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RULE PROPOSALS

OTHER AGENCIES

**PUBLIC EMPLOYMENT RELATIONS COMMISSION
NEGOTIATIONS, IMPASSE PROCEDURES, AND COMPULSORY INTEREST ARBITRATION OF
LABOR DISPUTES IN PUBLIC FIRE AND POLICE DEPARTMENTS**

44 N.J.R. 562(a)

Proposed Readoption with Amendments: N.J.A.C. 19:16

Proposed Repeal and New Rule: N.J.A.C. 19:16-5.4

Proposed Repeal: N.J.A.C. 19:16-6.2

Click here to view Interested Persons Statement

Authorized By: Public Employment Relations Commission, P. Kelly Hatfield, Chair. Authority: N.J.S.A. 34:13A-6(b), 34:13A-5.4(e), 34:13A-11 and 34:13A-16.5.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-042.

Submit comments by May 4, 2012 to:

P. Kelly Hatfield, Chair
Public Employment Relations Commission
P.O. Box 429
Trenton, New Jersey 08625-0429

[page=563] Comments may also be submitted via facsimile to (609) 777-0089 or via e-mail to rulecomments@perc.state.nj.us.

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1c(1), the Public Employment Relations Commission proposes to readopt, with amendments, N.J.A.C. 19:16, which is set to expire January 9, 2014. The rules, as proposed for readoption with amendments, provide for implementation of P.L. 2010, c. 105, which amended and supplemented P.L. 1977, c. 85, and P.L. 1995, c. 425. The statutes are collectively known as the "Police and Fire Public Interest Arbitration Reform Act." These laws provide for compulsory interest arbitration to resolve collective negotiations impasses in public fire and police departments and supplement the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq.

The rules describe: procedures for initiating interest arbitration; the required content of petitions and responses; filing fees; appointment of arbitrators; hearing procedures; the required content of an arbitration award; and procedures for appealing awards to the Commission. The rules also include guidelines to be used by the parties and arbitrators in applying the statutory comparability criterion, N.J.S.A. 34:13A-16g(2); standards for appointment and reappointment to the special panel of interest arbitrators; and procedures for suspending, disciplining, or removing arbitrators from the special panel during an arbitrator's three-year term.

Proposed amendments to the rules would conform N.J.A.C. 19:16 to requirements imposed by P.L. 2010, c. 105. Since the effective date of that law, the Commission has modified its administration of interest arbitration cases to conform to the new mandates. The rules proposed for readoption with amendments would formally incorporate modifications to meet the changes in the interest arbitration statute mandating that:

-- The filing of a petition to initiate compulsory interest arbitration shall terminate any other formal impasse resolution proceeding, such as mediation or fact-finding;

-- The Commission randomly select by lot and appoint an interest arbitrator to resolve a collective negotiations impasse within one business day after receipt of an interest arbitration petition;

-- That members of the interest arbitration panel shall be required to complete annual training offered by the State Ethics Commission;

-- The completion of interest arbitration hearings and the issuance of an interest arbitration award within 45 days after an arbitrator is appointed or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.;

-- Any appeal of an interest arbitration award be filed with the Commission within seven days after the issuance of an award or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.;

-- The Commission must issue a written decision within 30 days after it receives an appeal or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.;

-- In all cases, an interest arbitration award must be implemented immediately;

-- The Commission adopt a fee schedule for the compensation of interest arbitrators providing for a maximum fee of \$ 1,000 per day up to a limit of \$ 7,500 per case;

-- The fee of an interest arbitrator who does not issue a decision within the time limits imposed by the law be reduced by \$ 1,000 per day;

-- Interest arbitration awards must be within the two percent limit on the aggregate amount expended by the public employer on base salary items in the 12 months immediately preceding the end of the expired contract and set by N.J.S.A. 34:13A-16.7 for contracts falling within the window period established by N.J.S.A. 34:13A-16.9. Both of these new laws supplement the Police and Fire Public Interest Arbitration Reform Act, as well as N.J.S.A. 34:13A-16.8, creating the Police and Fire Public Interest Arbitration Impact Task Force;

-- Where a party has refused to engage in collective negotiations within the time periods mandated by N.J.S.A. 34:13A-16a(1), the other party may file an unfair practice charge, which shall not delay the impasse resolution process, but the losing party shall be assessed for all administrative and legal costs associated with the filing and resolution of the charge; and

-- During the interest arbitration proceeding the parties shall submit written evidence of the financial impact of their final offers on the taxpayers and, that the arbitrator shall certify in the interest arbitration award, that the statutory limitations imposed by the local levy cap were taken into account.

The Commission proposes raise the current fees, unchanged since 1996, required to file an interest petition, an appeal, or cross-appeal of an interest arbitration award and to seek special permission to appeal.

Other non-substantive amendments that are proposed would: add statutory cross-references to P.L. 2010, c. 105; identify the head of the Commission's section of Conciliation and Arbitration as the "Director of Conciliation and

Arbitration"; make references to the agency head gender neutral by using the title "Commission Chair"; and provide information and web addresses to obtain or download forms used to invoke the procedures covered by the chapter. Finally, some amendments are proposed that would make the rules more understandable through changes in text and rearrangement of some existing provisions based on logic and chronology.

A summary of each section in N.J.A.C. 19:16 follows:

N.J.A.C. 19:16-1.1, Purpose of procedures, explains that the rules implement the statute, as amended by P.L. 2010, c. 105, providing for compulsory interest arbitration of labor disputes in public fire and police departments and specifies that as mandated by P.L. 2010, c. 105, conventional arbitration is the only terminal procedure for resolving an impasse, and that the rules are to implement the mandatory time periods to begin negotiations, use non-binding and binding impasse resolution procedures and to consider appeals from interest arbitration awards. A proposed amendment to subsection (d) would eliminate references to procedures for resolving disputes over whether a disputed issue is economic or non-economic.

N.J.A.C. 19:16-2.1, Commencement of negotiations, specifies the time periods for commencing negotiations and requires that negotiations commence no later than 120 days before the parties' collective negotiations agreement is to expire. The section is further amended to provide that violation of the timetable shall constitute an unfair practice subjecting the violator to penalties prescribed by law and the Commission pursuant to rule.

N.J.A.C. 19:16-3.1, Initiation of mediation, details the provisions for securing a Commission-appointed mediator. A proposed amendment would mandate that formal mediation terminate on the filing of a petition for interest arbitration.

