

[Second Reprint]

SENATE, No. 3810

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 20, 2021

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator DAWN MARIE ADDIEGO

District 8 (Atlantic, Burlington and Camden)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

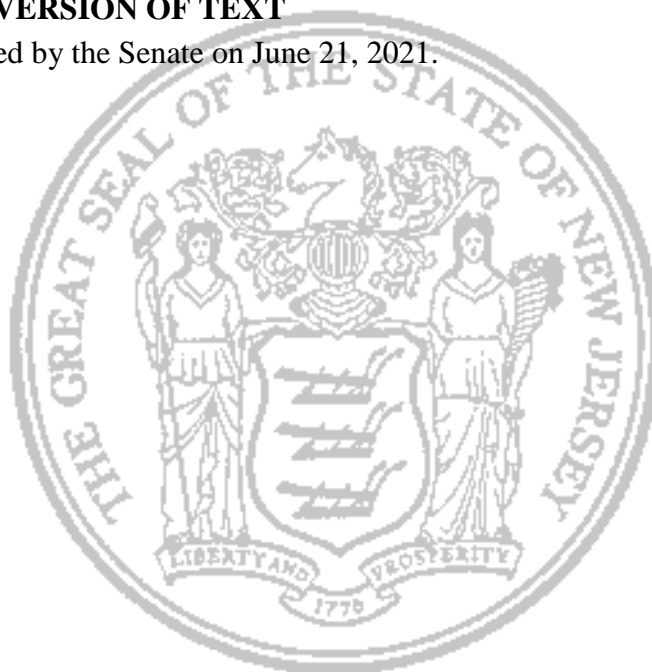
Senators Rice, Pou, Turner, Gill, Diegnan and Cunningham

SYNOPSIS

“Responsible Collective Negotiations Act.”

CURRENT VERSION OF TEXT

As amended by the Senate on June 21, 2021.



(Sponsorship Updated As Of: 12/2/2021)

1 AN ACT concerning public employment relations, amending
2 P.L.1967, c.310 and P.L.2018, c.15, and supplementing Title 34
3 of the Revised Statutes.

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

7
8 1. (New section) This act shall be known and may be cited as
9 the “Responsible Collective Negotiations Act.”

10
11 2. (New section) It is hereby declared as the public policy of
12 this State that the public interest is best served in the prompt
13 settlement of labor disputes and in achieving cost effective and
14 creative solutions to ensure the efficient delivery of public services
15 and that policy is best achieved by entrusting democratically elected
16 government officials with broad authority to negotiate over the
17 terms of employment of their employees; that the constitutional
18 mandate that public employees have the right to organize and
19 present grievances to their employers will be promoted by the
20 establishment of an system of collective negotiations between
21 public employers and the representatives of public employees that
22 includes all matters that intimately and directly affect employee
23 work and welfare, unless a negotiated agreement would prevent
24 government from carrying out its statutory mission; and that when
25 public employers and employee representatives agree upon subjects
26 of collective negotiations, it is in the public interest that those
27 agreements are enforceable by both public employee organizations
28 and public employers and that the parties to a collective
29 negotiations agreement respect and abide by their mutual promises
30 and agreements.

31
32 3. (New section) Notwithstanding any provisions of the “New
33 Jersey Employer-Employee Relations Act,” P.L.1941, c.100
34 (C.34:13A-1 et seq.), or any other law to the contrary, as used in
35 sections 1 through 9 of P.L. , c. (C.) (¹**now**)¹ pending
36 before the ¹**legislature** Legislature¹ as this bill):

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted June 10, 2021.

²Senate floor amendments adopted June 21, 2021.

1 c. The term “employee” means an employee of an employer as
2 defined by subparagraph b above, but does not include firefighting
3 employees of public fire departments or employees engaged in
4 performing police services for public police departments as those
5 terms are defined by section 2 of P.L.1977, c.85 (C.34:13A-15)¹,
6 except that, for the purposes of sections 6 through 9 of
7 P.L. , c. (C.) (pending before the Legislature as this bill), the term
8 “employee” also includes firefighting employees of public fire
9 departments or employees engaged in performing police services for
10 public police departments as those terms are defined by section 2 of
11 P.L.1977, c.85 (C.34:13A-15)¹.

