

SENATE, No. 1869

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 24, 2014

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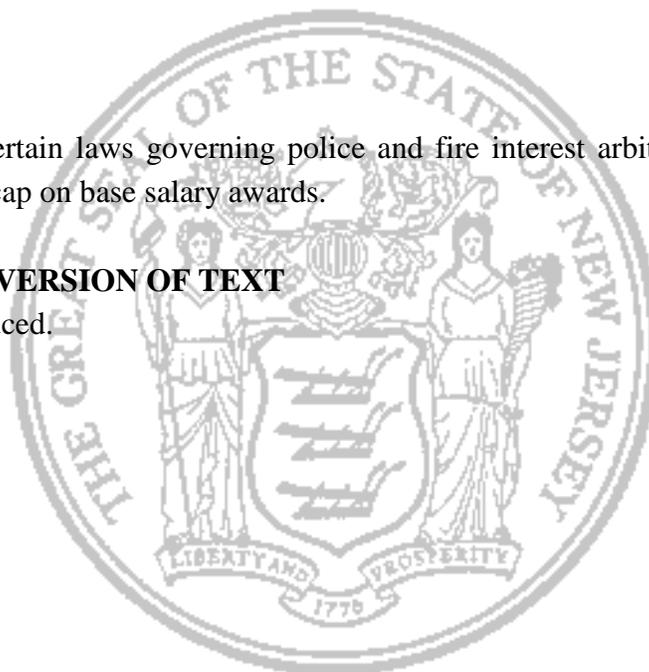
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SYNOPSIS

Revises certain laws governing police and fire interest arbitration; extends two-percent cap on base salary awards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/28/2014)

1 AN ACT concerning police and fire interest arbitration and
2 amending P.L.1977, c.85 and P.L.2010, c.105.

3

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

6

7 1. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to
8 read as follows:

9 3. a. (1) Negotiations between a public fire or police
10 department and an exclusive representative concerning the terms
11 and conditions of employment shall begin at least 120 days prior to
12 the day on which their collective negotiation agreement is to expire.
13 The parties shall meet at least three times during that 120-day
14 period. The first of those three meetings shall take place no later
15 than the 90th day prior to the day on which their collective
16 negotiation agreement is to expire. By mutual consent, the parties
17 may agree to extend the period during which the second and third
18 meetings are required to take place beyond the day on which their
19 collective negotiation agreement is to expire. A violation of this
20 paragraph shall constitute an unfair practice and the violator shall
21 be subject to the penalties prescribed by the commission pursuant to
22 rule and regulation.

23 Prior to the expiration of their collective negotiation agreement,
24 either party may file an unfair practice charge with the commission
25 alleging that the other party is refusing to negotiate in good faith.
26 The charge shall be filed in the manner, form and time specified by
27 the commission in rule and regulation. If the charge is sustained,
28 the commission shall order that the respondent be assessed for all
29 legal and administrative costs associated with the filing and
30 resolution of the charge; if the charge is dismissed, the commission
31 shall order that the charging party be assessed for all legal and
32 administrative costs associated with the filing and resolution of the
33 charge. The filing and resolution of the unfair practice charge shall
34 not delay or impair the impasse resolution process.

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

41 b. (1) In the event of a failure to resolve the impasse by
42 mediation, the Division of Public Employment Relations, at the
43 request of either party, shall invoke factfinding with
44 recommendation for settlement of all issues in dispute unless the
45 parties reach a voluntary settlement prior to the issuance of the

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.

1 factfinder's report and recommended terms of settlement.
2 Factfindings shall be limited to those issues that are within the
3 required scope of negotiations unless the parties to the factfinding
4 agree to factfinding on permissive subjects of negotiation.

5 (2) Notwithstanding the provisions of paragraph (2) of
6 subsection a. of this section or paragraph (1) of this subsection,
7 either party may petition the commission for arbitration on or after
8 the date on which their collective negotiation agreement expires.
9 The petition shall be filed in a manner and form prescribed by the
10 commission. The party filing the petition shall notify the other
11 party of its action. The notice shall be given in a manner and form
12 prescribed by the commission.