N.J.A.C. 19:16-3.2, Appointment of mediator, specifies who may be appointed a mediator. Proposed amendments would subdivide the rule for purposes of clarity, define when mediation starts and ends, and memorialize that the Commission retains jurisdiction until the case is closed.

N.J.A.C. 19:16-3.3, Mediator's function, states that a mediator is to assist the parties to reach a voluntary agreement and that the mediator may hold separate or joint conferences.

N.J.A.C. 19:16-3.4, Mediator's confidentiality, provides that information disclosed by a party to a mediator shall be confidential.

N.J.A.C. 19:16-3.5, Mediator's report, provides for the submission of one or more confidential reports to the Director of Conciliation concerning the progress of mediation.

N.J.A.C. 19:16-4.1, Initiation of fact-finding, specifies the procedures for initiating fact-finding, if mediation has been unsuccessful and for responding to separate requests. Proposed amendments would eliminate references to procedures for resolving disputes over whether a disputed issue is economic or non-economic and eliminate the need for a statement as to whether a dispute exists about the negotiability of any unresolved issues.

N.J.A.C. 19:16-4.2, Appointment of fact-finder, specifies the procedures for appointing a fact-finder and who may be appointed. A proposed amendment would reflect the requirement of P.L. 2010, c. 105 that fact-finding shall terminate immediately upon the filing of a petition for interest arbitration.

N.J.A.C. 19:16-4.3, Fact-finder's function, specifies the duties and powers of fact-finders.

[page=564] N.J.A.C. 19:16-5.1, Scope of compulsory interest arbitration, states that this subchapter relates to notification requirements, compulsory interest arbitration proceedings, and the designation of arbitrators to resolve

impasses in collective negotiations involving public employers and exclusive employee representatives of public fire and police departments. A proposed amendment would add language providing that all matters involving and associated with interest arbitration proceedings shall adhere to the deadlines and monetary limits established by N.J.S.A. 34:13A-14 et seq., as amended.

N.J.A.C. 19:16-5.2, Initiation of compulsory interest arbitration; motion to dismiss, specifies the procedures and the time for commencing interest arbitration proceedings. Proposed amendments would: eliminate references to motions to dismiss interest arbitration proceedings in both the heading and text of the rule; provide that an interest arbitration petition may be filed and served on the other party on or after the date the previous agreement expires; requires that the non-petitioning party shall file a written response within five days; that mediation and/or fact-finding shall end when the petition is filed; provide that prior to the expiration of the most recent agreement either party may file an unfair practice charge alleging that the other party has violated its duty to negotiate by failing to schedule or attend a negotiations session within the prescribed window period; specify that the non-prevailing party shall be assessed legal and administrative costs associated with the filing and processing of the unfair practice charge; and that the unfair practice proceeding shall not delay or impair the impasse resolution process.

N.J.A.C. 19:16-5.3, Contents of the petition requesting the initiation of compulsory interest arbitration; proof of service; notice of filing, specifies what must be contained in a petition requesting the initiation of compulsory interest arbitration, requires proof of service on the other party, and requires the Director of Arbitration to send a Notice of Filing to the non-petitioning party. A proposed amendment would require that the notice advise the non-petitioning party that it must file a written response to the petition within five days.

N.J.A.C. 19:16-5.4, Notification of terminal procedure agreement, is proposed for repeal and replacement with a new rule, Conventional arbitration to be terminal procedure. The new rule would state that the terminal procedure for the resolution of the issues in dispute shall be conventional interest arbitration.

N.J.A.C. 19:16-5.5, Response to the petition requesting the initiation of compulsory interest arbitration, specifies when a response to a notification or petition must be filed, how it must be served, what it must say, and what a party must do if a dispute exists concerning the negotiability or economic identity of a proposal. A proposed amendment would require that the response be filed within five days, rather than 14 days as the rule currently provides, and that the filing of a written response shall not delay the interest arbitration process.

N.J.A.C. 19:16-5.6, Appointment of an arbitrator or panel of arbitrators, is proposed for an amendment to the heading by excising the phrase "or panel of arbitrators" and replacing that phrase with "arbitrator training and discipline." Existing subsection (a) provides that that the Commission will maintain a special panel of interest arbitrators, who, after screening, shall be appointed for three-year terms and may be reappointed contingent upon a similar screening process. It further provides that Commission may suspend, remove, or otherwise discipline an arbitrator for violating the Police and Fire Public Interest Arbitration Reform Act or for good cause and that any arbitrator who fails to attend the Commission's annual continuing education program may be removed from the special panel.

Proposed amendments to the section would: delete existing subsections (b) through (g); divide existing subsection (a) into subsections (a) and (c), without change, except for excising a statutory reference in newly codified subsection (c); add new subsections (b) and (d), providing, respectively, that interest arbitrators on the special panel shall complete annual training offered by the State Ethics Commission; and specifying that arbitrators and their replacements, if necessary, on the first business day following the filing of a petition shall be assigned to cases through a computerized random selection process without participation of the parties and that the Commission's selection of an arbitrator shall be final and not subject to review or appeal.

N.J.A.C. 19:16-5.7, Conduct of the arbitration proceeding, specifies the arbitrator's jurisdiction, duties, and powers to

conduct arbitration proceedings, including hearings, adjournments, briefs, and subpoenas. The rule further provides for the confidentiality of information disclosed in arbitration. Proposed amendments would: excise all references to a "panel of arbitrators" as P.L. 2010, c. 105 requires that a single arbitrator be appointed in all cases; creates new subsection (b) providing that the filing of an interest arbitration petition shall terminate formal mediation or fact-finding; recodifies existing subsections (b) through (k) as (c) through (l) and adds subsections (m) and (n) providing respectively that an arbitrator must issue an award within 45 days following appointment, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.; and that interest arbitration awards shall be implemented immediately.

Proposed amendments to subsections (c) through (l), as proposed for recodification, would: provide in subsection (c) that an arbitrator's efforts to mediate an impasse shall not stay or extend award issuance or appeal filing deadlines; provide in subsection (f) that conventional arbitration shall be the only terminal procedure; provide in subsection (g) that the parties' final offers, including written estimates of the financial impact of their respective last offers on the taxpayers shall be submitted to each other and the arbitrator at least two days prior to the arbitration hearing; provide in subsection (i) that the arbitrator has authority to issue a ruling on an issue that a party asserts to be outside the scope of mandatory negotiability and that, if necessary and if a negotiability objection has not been waived, the Commission may determine that issue in the course of ruling on an appeal from the award; provide that subsection (j) only state that "the arbitrator shall have the authority to grant adjournments," deleting the need for good cause or on the arbitrator's own motion; and to modify subsection (l) to eliminate the 30-day maximum time limit on the filing of post-hearing briefs and to provide that any period set by the arbitrator for submission of briefs shall not stay the 45-day period, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for award issuance.