12 d. ²**“Terms and conditions of employment”** are all matters that
13 intimately and directly affect the work and welfare of public
14 employees. Examples of terms and conditions of employment include,
15 but are not limited to: compensation; hours and schedules of work;
16 fringe benefits; layoffs; subcontracting and privatization; criteria and
17 procedures for promotions, performance evaluations and hiring;
18 transfers of employees; assignments and reassignments of employees;
19 transfer of negotiations unit work; and job security, discipline disputes
20 and disciplinary review procedures.

21 e. “Disciplinary review procedures” are procedures to review all
22 forms of discipline, including but not limited to, oral and written
23 reprimands, written warnings, suspensions with and without pay, fines,
24 terminations, non-renewals, non-reappointments, demotions,
25 disciplinary transfers and all other adverse personnel actions based on
26 employee performance or conduct.

27 f. ²**“The terms “employee organization” and “majority**
28 **representative”, unless otherwise specified, means the “exclusive**
29 **majority representative” either certified by the commission or**
30 **recognized by the public employer.**

31
32 ¹4. (New section) Notwithstanding any provisions of the “New
33 Jersey Employer-Employee Relations Act,” P.L.1941, c.100
34 (C.34:13A-1 et seq.), or any other law to the contrary:

35 a. ²**“Mandatory”** ²**Permissive**² subjects for collective negotiation
36 ²“in public employment” involving the several counties and
37 municipalities, and any authorities, boards, commissions or other
38 instrumentalities of the several counties or municipalities,² shall
39 include ²all² terms and conditions of employment ²“of public
40 employees”² that are not ²otherwise mandatorily negotiable and that
41 intimately and directly affect employee work and welfare, unless those
42 subjects are² specifically exempted from collective negotiations by
43 State statute, ²or² unless a negotiated agreement would prevent
44 government from carrying out its statutory mission. ²Mandatory
45 subjects for collective negotiation involving public employers other
46 than the several counties and municipalities, and any authorities,
47 boards, commissions or other instrumentalities of the several counties

1 and municipalities, shall include terms and conditions of employment
2 that intimately and directly affect the work and welfare of public
3 employees and that are not specifically exempted from collective
4 negotiations by State statute, unless a negotiated agreement would
5 prevent government from carrying out its statutory mission.² Statutes
6 and administrative regulations that set terms and conditions of
7 employment or that grant public employers authority over terms and
8 conditions of employment do not preempt collective negotiations and
9 do not supersede the provisions of any negotiated agreement, except
10 that terms and conditions of employment set by statutes and
11 regulations shall not be diminished by a negotiated agreement.

12 b. ²Parties may agree to submit disputes about whether a matter is
13 within the scope of collective negotiations to the commission, pursuant
14 to the authority vested in it by subsection d. of section 1 of P.L. 1974,
15 c.123 (C.34:13A-5.4).

16 c.² Grievance ²[and disciplinary review]² procedures shall
17 provide for binding arbitration as ²[a] the means for resolving
18 disputes over the application, interpretation or violation of the terms of
19 a collective negotiations agreement entered into by the parties. With
20 respect to the discipline of employees without statutory protection
21 under tenure or civil service laws, binding arbitration shall be the final
22 dispute resolution mechanism of any dispute regarding whether there
23 is just cause for a disciplinary dispute, including, but not limited to,
24 reprimands, withholding of increments, termination or non-renewal of
25 an employment contract, expiration or lapse of an employment
26 contract or term, or lack of continuation of employment, irrespective
27 of the reason for the employer's action or failure to act. In arbitration,
28 the burden of proof shall be on the employer. Parties may negotiate
29 alternative disciplinary review procedures that may provide for
30 binding arbitration as the² means for resolving disputes involving
31 ²[mandatory subjects for collective negotiations] discipline of
32 employees with statutory protection under tenure or civil service laws.
33 For any collective negotiations agreement in effect on the effective
34 date of P.L. , c. (C.)(pending before the Legislature as this bill),
35 subsection c. of this section, shall become effective upon the
36 expiration of that collective negotiations agreement².