13 Any mediation or factfinding invoked pursuant to paragraph (2)
14 of subsection a. of this section or paragraph (1) of subsection b. of
15 this section shall terminate immediately upon the filing of a petition
16 for arbitration.

17 (3) Upon the filing of a petition for arbitration pursuant to
18 paragraph (2) of this subsection, an arbitrator selected pursuant to
19 paragraph (1) of subsection e. of this section shall conduct an initial
20 meeting as mediation to effect a voluntary resolution of the
21 impasse. The interest arbitration process shall not proceed until 14
22 days following the initial meeting.

23 c. (Deleted by amendment, P.L.2010, c.105)

24 d. The resolution of issues in dispute shall be binding
25 arbitration under which the award on the unsettled issues is
26 determined by conventional arbitration. The arbitrator shall
27 determine whether the total net annual economic changes for each
28 year of the agreement are reasonable under the nine statutory
29 criteria set forth in subsection g. of this section and shall adhere to
30 the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-
31 16.7). The non-petitioning party, within five days of receipt of the
32 petition, shall separately notify the commission in writing of all
33 issues in dispute. The filing of the written response shall not delay,
34 in any manner, the interest arbitration process.

35 e. (1) The commission shall take measures to assure the
36 impartial selection of an arbitrator or arbitrators from its special
37 panel of arbitrators. **【**On the first business day following receipt of
38 an interest arbitration petition,**】** Each party shall submit three
39 names of arbitrators from the special panel. If none of the names
40 submitted by each party are the same, the commission shall,
41 independent of and without any participation by either of the
42 parties, randomly select an arbitrator from its special panel of
43 arbitrators. If one name submitted by each party is the same, that
44 arbitrator shall be selected. If two or three of the names submitted
45 are the same, then the commission shall randomly select an
46 arbitrator from among the names submitted that were the same. The
47 selection by the commission shall be final and shall not be subject
48 to review or appeal.

1 (2) Applicants for initial appointment to the commission's
2 special panel of arbitrators shall be chosen based on their
3 professional qualifications, knowledge, and experience, in
4 accordance with the criteria and rules adopted by the commission.
5 Such rules shall include relevant knowledge of local government
6 operations and budgeting. Appointment to the commission's special
7 panel of arbitrators shall be for a three-year term, with
8 reappointment contingent upon a screening process similar to that
9 used for determining initial appointments. Arbitrators currently
10 serving on the panel shall demonstrate to the commission their
11 professional qualification, knowledge and experience, in accordance
12 with the criteria and rules adopted by the commission, within one
13 year of the effective date of this act. Any arbitrator who does not
14 satisfactorily demonstrate such to the commission within the
15 specified time shall be disqualified.

16 (3) Arbitrators serving on the commission's special panel shall
17 be guided by and subject to the objectives and principles set forth in
18 the "Code of Professional Responsibility for Arbitrators of Labor-
19 Management Disputers" of the National Academy of Arbitrators,
20 the American Arbitration Association, and the Federal Mediation
21 and Conciliation Service.

22 (4) Arbitrators shall be required to complete annual training
23 offered by the State Ethics Commission. Any arbitrator failing to
24 satisfactorily complete the annual training shall be immediately
25 removed from the special panel.

26 The commission may suspend, remove, or otherwise discipline
27 an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.),
28 section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause.
29 An arbitrator who fails to render an award within the time
30 requirements set forth in this section shall be fined \$1,000 for each
31 day that the award is late.

32 f. (1) At a time prescribed by the commission, the parties shall
33 submit to the arbitrator their final offers on each economic and non-
34 economic issue in dispute. The offers submitted pursuant to this
35 section shall be used by the arbitrator for the purposes of
36 determining an award pursuant to subsection d. of this section.