N.J.A.C. 19:16-5.8, Stenographic record, provides that stenographic records are not required, but may be made at the expense of the requesting party. Proposed revisions to this rule would subdivide the existing text into subsections (a) and (b) and would add new subsections (c) and (d) providing respectively, that the arbitrator may set a deadline for submission of the stenographic record to the arbitrator; and that any delay in receiving a stenographic record shall not extend either the 45 day time period for rendering an award or the seven-day time limit for an appeal (or such other periods of time that may be set by N.J.S.A. 34:13A-14 et seq. for the completion of these events or obligations).

N.J.A.C. 19:16-5.9, Opinion and award, is proposed for amendment to subdivide this rule into subsections (a), (b), and (d), and add new subsections (c) and (e). The proposed amendments to subsection (a) provide that an opinion and award must be issued within 45 days (rather than 120), or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., after an arbitrator is assigned and that an arbitrator failing to meet that deadline shall, as prescribed by law, be fined \$ 1,000 per day for each day late. Also, language regarding extensions of the now 45-day period are proposed for deletion. Proposed amendments to subsection (b) would delete references to a panel of arbitrators and arbitrator discipline but retain existing language requiring that the award be based on a reasonable determination of the issues giving due weight to statutory criteria and analyze and explain why each of the statutory criteria is judged relevant or not relevant and set forth reasons for the result. Proposed new subsection (c) states that the arbitrator shall certify that the award takes into account statutory limits imposed by the local levy cap. The proposed amendment to subsection (d) states that the award shall be signed and notarized with an original and four copies submitted to the Director of Conciliation and Arbitration who will then serve the parties simultaneously. Proposed new subsection (e) provides that an arbitrator violating the provisions of this section may be subject to suspension, removal, or discipline in accordance with the statute.

N.J.A.C. 19:16-5.10, Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, obligates arbitrators to be guided by the codes of professional responsibility of the National [page=565] Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

N.J.A.C. 19:16-5.11, Cost of arbitration, requires the parties to bear the costs of the arbitrator's services in accordance with a fee schedule adopted by the Commission. Proposed amendments to this rule would eliminate all references to mutual selection of an arbitrator or the use of a panel of arbitrators, as well as eliminate different fees for arbitrators

selected by lot and those appointed by mutual agreement, as P.L. 2010, c. 105 eliminates the option of using an arbitrator mutually selected by the parties; provide that the arbitrator's fee be paid within 60 days; set maximum fees for arbitrators at \$ 1,000 per day up to \$ 7,500 per case and provide that the arbitrator may assess a \$ 500.00 fee on the party responsible, if a proceeding is cancelled without good cause.

N.J.A.C. 19:16-5.12, Fees for filing and processing interest arbitration petitions, is proposed for amendment as follows: to subdivide the existing rule into subsections (a) and (c); raise filing fees to provide that the petitioner and respondent each pay a \$ 175.00 filing fee (rather than \$ 150.00) payable to the State of New Jersey by check or purchase order when a petition is filed; provide in new subsection (b) that the petition will not be processed or processing shall be suspended until the filing fee is received from both parties.

N.J.A.C. 19:16-5.13, Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders, is proposed for amendment to require a \$ 200.00 filing fee (rather than \$ 135.00) for an appeal or cross-appeal and a \$ 75.00 fee (rather than \$ 25.00) for special permission to appeal an interlocutory ruling.

N.J.A.C. 19:16-5.14, Comparability guidelines, implements Police and Fire Public Interest Arbitration Reform Act provisions directing the Commission to establish guidelines to be used by the parties and arbitrators in applying N.J.S.A. 34:13A-16g(2)(c), which requires an arbitrator to consider evidence on employees in "the same or similar comparable jurisdictions." The rule identifies comparability considerations in the same jurisdiction and in similar comparable jurisdictions. A proposed amendment to subsection (a) would: eliminate the reference to a precise number of factors as P.L. 2010, c. 105 adds additional criteria that, in every interest arbitration proceeding, must be part of the evidence presented by the parties and considered by the arbitrator regarding the factors set forth in N.J.S.A. 34:13A-16(g)(6), the financial impact on the governing unit, its residents, and taxpayers, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62 (N.J.S.A. 40A:4-45.45).

N.J.A.C. 19:16-5.15, Standards for appointment and reappointment to the special panel, sets standards for membership on the special panel of interest arbitrators and states that the panel will be limited to those labor relations neutrals who, in the Commission's expert judgment, have the demonstrated ability to mediate the most complex labor relations disputes and resolve the most demanding interest arbitration matters.

N.J.A.C. 19:16-5.16, Suspension, removal, or discipline of members of the special panel, implements statutory provision giving the Commission authority to suspend, remove, or otherwise discipline an arbitrator for a violation of the interest arbitration statute or for other good cause. The rule establishes procedures to be followed by the Commission in deciding whether to take such action during an arbitrator's three-year term.

N.J.A.C. 19:16-5.17, Interlocutory rulings; appeal on special permission, establishes procedures and time frames for requesting special permission to appeal an interlocutory ruling or order of an arbitrator. A proposed amendment would require that an appeal on special permission be filed, together with a \$ 75.00 filing fee (rather than \$ 25.00), on the next business day (rather than within five days) after service of the arbitrator's ruling and that a response to the application shall be filed within two business days (rather than five) after receipt of the appeal on special permission.

N.J.A.C. 19:16-6.1, Purpose of procedure, would, in accordance with proposed amendments, recognize the Commission's authority to resolve disputes as to whether an issue is economic or noneconomic for purposes of interest arbitration. Because conventional arbitration is the sole terminal method, and given the time constraints established by P.L. 2010, c. 105, such disputes rarely arise and if necessary must be resolved after interest arbitration is complete. The Commission last issued a decision on the merits of an economic/noneconomic dispute in 1993. The proposed amendment would provide that, if necessary, the Commission can issue such a determination after an interest arbitration award has issued but will do so only if necessary to resolve an interest arbitration appeal.