37 ²[c.] d.² Notwithstanding the expiration of a collective
38 negotiations agreement, an impasse in negotiations, an exhaustion of
39 the commission's impasse procedures, or the utilization or completion
40 of the procedures required by of P.L. , c. (C.)(pending before
41 the Legislature as this bill) to resolve disputes involving collective
42 negotiations, and notwithstanding any law or regulation to the
43 contrary, no public employer, its representatives, or its agents shall
44 unilaterally impose, modify, amend, delete or alter any terms and
45 conditions of employment as set forth in the expired or expiring
46 collective negotiations agreement, or unilaterally impose, modify,
47 amend, delete, or alter any other negotiable terms and conditions of
48 employment, without the specific written agreement of the majority

1 representative. Following contract expiration, and notwithstanding
2 any law or regulation to the contrary, absent express language in a
3 collective negotiations agreement providing that a specific term of the
4 agreement will not continue after the expiration of the collective
5 negotiations agreement, all terms and conditions of the agreement,
6 including, but not limited to the payment of salary increments, shall
7 remain in effect following the agreement's expiration until the parties
8 reach agreement on a successor collective negotiations agreement.¹

9 ²e. Notwithstanding any provision of this section, the Legislature
10 retains the right to exempt from collective negotiations subjects that
11 would otherwise be mandatory subjects of negotiations.

12 f. Notwithstanding any provision of this section, the resolution of
13 disputes concerning negotiations over terms and conditions of
14 employment shall not be subject to compulsory interest arbitration as
15 set forth in P.L. 1995, c. 425 (C.34:13A-14a et seq.).²

16
17 ¹5. (New section) The communications between a majority
18 representative of employees and its unit members regarding
19 collective negotiations, the administration of collective negotiations
20 agreements, the investigation of grievances, other workplace related
21 complaints and issues, or any other matters that are within the scope
22 of a majority representative's duty of fair representation, and
23 internal union matters involving the governance or business of the
24 union, shall be treated as confidential communications and shall not
25 be subject to disclosure under the discovery rules of New Jersey
26 administrative agencies, including, but not limited to the Office of
27 Administrative Law and the Commission, or pursuant to section 17
28 of P.L.2003, c.95 (C.2A:23B-17), and other applicable state laws
29 authorizing arbitrators, presiding at labor arbitrations, to issue
30 subpoenas.¹

31
32 ¹[4.] 6.¹ (New section) Notwithstanding any provisions of the
33 "New Jersey Employer-Employee Relations Act," P.L.1941, c.100
34 (C.34:13A-1 et seq.), or any other law to the contrary, if an
35 employee who does not pay dues to a majority representative
36 requests that the majority representative represent the employee in
37 arbitration proceedings to enforce the terms of the collective
38 negotiations agreement between the majority representative and the
39 public employer, including arbitration proceedings involving the
40 resolution of disciplinary disputes, the majority representative may
41 charge an employee for the cost of representing the employee in the
42 arbitration proceedings, and may decline to represent an employee
43 in the arbitration unless the employee agrees to pay for the cost of
44 the representation.

45
46 ¹[5.] 7.¹ (New section) Only the parties to a collective
47 negotiations agreement shall have the authority to invoke the
48 arbitration procedures of the agreement and the public employer

1 and the employee organization shall be the only parties to the
2 arbitration proceeding invoked pursuant to the collective
3 negotiations agreement.

4
5 **¹[6.] 8.¹** (New section) An authorization card or petition
6 submitted to the Commission for purposes of conducting an election
7 to select a majority representative or certifying an employee
8 organization as the exclusive majority representative based on a
9 majority of employees in the unit signing authorization cards or a
10 petition, may bear the electronic signature of the employee, as the
11 term electronic signature is defined in section 2 of P.L. 2001, c.
12 116, (C. 12A:12-2).

13
14 **¹[7.]** (New section) Notwithstanding any provisions of the
15 “New Jersey Employer-Employee Relations Act,” P.L.1941, c.100
16 (C.34:13A-1 et seq.), or any other law to the contrary:

17 a. Mandatory subjects for collective negotiation in public
18 employment shall include terms and conditions of employment of
19 public employees that are not specifically exempted from collective
20 negotiations by State statute, unless a negotiated agreement would
21 prevent government from carrying out its statutory mission.
22 Statutes and administrative regulations that set terms and conditions
23 of employment or that grant public employers authority over terms
24 and conditions of employment do not preempt collective
25 negotiations and do not supersede the provisions of any negotiated
26 agreement, except that terms and conditions of employment set by
27 statutes and regulations shall not be diminished by a negotiated
28 agreement.

29 b. Grievance and disciplinary review procedures shall provide
30 for binding arbitration as a means for resolving disputes involving
31 mandatory subjects for collective negotiations.