37 (2) In the event of a dispute, the commission shall have the
38 power to decide which issues are economic issues. Economic
39 issues include those items which have a direct relation to employee
40 income including wages, salaries, hours in relation to earnings, and
41 other forms of compensation such as paid vacation, paid holidays,
42 health and medical insurance, and other economic benefits to
43 employees.

44 (3) Throughout formal arbitration proceedings the chosen
45 arbitrator may mediate or assist the parties in reaching a mutually
46 agreeable settlement.

47 All parties to arbitration shall present, at the formal hearing
48 before the issuance of the award, written estimates of the financial

1 impact of their last offer on the taxpayers of the local unit to the
2 arbitrator with the submission of their last offer.

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

7 (5) The decision of an arbitrator or panel of arbitrators shall
8 include an opinion and an award, and shall be rendered within **[45]**
9 90 calendar days of the commission's assignment of that arbitrator.

10 Each arbitrator's decision shall be accompanied by a written
11 report explaining how each of the statutory criteria played into the
12 arbitrator's determination of the final award. The report shall
13 certify that the arbitrator took the statutory limitations imposed on
14 the local levy cap into account in making the award.

15 Any arbitrator violating the provisions of this paragraph may be
16 subject to the commission's powers under paragraph (3) of
17 subsection e. of this section. The decision shall be final and
18 binding upon the parties and shall be irreversible, except:

19 (a) Within **[seven]** 14 calendar days of receiving an award, an
20 aggrieved party may file notice of an appeal of an award to the
21 commission on the grounds that the arbitrator failed to apply the
22 criteria specified in subsection g. of this section or violated the
23 standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal
24 shall be filed in a form and manner prescribed by the commission.
25 In deciding an appeal, the commission, pursuant to rule and
26 regulation and upon petition, may afford the parties the opportunity
27 to present oral arguments. The commission may affirm, modify,
28 correct or vacate the award or may, at its discretion, remand the
29 award to the same arbitrator or to another arbitrator, selected by lot,
30 for reconsideration. The commission's decision shall be rendered
31 no later than **[30]** 60 calendar days after the filing of the appeal
32 with the commission.

33 Arbitration appeal decisions shall be accompanied by a written
34 report explaining how each of the statutory criteria played into their
35 determination of the final award. The report shall certify that in
36 deciding the appeal, the commission took the local levy cap into
37 account in making the award.

38 An aggrieved party may appeal a decision of the commission to
39 the Appellate Division of the Superior Court.

40 (b) An arbitrator's award shall be implemented immediately.

41 (6) The parties shall share equally the costs of arbitration
42 subject to a fee schedule approved by the commission. The fee
43 schedule shall provide that the cost of services provided by the
44 arbitrator shall not exceed \$1,000 per day. The total cost of
45 services of an arbitrator shall not exceed **[\$7,500]** \$10,000. If the
46 parties cancel an arbitration proceeding without good cause, the
47 arbitrator may impose a fee of not more than \$500. The parties
48 shall share equally in paying that fee if the request to cancel or

1 adjourn is a joint request. Otherwise, the party causing such
2 cancellation shall be responsible for payment of the entire fee.

3 g. The arbitrator shall decide the dispute based on a reasonable
4 determination of the issues, giving due weight to those factors listed
5 below that are judged relevant for the resolution of the specific
6 dispute. In the award, the arbitrator or panel of arbitrators shall
7 indicate which of the factors are deemed relevant, satisfactorily
8 explain why the others are not relevant, and provide an analysis of
9 the evidence on each relevant factor; provided, however, that in
10 every interest arbitration proceeding, the parties shall introduce
11 evidence regarding the factor set forth in paragraph (6) of this
12 subsection and the arbitrator shall analyze and consider the factors
13 set forth in paragraph (6) of this subsection in any award:

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

18 (2) Comparison of the wages, salaries, hours, and conditions of
19 employment of the employees involved in the arbitration
20 proceedings with the wages, hours, and conditions of employment
21 of other employees performing the same or similar services and
22 with other employees generally:

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

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

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

34 (3) The overall compensation presently received by the
35 employees, inclusive of direct wages, salary, vacations, holidays,
36 excused leaves, insurance and pensions, medical and hospitalization
37 benefits, and all other economic benefits received.

