ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 5862
STATE OF NEW JERSEY
219th LEGISLATURE
ADOPTED JANUARY 6, 2022
Sponsored by:
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Co-Sponsored by:
Assemblywomen Reynolds-Jackson, Murphy, Assemblymen Giblin, Verrelli, Zwicker, Assemblywomen Chaparro, Sunter, Jasey, McKnight, Assemblymen McKeon, Stanley, Assemblywoman Lopez, Assemblymen Wimberly, Caputo and DeAngelo

SYNOPSIS
“Responsible Collective Negotiations Act.”

CURRENT VERSION OF TEXT
Substitute as adopted by the Assembly Appropriations Committee.

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

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

2. (New section) The Legislature finds and declares that the public interest is best served in the prompt settlement of labor disputes and in achieving cost effective and creative solutions to ensure the efficient delivery of public services and that policy is best achieved by entrusting democratically elected government officials with broad authority to negotiate over the terms of employment of their employees.

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

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

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

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

   d. The terms “employee organization” and “majority representative”, unless otherwise specified, mean the “exclusive

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.
majority representative” either certified by the commission or
recognized by the public employer.

4. (New section) Notwithstanding any provisions of the “New
Jersey Employer-Employee Relations Act,” P.L.1941, c.100
(C.34:13A-1 et seq.), or any other law to the contrary:
   a. Permissive subjects for collective negotiation shall include all
terms and conditions of employment that are not otherwise
mandatorily negotiable and that intimately and directly affect
employee work and welfare, unless otherwise preempted by State or
federal statute, or unless a negotiated agreement would prevent
government from carrying out its statutory mission.
   b. Administrative regulations adopted after the effective date of
P.L. c. (C. )(pending before the Legislature as this bill) that set
terms and conditions of employment or that grant public employers
authority over terms and conditions of employment do not preempt
collective negotiations and do not supersede the provisions of any
negotiated agreement, except that terms and conditions of employment
set by statutes and regulations shall not be diminished by a negotiated
agreement.
   c. Parties may submit disputes about whether a matter is within the
scope of collective negotiations to the commission, pursuant to the
authority vested in it by subsection d. of section 1 of P.L. 1974, c.123
(C.34:13A-5.4).
   d. Grievance procedures shall provide for binding arbitration as
the means for resolving disputes over the application, interpretation or
violation of the terms of a collective negotiations agreement entered
into by the parties.
   e. Where an employer and a majority representative agree to
disciplinary review procedures that provide for binding arbitration of
disputes involving employees who are covered by alternate statutory
review procedures, other than public employees subject to discipline
pursuant to R.S.53:1-10, the disciplinary review procedures
established by agreement between an employer and a majority
representative shall be utilized for any dispute covered by the terms of
such agreement.
   f. Notwithstanding the expiration of a collective negotiations
agreement, an impasse in negotiations, an exhaustion of the
commission’s impasse procedures, or the utilization or completion of
the procedures required by P.L. , c. (pending before the
Legislature as this bill) to resolve disputes involving collective
negotiations, and notwithstanding any law or regulation to the
contrary, no public employer, its representatives, or its agents shall
unilaterally impose, modify, amend, delete, or alter any mandatorily
negotiable terms and conditions of employment as set forth in the
expired or expiring collective negotiations agreement, or unilaterally
impose, modify, amend, delete, or alter any other mandatorily
negotiable terms and conditions of employment that are not set forth in
a collective negotiations agreement, without the specific written agreement of the majority representative. Following contract expiration, and notwithstanding any law or regulation to the contrary, absent express language in a collective negotiations agreement providing that a specific term of the agreement will not continue after the expiration of the collective negotiations agreement, all terms and conditions of the agreement, including, but not limited to the payment of salary increments, shall remain in effect following the agreement’s expiration until the parties reach agreement on a successor collective negotiations agreement.

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

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

i. The parties to collective negotiations may not insist on negotiating over permissive subjects of negotiations. A party’s decision to not negotiate or to cease negotiating over a permissive subject of negotiations is not a violation of subsection a. or b. of section 1 of P.L.1974, c.123 (C.34:13A-5.4).

j. The commission shall promulgate regulations to enforce the provisions of this section.

5. (New section) The communications between a representative of a majority representative of employees and a unit member regarding the investigation and preparation for meetings and hearings of grievances and disciplinary disputes, shall be treated as confidential communications and shall not be subject to disclosure under the discovery rules of New Jersey administrative agencies, including, but not limited to the Office of Administrative Law and the commission, or pursuant to section 17 of P.L.2003, c.95 (C.2A:23B-17), and other applicable State laws authorizing arbitrators, presiding at labor arbitrations, to issue subpoenas. This section does not apply to the New Jersey Court Rules or to records that are required by statute, case law, or the New Jersey Court Rules to be made available to the public by entities provided for in Article VI of the New Jersey Constitution.

6. (New section) Notwithstanding any provisions of the “New Jersey Employer-Employee Relations Act,” P.L.1941, c.100 (C.34:13A-1 et seq.), or any other law to the contrary, if an employee who does not pay dues to a majority representative requests that the majority representative represent the employee in arbitration proceedings to enforce the terms of the collective negotiations agreement between the majority representative and the public employer, including arbitration proceedings involving the resolution of disciplinary disputes, the majority representative may
charge an employee for the cost of representing the employee in the
arbitration proceedings, and may decline to represent an employee
in the arbitration unless the employee agrees to pay for the cost of
the representation.

