factors are deemed relevant,
30 satisfactorily explain why the others are not relevant, and provide an
31 analysis of the evidence on each relevant factor:

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

36 (2) Comparison of the wages, salaries, hours, and conditions of
37 employment of the employees involved in the arbitration proceedings
38 with the wages, hours, and conditions of employment of other
39 employees performing the same or similar services and with other
40 employees generally:

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

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

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

6 (3) The overall compensation presently received by the employees,
7 inclusive of direct wages, salary, vacations, holidays, excused leaves,
8 insurance and pensions, medical and hospitalization benefits, and all
9 other economic benefits received.

10 (4) Stipulations of the parties.

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

15 (6) The financial impact on the governing unit, its residents and
16 taxpayers. When considering this factor in a dispute in which the
17 public employer is a county or a municipality, the arbitrator or panel
18 of arbitrators shall take into account, to the extent that evidence is
19 introduced, how the award will affect the municipal or county
20 purposes element, as the case may be, of the local property tax; a
21 comparison of the percentage of the municipal purposes element or,
22 in the case of a county, the county purposes element, required to fund
23 the employees' contract in the preceding local budget year with that
24 required under the award for the current local budget year; the impact
25 of the award for each income sector of the property taxpayers of the
26 local unit; the impact of the award on the ability of the governing body
27 to (a) maintain existing local programs and services, (b) expand
28 existing local programs and services for which public moneys have
29 been designated by the governing body in a proposed local budget, or
30 (c) initiate any new programs and services for which public moneys
31 have been designated by the governing body in a proposed local
32 budget.

33 (7) The cost of living.

1 (8) The continuity and stability of employment including seniority
2 rights and such other factors not confined to the foregoing which are
3 ordinarily or traditionally considered in the determination of wages,
4 hours, and conditions of employment through collective negotiations
5 and collective bargaining between the parties in the public service and
6 in private employment.

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

15 (cf: P.L. 1995, c.425, s.3)

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17 2. This act shall take effect immediately.

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STATEMENT

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22 This bill corrects a printer's error. Five lines of existing statutory
23 language, including the deletion of "The cost of factfinding shall be
24 borne by the commission," were inexplicably omitted from the copy of
25 A-3296 which the Governor signed into law as P.L.1995, c.425 on
26 January 10, 1996. This bill corrects that law to read as the Legislature
27 intended it.

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32 Corrects printing error; reinserts dropped statutory language.