N.J.A.C. 19:16-6.2, Procedure, specifying the procedures for initiating issue definition proceedings, is proposed for repeal as unnecessary.

N.J.A.C. 19:16-7.1, Failure to submit a notice or other document, provides that such failure shall not provide the basis for any delay in these proceedings, nor shall it otherwise prevent a dispute's resolution through compulsory interest arbitration. An amendment would add the phrase "except as provided by N.J.A.C. 19:16-5.12" to reflect the proposed amendment to that rule that would provide that the Commission will not process or will suspend the processing of interest arbitration cases until filing fees are paid.

N.J.A.C. 19:16-8.1, Appeals and cross-appeals, specifies the time and manner in which appeals and cross-appeals from interest arbitration awards shall be filed with the Commission; filing fees; and the filing requirements for supporting materials and proof of service. Proposed amendments would, in accordance with amendments to the interest arbitration law, conform the time period allowed for an appeal to the time limits set by N.J.S.A. 34:13A-14 et seq. (rather than the current 14 days from receipt of the award); provide that a cross-appeal and/or a brief opposing the appeal may be filed no later than seven days after service of an appeal; where a cross-appeal is filed allow the original appellant to respond within three days (rather than seven) after receipt of the cross-appeal; require that if a stenographic record exists, the appellant must not only provide a copy of the transcript, but must also certify its existence; require the Commission to issue a written decision within 30 days of receipt of the appeal or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.; and require that the decision explain the application of the statutory criteria and that the statutory tax levy cap was considered.

N.J.A.C. 19:16-8.2, Oral argument, specifies the procedures for requesting oral argument.

N.J.A.C. 19:16-8.3, Action by the Commission, specifies that the Commission may affirm, modify, correct, or vacate the award or may, at its discretion, remand the award for reconsideration to the same or another arbitrator. An amendment would eliminate the parties ability to agree upon a different arbitrator and would mandate that where the remand is to a different arbitrator, that arbitrator shall be selected through a computerized random selection process.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Police and Fire Public Interest Arbitration Reform Act, as amended, provides for conventional interest arbitration, as the sole terminal procedure for resolving negotiations impasses involving police officers and firefighters in public police and fire departments. The Legislature has determined that an expeditious, effective, and binding arbitration procedure is necessary to promote the high morale of police officers and firefighters, the efficient operation of police and fire departments, and the well-being and benefit of the citizens of New Jersey. N.J.S.A. 34:13A-14a. The Commission believes that readoption of these rules with the proposed amendments, repeals and new rule, needed to conform the rules to new substantive and procedural requirements, including strict deadlines imposed by statutory amendments, repeals, and new rule, will benefit the public, as well as employers and employees participating in interest arbitration by continuing the framework for conducting the process and by ensuring that it proceeds expeditiously and is not needlessly delayed in accordance with the intent of the Legislature reflected in the provisions of P.L. 2010, c. 105, and the statements accompanying that law.

Economic Impact

The rules proposed for readoption and the proposed amendments, repeals, and new rule, are designed to implement the

provisions of P.L. 2010, c. 105 mandating that interest arbitration awards may not increase base salary items by more than two percent of the aggregate amount [page=566] expended by the public employer on base salary and that the awards must consider the financial impact on the governing unit, its residents, and taxpayers, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62 (N.J.S.A. 40A:4-45.45). The rules proposed for readoption with amendments, repeals, and new rule, specifically address and incorporate these limitations and, when implemented, are expected to ease the tax burdens of the State's residents and taxpayers. The readoption of these rules as amended, in cases where interest arbitration is required to resolve a negotiations impasse, is intended to make the process less costly to public employers and the representatives of their police and/or fire employees by: adopting limits on the maximum daily and per case fees that can be charged by interest arbitrators; by mandating completion of interest arbitration within 45 days or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., thus reducing the number of days of hearing and the costs of all parties with regard to the payment of fees to attorneys and other representatives. The proposed amendments would increase fees to the parties for filing interest arbitration petitions and appealing interest arbitration awards, but the maximum proposed increase in any of the existing fees, which have been unchanged since 1996, is \$ 65.00. There is also an additional fee of \$ 500.00 if one or both parties cancel a proceeding without good cause.

Federal Standards Statement

The National Labor Relations Act excludes "any State or political subdivision thereof" See 29 U.S.C. § 152(2). No Federal law or regulation applies and the Commission cannot rely upon a comparable Federal rule or standard to achieve the aims of the Police and Fire Public Interest Arbitration Reform Act, as amended by P.L. 2010, c. 105. The rules proposed for readoption with amendments, repeals, and new rule, are thus necessary and proper.

Jobs Impact

While it is not possible to predict the extent of the impact the rules proposed for readoption and amendments, repeals, and new rule, will have on jobs to be generated or lost as a result of their promulgation, it is anticipated that the more efficient operation of public police and fire departments, a major goal of the recent changes to the Police and Fire Public Interest Arbitration Reform Act, as amended by P.L. 2010, c. 105, as well as the rules proposed for readoption with amendments, repeals, and new rule, will potentially both minimize the loss of jobs and increase the ability of public employers to maintain or increase the personnel in their police and fire departments.

Agriculture Industry Impact

The Commission's jurisdiction is limited to employer-employee relations in public employment. The rules proposed for readoption with amendments, repeals, and new rule, impose no requirements on the agriculture industry.

Regulatory Flexibility Statement

The Commission's jurisdiction is limited to employer-employee relations in public employment. The rules proposed for readoption with amendments, repeals, and new rule, impose no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, repeals, and new rule, will have no impact on affordable housing because the rules are designed to resolve collective negotiations impasses between public employers and the representatives of their police officers and fire fighters.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, repeals, and new rule, will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules are designed to resolve collective negotiations impasses between public employers and the representatives of their police officers and fire fighters.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:16.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:16-5.4 and 6.2.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 16

NEGOTIATIONS, IMPASSE PROCEDURES, AND COMPULSORY INTEREST ARBITRATION OF LABOR DISPUTES IN PUBLIC FIRE AND POLICE DEPARTMENTS

SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

(a) The rules of this chapter provide for implementation of the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, [c.425, an Act which provides] **c. 425, as amended by P.L. 2010, c. 105, providing** for compulsory interest arbitration of labor disputes in public fire and police departments [and supplements the New Jersey Employer-Employee Relations Act, as amended N.J.S.A. 34:13A-1.1 et seq].