38 (4) Stipulations of the parties.

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

43 (6) The financial impact on the governing unit, its residents, the
44 limitations imposed upon the local unit's property tax levy pursuant
45 to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers.
46 When considering this factor in a dispute in which the public
47 employer is a county or a municipality, the arbitrator or panel of
48 arbitrators shall take into account, to the extent that evidence is

1 introduced, how the award will affect the municipal or county
2 purposes element, as the case may be, of the local property tax; a
3 comparison of the percentage of the municipal purposes element or,
4 in the case of a county, the county purposes element, required to
5 fund the employees' contract in the preceding local budget year with
6 that required under the award for the current local budget year; the
7 impact of the award for each income sector of the property
8 taxpayers of the local unit; the impact of the award on the ability of
9 the governing body to (a) maintain existing local programs and
10 services, (b) expand existing local programs and services for which
11 public moneys have been designated by the governing body in a
12 proposed local budget, or (c) initiate any new programs and services
13 for which public moneys have been designated by the governing
14 body in a proposed local budget.

15 (7) The cost of living.

16 (8) The continuity and stability of employment including
17 seniority rights and such other factors not confined to the foregoing
18 which are ordinarily or traditionally considered in the determination
19 of wages, hours, and conditions of employment through collective
20 negotiations and collective bargaining between the parties in the
21 public service and in private employment.

22 (9) Statutory restrictions imposed on the employer. Among the
23 items the arbitrator or panel of arbitrators shall assess when
24 considering this factor are the limitations imposed upon the
25 employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

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

34 (cf: P.L.2010, c.105, s.1)

35
36 2. Section 2 of P.L.2010, c.105 (C.34:13A-16.7) is amended to
37 read as follows:

38 2. a. As used in this section:

39 "Base salary" means the salary provided pursuant to a salary
40 guide or table and any amount provided pursuant to a salary
41 increment, including any amount provided for longevity or length of
42 service. It also shall include any other item agreed to by the parties,
43 or any other item that was included in the base salary as understood
44 by the parties in the prior contract. Base salary shall not include
45 non-salary economic issues, pension and health and medical
46 insurance costs.

47 "Non-salary economic issues" means any economic issue that is
48 not included in the definition of base salary.

1 b. An arbitrator shall not render any award pursuant to section
2 3 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis,
3 increases base salary items by more than 2.0 percent of the
4 aggregate amount expended by the public employer on base salary
5 items for the members of the affected employee organization in the
6 twelve months immediately preceding the expiration of the
7 collective negotiation agreement subject to arbitration; provided,
8 however, the parties may agree, or the arbitrator may decide, to
9 distribute the aggregate monetary value of the award over the term
10 of the collective negotiation agreement in unequal annual
11 percentages. An award of an arbitrator shall not include base salary
12 items and non-salary economic issues which were not included in
13 the prior collective negotiations agreement.

14 c. Notwithstanding the provisions of subsections a. and b. of
15 this section, base salary shall include the savings realized by a
16 public employer as a result of:

17 (1) increased employee contributions toward health and medical
18 insurance premiums occurring in the fourth year, and pursuant to,
19 sections 39, 40, 42, and 44 of P.L.2011, c.78 (C.52:14-17.28c;
20 52:14-17.28d; 40A:10-21.1; and 40A:5A-11.1) and section 80 of
21 P.L.2011, c.78; except if the increase in the employee contributions
22 toward health and medical insurance premiums are not in the fourth
23 year at the time of the new collective bargaining agreement, base
24 salary shall include the savings realized in the most recent year of
25 implementation of increased employee contributions toward health
26 and medical insurance premiums; and

27 (2) a reduction in force which occurred prior to the expiration of
28 the collective negotiations agreement.