7. (New section) Only the parties to a collective negotiations
agreement shall have the authority to invoke the arbitration
procedures of the agreement and the public employer and the
employee organization shall be the only parties to the arbitration
proceeding invoked pursuant to the collective negotiations
agreement.

8. (New section) Authorization cards or showings of interest
submitted to the commission for purposes of conducting an election to
select a majority representative or certifying an employee organization
as the exclusive majority representative based on a majority of
employees in the unit signing authorization cards or a petition, may
bear the electronic signature of the employee, as the term electronic
signature is defined in section 2 of P.L. 2001, c. 116 (C.12A:12-2),
provided that the petitioner provides to the commission verification as
to the authenticity of the electronic signature, such as an email from
the employee signatory confirming the authenticity of their signature
or such other verification deemed acceptable by the commission.
Facsimile transmissions and email will be accepted in lieu of originals
for authorization cards and showings of interest in certification cases;
however, all original filings and submissions shall be retained by the
petitioner and the originals shall be produced upon request of the
commission.

9. (New section) Complaints issued based on a violation of
paragraph (3) of subsection (a) of section 1 of P.L.1974, c.123
(C.34:13A-5.4) shall be scheduled for hearing within 120 calendar
days from date of complaint issuance, unless the parties agree to
extend the time for complaint issuance. Within 60 calendar days of
the filing of an unfair practice charge alleging the violation the
commission shall decide whether or not to issue a complaint. The
commission shall promulgate rules to provide for discovery prior to
the commencement of a hearing.

10. Section 1 of P.L.1974, c.123 (C.34:13A-5.4) shall be amended
as follows:
   1. a. Public employers, their representatives or agents are
      prohibited from:
         (1) Interfering with, restraining or coercing employees in the
             exercise of the rights guaranteed to them by this act.
         (2) Dominating or interfering with the formation, existence or
             administration of any employee organization.
Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

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

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

Refusing to reduce a negotiated agreement to writing and to sign such agreement.

Violating any of the rules and regulations established by the commission.

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

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

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

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

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

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

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

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

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

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

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

g. The Director of the Division of Local Government Services in
the Department of Community Affairs may notify the commission that
a municipality deemed a "municipality in need of stabilization and
recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBB-4)
shall not be subject to the commission's authority to prevent an unfair
practice pursuant to subsection a. of this section. Upon such notice,
neither the commission, nor any designee, shall have the authority to
issue or cause to be served upon such municipality in need of
stabilization and recovery any complaint alleging an unfair practice
under subsection a. of this section or to hold any hearings with respect
thereo. Nothing in this subsection shall be construed to limit the
scope of any general or specific powers of the Local Finance Board or
the Director set forth in P.L.2016, c.4 (C.52:27BBB-1 et al.).

The provisions of this subsection shall no longer be applicable on
and after the first day of the sixth year next following the
determination by the Commissioner of Community Affairs that the
municipality shall be deemed "a municipality in need of stabilization
and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBB-
4); however, actions taken pursuant to this subsection prior to the
effective date of P.L.2021, c.124 (C.52:27BBBB-4 et al.) shall be final
and shall not be subject to reconsideration.

(cf: P.L.2021, c.124, s.4)

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

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

b. Negotiations unit work means work that is performed by any
employees who are included in a negotiations unit represented by an
exclusive representative employee organization without regard to
job title, job classification or number of hours worked, except that
employees who are confidential employees or managerial
executives, as those terms are defined by section 1 of P.L.1941,
c.100 (C.34:13A-3), or elected officials, members of boards and
commissions, or casual employees, may be excluded from the
negotiations unit. Casual employees are employees who work an
average of fewer than four hours per week over a period of 90
calendar days.

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

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

[e.] The Public Employment Relations Commission shall
promulgate rules to implement this section, including rules to
resolve disputes over the inclusion of employees performing
negotiations unit work in the appropriate negotiations unit. The
rules promulgated by the commission shall provide for the
resolution of disputes that arise under this section, within 60
calendar days from the submission of the dispute to the commission
by either the exclusive representative employee organization or the public employer. (cf: P.L.2018, c.15, s.5)

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

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

Employees who have authorized the payroll deduction of fees to employee organizations prior to the effective date of the “Workplace Democracy Enhancement Act”, P.L. 2018, c.15 (C.34:13A-5.11 et seq.), may revoke such authorization in accordance with the law in effect at the time of their initial authorization of payroll deduction of fees or with the terms of that authorization as those terms are set forth on the record bearing the employee’s signature, provided the terms were consistent with the law in effect at the time.

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

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

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

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

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

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

13. (New section) The provisions of sections 4 and 5 of
P.L. , c. (C. )(pending before the Legislature as this bill),
and of subsection c. of section 5 of P.L.2018, c.15 (C.34:13A-5.15)
shall not apply to:

a. the several counties and municipalities;
b. authorities, commissions, boards or other instrumentalities
of the several counties and municipalities;
c. State colleges and universities, including Kean University,
Montclair State University, and Rowan University;
d. county colleges;
e. Rutgers, the State University of New Jersey; or
f. the New Jersey Institute of Technology.

14. This act shall take effect immediately; provided, however, that
subsection a., and subsections c. through i., of section 4 of P.L. c.
(C. )(pending before the Legislature as this bill) shall be applicable
upon the expiration of any binding collective negotiations agreements
or contracts of employment in force on the date of enactment.