(b) [N.J.S.A. 34:13A-5.4e provides that the] **The** Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of **the** institution **and termination** of impasse procedures, [and section 8 of the Police and Fire Public Interest Arbitration Reform Act provides that the Commission shall adopt rules and regulations to effectuate the purposes of that Act. Further, N.J.S.A. 34:13A-16(a) and (b) provide that whenever negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission is empowered upon the request of either party or upon its own motion to provide mediation to effect a voluntary resolution of the impasse, and in the event of a failure to resolve the impasse by mediation, to invoke fact-finding with recommendations for settlement] at the request of [either party] **the parties, or on its own motion, and to adhere to the time limits established in N.J.S.A. 34:13A-16, as amended.**

(c) [Additionally, the act provides for the submission of issues in dispute either to a mutually agreed and approved final and binding arbitration procedure or conventional arbitration,] **Impasse procedures that may be invoked include mediation, fact-finding, and binding conventional interest arbitration,** as set forth in N.J.S.A. 34:13A-16d[(2)].

(d) Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations and for institution of impasse procedures, including compulsory interest arbitration of unresolved impasses and appeals of arbitration awards. [Also provided is a procedure for Commission determination of disputes regarding the identification of issues as economic or non-economic.]

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:16-2.1 Commencement of negotiations

(a) The parties shall commence negotiations for a new or successor agreement, or in the case of an agreed reopener provision, shall commence negotiations pursuant to such reopener provision, at least 120 days prior to the day on which their collective negotiations agreement is to expire. **The following provisions shall not preclude the parties from agreeing to the automatic renewal of a collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement.**

1. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiations agreement is to expire.

2. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the [day] **date** on which their collective negotiations agreement is to expire.

3. A violation of these requirements shall constitute an unfair practice and the violator shall be subject to [an interim relief order requiring such negotiations and any other relief the Commission deems appropriate. The [page=567] foregoing provisions shall not preclude the parties from agreeing to the automatic renewal of a collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement] **penalties prescribed by law and by the Commission pursuant to rule and regulation.**

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this subchapter, notify the other party in writing of its intention to commence negotiations on such date, and shall simultaneously file with the Commission a copy of such notification. Forms for filing such petitions **may be downloaded from the Commission's web site at: http://www.state.nj.us/perc/NJ_PERC_Notification_of_Intent_to_Commence_Negotiations_-_Form.pdf** or will be supplied upon request[. Address such requests] **addressed to:** Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) (No change.)

SUBCHAPTER 3. MEDIATION

19:16-3.1 Initiation of mediation

(a) In the event that a public employer and an exclusive employee representative have failed to achieve an agreement through direct negotiations, either the public employer, the employee representative, or the parties jointly, may notify the Director of Conciliation **and Arbitration**, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed, and shall be signed and dated and shall contain the following information:

1.-6. (No change.)

7. Whether the request is a joint request; **and**

8. A detailed statement of the facts giving rise to the request, including all issues in dispute[, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2); and].

[9. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.]

(b) A blank form for filing a **Notice of Impasse** to request [for] mediation [will be supplied upon request. Address requests] **may be downloaded from the Commission's web site at:** http://www.state.nj.us/perc/NJ_PERC_Notice_of_Impasse_-_Form.pdf or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, [New Jersey] NJ 08625-0429.

(c) Upon receipt of the [notification and request] **Notice of Impasse**, the Director of Conciliation **and Arbitration** shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach an agreement through direct negotiations, and that an impasse exists in negotiations.

(d) The Commission or the Director of Conciliation **and Arbitration** may also initiate mediation at any time in the absence of a request in the event of the existence of an impasse.

(e) Any mediation invoked pursuant to this section shall terminate immediately upon the filing of a petition for interest arbitration.

19:16-3.2 Appointment of a mediator

(a) The mediator appointed pursuant to [the] **this** subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's mediation panel, or any other appointee, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Director of Conciliation **and Arbitration** shall have the authority to appoint a mediator without regard to the parties' joint request. **The appointment process begins once the Commission receives a Notice of Impasse requesting the assignment of a mediator and the Commission retains jurisdiction until the docket is closed.**

(b) If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed.

(c) The appointment of a mediator pursuant to this subchapter shall not be reviewable in any other proceeding before the Commission.

19:16-3.5 Mediator's report

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation **and Arbitration** which shall[, in general,] **normally** be limited to the following:

1.-5. (No change.)

SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding

(a) If the parties fail to resolve the impasse through mediation, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation **and Arbitration**, in writing, to invoke fact-finding and upon receipt of such request, fact-finding with recommendations for settlement shall be invoked. An original and four copies of such request shall be filed with the Director of Conciliation **and Arbitration**, together with proof of service upon the other party. The request shall be signed and dated and shall contain the following information:

1.-8. (No change.)

9. Whether the request is a joint request; **and**

10. A detailed statement of the facts giving rise to the request, including all issues in dispute[, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2)]; and

11. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.]

(b) A blank form for filing a request for fact-finding [will be supplied upon request. Address requests] **may be downloaded from the Commission's web site at:**

http://www.state.nj.us/perc/NJ_PERC_Request_for_Invocation_of_Factfinding_with_Recommendations_for_Settlement_Form.pdf or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, [New Jersey] NJ 08625-0429.

(c) In the absence of a joint request seeking the invocation of fact-finding, the non-filing party may submit a statement or response within seven days of receipt of the request for fact-finding, setting forth the following:

1. (No change.)

[2. A statement as to whether it disputes the identification of any issues as economic or noneconomic;]

Recodify existing 3. and 4. as **2. and 3.** (No change in text.)

(d) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation **and Arbitration**. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the invocation of fact-finding as submitted by the requesting party.

(e) (No change.)

19:16-4.2 Appointment of a fact-finder

(a) Upon the invocation of fact-finding pursuant to this subchapter, the Director of Conciliation **and Arbitration** shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which it objects, indicate the order of its preference regarding the remaining names, and communicate the foregoing to the Director of Conciliation **and Arbitration** no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not responded within the time specified, all names submitted shall be deemed acceptable. The Director of Conciliation **and Arbitration** shall appoint a fact-finder giving recognition to the parties' preferences. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding these provisions, the Director of Conciliation **and Arbitration** shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties whenever he or she deems it necessary to effectuate the purposes of the Act.