29 In the case of savings realized by a public employer under
30 paragraphs (1) or (2) of this subsection, an arbitrator may render an
31 award which increases base salary items by more than 2.0 percent,
32 but not more than 3.0 percent.

33 (cf: P.L.2010, c.105, s.2)

34

35 3. Section 4 of P.L.2010, c.105 (C.34:13A-16.9) is amended to
36 read as follows:

37 4. This act shall take effect January 1, 2011; provided however,
38 section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall apply only to
39 collective negotiations between a public employer and the exclusive
40 representative of a public police department or public fire
41 department that relate to a negotiated agreement expiring on **【that**
42 **effective date】** April 2, 2014 or any date thereafter until **【April 1,**
43 **2014】** December 31, 2017, whereupon the provisions of section 2
44 of P.L.2010, c.105 (C.34:13A-16.7) shall become inoperative for all
45 parties except those whose collective negotiations agreements
46 expired on or after April 2, 2014 but prior to **【April 1, 2014 but】**
47 December 31, 2017 and for whom a final settlement has not been
48 reached. When final settlement between the parties in all such

1 negotiations is reached, the provisions of section 2 of **[this act]**
2 P.L.2010, c.105 (C.34:13A-16.7) shall expire. In the case of a party
3 that entered into a contract that expires on **[the effective date of this**
4 **act or any date thereafter until April 1, 2014]** April 2, 2014 or any
5 date thereafter until December 31, 2017, and where the terms of that
6 contract otherwise meet the criteria set forth in section 2 of **[this**
7 **act]** P.L.2010, c.105 (C.34:13A-16.7) that party shall not be subject
8 to the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7)
9 when negotiating a future contract.
10 (cf: P.L.2010, c.105, s.4)

11

12 4. This act shall take effect on April 1, 2014.

13

14

15

STATEMENT

16

17 This bill makes several changes to the current law governing
18 arbitration awards in disputes between public employers and their
19 police and fire departments.20 Under current law, any time after a collective negotiation
21 agreement between a public employer and a public police or fire
22 department expires, either party may petition the New Jersey Public
23 Employment Relations Commission (PERC) for arbitration.
24 Arbitrators in these cases are required to render their decision
25 within 45 days of the case being assigned to them. This bill extends
26 the time to render the decision to 90 days. Current law allows an
27 aggrieved party seven days to file notice of appeal of the
28 arbitrator's decision. This bill extends the time to appeal to 14
29 days. The bill also increases the time frame within which PERC
30 has to render its decision in an appeal of an arbitration award from
31 30 to 60 days. The bill further increases the maximum amount
32 arbitrators can be compensated for their services from \$7,500 to
33 \$10,000.34 Currently, PERC randomly selects an arbitrator for a case from a
35 special panel of qualified and eligible arbitrators. Under the bill,
36 the parties are required to submit three names of arbitrators from
37 the special panel. If none of the names submitted by each party are
38 the same, the bill requires the commission to randomly select an
39 arbitrator from its special panel of arbitrators. If one name
40 submitted by each party is the same, then that arbitrator is to be
41 selected. If two or three of the names submitted are the same, then
42 the commission is required to randomly select an arbitrator from
43 among the names submitted that were the same.44 Under current law, there is a two-percent cap on base salary
45 increases in arbitration awards. This cap is scheduled to expire on
46 April 1, 2014. The bill extends the cap until December 31, 2017.47 Finally, the bill includes in the base salary computation overall
48 savings realized by a public employer as a result of increased

1 employee contributions towards health and medical insurance
2 premiums based on a single contract year, as well as savings
3 resulting from a reduction in force of police and fire personnel. In
4 these cases, the arbitrator also may render an award increasing base
5 salary by more than two percent, but not more than three percent.