32 c. Notwithstanding the expiration of a collective negotiations
33 agreement, an impasse in negotiations, an exhaustion of the
34 Commission’s impasse procedures, or the utilization or completion
35 of the procedures required by of P.L. , c. (C.)(now
36 pending before the legislature as this bill) to resolve disputes
37 involving collective negotiations, and notwithstanding any law or
38 regulation to the contrary, no public employer, its representatives,
39 or its agents shall unilaterally impose, modify, amend, delete or
40 alter any terms and conditions of employment as set forth in the
41 expired or expiring collective negotiations agreement, or
42 unilaterally impose, modify, amend, delete, or alter any other
43 negotiable terms and conditions of employment, without the
44 specific written agreement of the majority representative.
45 Following contract expiration, and notwithstanding any law or
46 regulation to the contrary, absent express language in a collective
47 negotiations agreement providing that a specific term of the
48 agreement will not continue after the expiration of the collective
49 negotiations agreement, all terms and conditions of the agreement,

1 including, but not limited to the payment of salary increments, shall
2 remain in effect following the agreement's expiration until the
3 parties reach agreement on a successor collective negotiations
4 agreement.】¹

5
6 ¹【8. (New section) The communications between a majority
7 representative of employees and its unit members regarding
8 collective negotiations, the administration of collective negotiations
9 agreements, the investigation of grievances, other workplace related
10 complaints and issues, or any other matters that are within the scope
11 of a majority representative's duty of fair representation, and
12 internal union matters involving the governance or business of the
13 union, shall be treated as confidential communications and shall not
14 be subject to disclosure under the discovery rules of New Jersey
15 administrative agencies, including, but not limited to the Office of
16 Administrative Law and the Commission, or pursuant to section 17
17 of P.L.2003, c.95 (C.2A:23B-17), and other applicable state laws
18 authorizing arbitrators, presiding at labor arbitrations, to issue
19 subpoenas.】¹

20
21 9. (New section) Complaints issued based on a violation of
22 paragraph (3) of subsection (a) of section 1 of P.L.1974, c.123
23 (C.34:13A-5.4) shall be scheduled for hearing within 60 to 90
24 calendar days from date of complaint issuance, unless the parties
25 agree to extend the time for complaint issuance. Within 60 calendar
26 days of the filing of an unfair practice charge alleging the violation
27 the commission shall decide whether or not to issue a complaint.
28 The commission shall promulgate rules to provide for discovery
29 prior to the commencement of a hearing.

30
31 10. Section 5 of P.L.2018, c.15 (C.34:13A-5.15) is amended to
32 read as follows:

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

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

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

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

21 [d.] e. The Public Employment Relations Commission shall
22 promulgate rules to implement this section, including rules to
23 resolve disputes over the inclusion of employees performing
24 negotiations unit work in the appropriate negotiations unit. The
25 rules promulgated by the commission shall provide for the
26 resolution of disputes that arise under this section, within 60
27 calendar days from the submission of the dispute to the commission
28 by either the exclusive representative employee organization or the
29 public employer.

30 (cf: P.L.2018, c.15, s.5)

31
32 11. Section 1 of P.L.1967, c.310 (C.52:14-15.9e) is amended to
33 read as follows:

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

1 Employees who have authorized the payroll deduction of fees to
2 employee organizations prior to the effective date of the
3 “Workplace Democracy Enhancement Act”, P.L. 2018, c.15
4 (C.34:13A-5.11 et seq.), may revoke such authorization by
5 providing written notice to their public employer consistent with the
6 terms of the authorization by the employee to have any deductions
7 made from the employee’s compensation for the purpose of paying
8 the employee's dues to a bona fide employee organization, as those
9 terms are set forth on the writing signed by the employee
10 authorizing the payroll deduction of dues, provided the writing was
11 consistent with the law at the time the authorization was given. If
12 the writing was not consistent with law, the revocation of
13 authorization shall be effective on the dates provided by law at the
14 time the authorization was given.

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

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

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

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

48 As used in this section, dues shall mean all moneys required to
49 be paid by the employee as a condition of membership in an

1 employee organization and any voluntary employee contribution to
2 a committee or fund established by such organization, including but
3 not limited to welfare funds, political action committees, charity
4 funds, legal defense funds, educational funds, and funds for
5 donations to schools, colleges, and universities.

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

7

8 12. This act shall take effect immediately.