(b) (No change.)

(c) Fact-finding invoked pursuant to this section shall terminate immediately upon the filing of a petition for interest arbitration.

19:16-4.3 Fact-finder's function

(a)-(e) (No change.)

[page=568] (f) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties privately and to the Director of Conciliation **and Arbitration**.

(g) (No change.)

SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION

19:16-5.1 Scope of compulsory interest arbitration

The provisions in this subchapter relate to notification requirements, compulsory interest arbitration proceedings, and the designation of arbitrators to resolve impasses in collective negotiations involving public employers and exclusive employee representatives of public fire and police departments. **The processing of petitions to initiate compulsory interest arbitration, any related filings, the appointment of interest arbitrators, the conduct of interest arbitration hearings, appeals from interest arbitration awards, decisions reviewing awards, and all other matters stemming from interest arbitration proceedings, including schedules and fines relating to the compensation of interest arbitrators, shall adhere to the deadlines and monetary limits established by N.J.S.A. 34:13A-14 et seq., as amended.**

19:16-5.2 Initiation of compulsory interest arbitration[; motion to dismiss]

(a) Compulsory interest arbitration may be initiated through appropriate utilization of any of the following:

1. In the event of a continuing impasse following receipt of a fact-finder's findings of fact and recommended terms of settlement, a petition requesting that an impasse be resolved through compulsory interest arbitration may be filed by an employee representative and/or public employer. [Forms for filing such petitions will be supplied upon request. Address such requests] **A blank form to file a petition to initiate compulsory interest arbitration may be downloaded from the Commission's web site at:** http://www.state.nj.us/perc/NJ_PERC_Petition_to_Initiate_Compulsory_Interest_Arbitration_-_Form.pdf **or will be supplied upon request addressed to:** Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

2. On or after the date on which their collective negotiations agreement expires, [and notwithstanding N.J.A.C. 19:16-3.1 and 4.1,] either party may file a petition with the Director of **Conciliation and Arbitration** requesting the initiation of compulsory interest arbitration.

[3. On or after the expiration of a collective negotiations agreement, in the event of an impasse and notwithstanding the failure of either party to initiate impasse procedures or compulsory interest arbitration, the Commission or the Director of Arbitration may invoke compulsory interest arbitration.

(b) A non-petitioning party may, within 14 days of receiving the Director of Arbitration's notice of filing, N.J.A.C. 19:16-5.3, file a motion to dismiss the petition on the grounds that the unit is not entitled to compulsory arbitration under N.J.S.A. 34:13A-15. The motion shall be filed with the Chair, who may refer it to the Commission or a Commission designee. Absent an extension of time, the filing of a motion to dismiss shall not toll the time periods set forth in N.J.A.C. 19:16-5.5.]

3. Either party may petition the Commission for compulsory interest arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the Commission. The party filing the petition shall notify the other party of its action. The notice shall be given

in a manner and form prescribed by the Commission.

4. The non-petitioning party, within five days of receipt of the petition, shall separately notify the Commission in writing of all issues in dispute. The filing of the written response shall not delay, in any manner, the interest arbitration process.

5. Any mediation or fact-finding invoked pursuant to (a)2 above or (b)1 below shall terminate immediately upon the filing of a petition for arbitration.

(b) Prior to the expiration of their collective negotiations agreement, either party may file an unfair practice charge with the Commission alleging that the other party is refusing to negotiate in good faith because the other party has refused to schedule or attend a negotiations session within the time periods set forth in N.J.S.A. 34:13A-16a(1). The charge shall be filed and served in the manner and form specified by N.J.A.C. 19:14-1.3.

1. If the charge is sustained, the Commission shall order that the respondent be assessed for all legal and administrative costs associated with the filing and resolution of the charge.

2. If the charge is dismissed, the Commission shall order that the charging party be assessed for all legal and administrative costs associated with the filing and resolution of the charge.

(c) The filing and resolution of the unfair practice charge shall not delay or impair the impasse resolution process.

19:16-5.3 Contents of the petition requesting the initiation of compulsory interest arbitration; proof of service; notice of filing

(a) An original and four copies of a petition requesting the initiation of compulsory interest arbitration shall be filed with the Director of **Conciliation and** Arbitration. This document shall be signed and dated and contain the following information:

1.-8. (No change.)

9. A statement indicating which issues are in dispute, **and, if applicable**, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2); and

10. (No change.)

(b) (No change.)

(c) In the absence of a joint petition, the Director of **Conciliation and** Arbitration shall, upon receipt of the petition, send a notice of filing to the non-petitioning party advising it [of the time period for responding to the petition] **that it must, within five days, respond to the petition in accordance with N.J.A.C. 19:16-5.5.**

19:16-5.4 Conventional arbitration to be terminal procedure

The terminal procedure for the resolution of the issues in dispute shall be conventional interest arbitration.

19:16-5.5 Response to the petition requesting the initiation of compulsory interest arbitration

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party [shall file within 14 days of receipt of a notice of filing, a statement of response setting forth the following:], **within five days of receipt of the petition, shall separately notify the Commission in writing of all issues in dispute. The filing of the written response shall not, in any manner, delay the interest arbitration process. The statement of response shall include:**

1.-4. (No change.)

(b) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of **Conciliation and Arbitration**. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party. The substance of this response shall not provide the basis for any delay in effectuating the provisions of this chapter.

(c)-(d) (No change.)

19:16-5.6 Appointment of an arbitrator [or panel of arbitrators]; **arbitrator training and discipline**

(a) The Commission shall maintain a special panel of interest arbitrators. Members of this panel shall be appointed for three-year terms following a screening process as set forth in N.J.S.A. 34:13A-16(e) and pursuant to the standards set forth in N.J.A.C. 19:16-5.15. Reappointments to the panel shall also be contingent upon a similar screening process. The arbitrators appointed pursuant to this subchapter shall be from this special panel. All arbitrators appointed by the Commission shall be considered officers of the Commission while performing duties pursuant to this subchapter.

(b) In accordance with N.J.S.A. 34:13A-16e(4), members of the Commission's special panel of interest arbitrators shall be required to complete annual training offered by the State Ethics Commission.

(c) The Commission may suspend, remove, or otherwise discipline an arbitrator for violating the Police and Fire Public Interest Arbitration Reform Act or for good cause in accordance with the procedures set forth at N.J.A.C. 19:16-5.16. Any arbitrator who fails to attend the Commission's annual continuing education program [under section 4 of [page=569] the Police and Fire Public Interest Arbitration Reform Act] may be removed from the special panel. Any arbitrator who fails to participate in the continuing education program for two consecutive years shall be removed.

[(b) Within 17 days of the filing of a joint petition, or a non-petitioning party's receipt of a notice of filing, the parties shall notify the Director of Arbitration in writing of any mutual agreement to select an arbitrator from the special panel of arbitrators. The parties may also jointly request the appointment of a particular arbitrator who is not a member of the Commission's special panel, and the Director of Arbitration may approve the appointment of that arbitrator to the special panel for that particular arbitration.

(c) In the event that the parties have agreed to a tripartite panel of arbitrators, each party shall communicate in writing to the Director of Arbitration indicating the name, address and telephone number of the arbitration representative designed to the panel. In all such circumstances, the arbitrator appointed by the Director of Conciliation and Arbitration from the Commission's special panel of interest arbitrators shall serve as chairman of the arbitration panel. The arbitration representatives designated by each of the parties need not be members of the Commission's special panel, and shall not be considered officers of the Commission.

(d) Unless an arbitrator has been mutually selected by the parties, the Director of Arbitration shall select the arbitrator by lot. Once such selection has been made by the Director, the parties may not mutually select a different arbitrator.

(e) If an arbitrator selected by mutual agreement is unable to serve and the parties are unable to mutually agree on a

replacement arbitrator within 10 days of the date the arbitrator became unable to serve, the Director of Arbitration shall select the replacement by lot.

(f) If an arbitrator assigned by lot is unable to serve and the parties are unable to agree on a replacement arbitrator within 10 days of the date the arbitrator became unable to serve, the Director of Arbitration shall select the replacement arbitrator by lot.

(g) Any motion to disqualify an interest arbitrator shall be filed with the Commission, together with proof of service of a copy on the other party and the arbitrator. Any response to such motion shall be filed with the Commission within five days of service of the motion, together with proof of service of a copy on the other party and the arbitrator. The Chairman or some other Commission designee shall then either decide the motion or refer it to the arbitrator or the full Commission.]

(d) An arbitrator from the special panel of interest arbitrators shall be assigned to a petition through a computerized random selection process. On the first business day following receipt of an interest arbitration petition, the Commission, or its designee, independent of and without any participation by either of the parties, shall begin the computerized process of randomly selecting an arbitrator from its special panel of interest arbitrators. The selection shall be final and shall not be subject to review or appeal.

19:16-5.7 Conduct of the arbitration proceeding

(a) The conduct of the arbitration proceeding [by an arbitrator or panel of arbitrators] shall be under the exclusive jurisdiction and control of the arbitrator [or arbitrators].

(b) The filing of an interest arbitration petition shall terminate formal mediation or fact-finding proceedings.

[(b)] (c) The appointed arbitrator [or panel of arbitrators] may mediate or assist the parties in reaching a mutually agreeable settlement at any time throughout formal arbitration proceedings. **However, mediation efforts shall not stay or extend the deadlines for issuance of an award or the filing of an appeal.**

Recodify existing (c) and (d) as **(d) and (e)** (No change in text.)

[(e)] **(f)** [Unless a terminal procedure has been mutually agreed to by the parties and approved by the Director of Arbitration, the] **The** procedure to provide finality for the resolution of unsettled issues shall be conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the [eight] statutory criteria set forth in N.J.S.A. 34:13A-16g.

[(f)] **(g)** The arbitrator, after appointment, shall communicate with the parties to arrange for a [mutually satisfactory] date, time, and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time, and place for a hearing. The arbitrator shall submit a written notice containing arrangements for a hearing within a reasonable time period before hearing. At least [10] **two** days before the hearing, the parties shall submit to the arbitrator [or tripartite panel of arbitrators] and to each other their final offers on each economic and noneconomic issue in dispute. **The parties must also submit written estimates of the financial impact of their respective last offers on the taxpayers as part of their final offer submissions.** The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.

[(g)] **(h)** (No change in text.)

[(h)] (i) If a party objects to an issue as being outside the scope of mandatorily negotiable subjects, the parties may state their positions to the arbitrator on the record. The arbitrator shall be permitted to take evidence[, but shall not] and render a decision on [any] the issue [which is the subject of a petition for a scope of negotiations determination filed with the Commission or on any issue which is the subject of an issue definition proceeding pursuant to N.J.A.C. 19:16-6]. **Any further negotiability argument may be made to the Commission post-award if appealed and provided the negotiability objection has not been waived by a party's failure to file a timely petition for scope of negotiations determination.**

[(i)] (j) The arbitrator shall have the authority to grant adjournments [for good cause shown upon either party's application or the arbitrator's own motion].

[(j)] (k) (No change in text.)

[(k)] (l) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not [exceed 30 days from the close of the hearing. Briefs shall be submitted to the arbitrator along with submission of proof of service on all parties] **stay the 45-day time period, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for issuing an award.** The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

(m) An arbitrator must issue an award within 45 days from appointment or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.

(n) All interest arbitration awards shall be implemented immediately.

19:16-5.8 Stenographic record

(a) A stenographic record shall not be a procedural requirement for the conduct of a hearing. However, any party shall have the right to a stenographic record taken of the arbitration proceeding.

(b) The arrangements for a stenographic record must be made by the requesting party after the appointment of the arbitrator. The cost of such record shall be paid by the party requesting it or divided equally between the parties if both make such a request. If a stenographic record is requested by either or both parties, the party or parties making the request shall provide at its/their cost a copy of a transcript to the arbitrator.

(c) The arbitrator shall have the authority to set a deadline for the submission of the stenographic record to the arbitrator.

(d) Any delay in receiving a stenographic record shall not extend:

1. The 45-day time period, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for rendering an award; or

2. The seven-day time limit, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for submitting an appeal to the Commission.

[page=570] 19:16-5.9 Opinion and award

(a) If the impasse is not otherwise resolved, the arbitrator [or arbitrators] shall decide the dispute and issue a written opinion and award within [120] **45 days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.,** of the Director of **Conciliation and Arbitration's** assignment of that arbitrator. [The arbitrator or panel of arbitrators, for good cause, may petition the Director of Arbitration for an extension of not more than 60 days. The arbitrator shall notify the parties in writing of such a petition and the Director shall notify the parties and the arbitrator in writing of whether the petition has been granted or denied. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the Director of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this section may be subject to suspension, removal or discipline under N.J.A.C. 19:16-5.6.] **Any arbitrator who fails to issue an award within 45 days, or within such other period of time that may be prescribed by N.J.S.A. 34:13A-14 et seq., shall be fined \$ 1,000 per each day late.**

(b) **Each arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award.** The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16(g) which are judged relevant for the resolution of the specific dispute. In the award, the arbitrator [or panel of arbitrators] shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The opinion and award shall set forth the reasons for the result reached.

(c) **The arbitrator shall certify that the statutory limitations imposed by the local levy cap were taken into account in making the award.**

(d) [Copies] **The arbitrator's opinion and award shall be signed and notarized. An original and four copies** of the opinion and award shall be submitted directly to the Director of **Conciliation and Arbitration** who will then serve the parties simultaneously. **The signed original must be filed with the Director of Conciliation and Arbitration. The copies may be transmitted electronically.**

(e) **Any arbitrator violating the provisions of this section may be subject to suspension, removal, or discipline under N.J.A.C. 19:16-5.6.**

19:16-5.10 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes

[The arbitrator shall] **Arbitrators serving on the Commission's special panel shall** be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

19:16-5.11 Cost of arbitration

(a) The costs of services performed by the arbitrator shall be borne equally by the parties [in accordance with the following fee schedule:]. **Each party shall pay its share of the arbitrator's fee within 60 days of receipt of the arbitrator's bill or invoice.**

1. For arbitrators assigned by lot, pursuant to N.J.S.A. 34:13A-16e(1), the fee shall be \$ 1,000 per day;

2. For arbitrators mutually selected by the parties, the fee shall be the per diem rate set by the arbitrator for conducting grievance arbitrations and on file with the Director of Arbitration on the date of the mutual selection.]

[(b) Should the parties use an arbitration panel with an appointee of each of the parties, as permitted by N.J.A.C. 19:16-5.6(c), each appointee's fee shall be paid by the party making the appointment. The costs of the services of the special panel member who chairs the panel shall be borne equally by the parties. The fee for the chair of the panel shall be as set forth in (a)1 or 2 above, depending on whether the arbitrator is assigned by lot or mutually selected by the parties.]

(b) The fee for services provided by the arbitrator shall not exceed \$ 1,000 per day. The total cost of services provided by an arbitrator shall not exceed \$ 7,500.

(c) An assessment of not more than \$ 500.00 may be imposed by the arbitrator if a proceeding is cancelled without good cause. If the parties jointly cancel the proceeding the fee will be shared. Otherwise the party causing the cancellation or adjournment shall be responsible for payment of the entire fee.

19:16-5.12 Fees for filing and processing interest arbitration petitions

(a) At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a [\$ 150.00] **\$ 175.00** fee. If the petition is filed by one party only, then the petitioning party shall pay a [\$ 150.00] **\$ 175.00** fee upon filing the petition and the non-petitioning party shall pay a [\$ 150.00] **\$ 175.00** fee upon filing its response to the petition pursuant to N.J.A.C. 19:16-5.5.

(b) The petition shall not be processed until the petitioning party pays the filing fee of \$ 175.00. The processing of the petition shall be deemed suspended until the required fee is received from the non-petitioning party.

(c) Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

19:16-5.13 Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a [\$ 135.00] **\$ 200.00** fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a [\$ 135.00] **\$ 200.00** fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or ruling, the party shall pay a [\$ 25.00] **\$ 75.00** fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

19:16-5.14 Comparability guidelines

(a) N.J.S.A. 34:13A-16g identifies [eight] **the** factors that an interest arbitrator must consider in reviewing the parties' proposals. **In addition, in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in N.J.S.A. 34:13A-16g(6): the financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to P.L. 2007, c. 62, section 10 (N.J.S.A. 40A:4-45.45), and taxpayers.** The arbitrator must indicate which of the factors listed in [that subsection] **N.J.S.A. 34:13A-16g** are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor. N.J.S.A. 34:13A-16g(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions. . . ." Subsection a of section 5 of P.L. 1995, [c.425] **c. 425** requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

(b) (No change.)

1. (No change.)

2. The Commission further recognizes that it is the arbitrator's responsibility to consider all the evidence submitted and to determine the weight of any evidence submitted based upon the guidelines in (c) and (d) below and to determine the relevance or lack of relevance of comparability in relationship to all [eight] **of the** factors set forth in N.J.S.A. 34:13A-16g. Promulgation of these guidelines is not intended to require that any party submit evidence on all or any of the elements set forth in (c) and (d) below or assert that the comparability factor should or should not be deemed relevant or accorded any particular weight in any arbitration proceeding. Nothing in this section shall preclude the arbitrator from supplementing the factual record by issuing subpoenas to require the attendance of witnesses and the production of documents. Nor does anything in this section prevent the arbitrator from requesting the parties to supplement their presentations in connection with this factor or any other factor set forth in the law.

(c)-(d) (No change.)

[page=571] 19:16-5.15 Standards for appointment and reappointment to the special panel

(a) Because any special panel member may be assigned [by lot] to the most demanding and complex interest arbitration matter, appointments to the special panel will be limited to those labor relations neutrals who, in the Commission's expert judgment, have the demonstrated ability to mediate the most complex labor relations disputes and resolve the most demanding interest arbitration matters in the most professional, competent and neutral manner. No applicant shall have any right or expectation to be appointed or reappointed to the special panel.

(b)-(h) (No change.)

19:16-5.17 Interlocutory rulings; appeal on special permission

(a) Interlocutory rulings or orders issued before the arbitrator's final written opinion and award under N.J.S.A. 34:13A-[16(f)(5)]**16f(5)** and N.J.A.C. 19:16-5.9 shall not be appealed to the Commission except by special permission to appeal. All such rulings and orders shall become part of the record of the arbitration proceedings and shall be reviewed by the Commission in considering any appeal or cross-appeal from an arbitrator's final award, provided exception to the ruling or order is included in the [notice of] appeal or cross-appeal filed with the Commission pursuant to N.J.A.C. 19:16-8.1 through 8.3.

(b) A request for special permission to appeal shall be filed in writing [within five days from the] **on the next business day following** service of written rulings or statements of oral rulings, and shall briefly state the grounds for granting special permission to appeal and the grounds for reversing or modifying the ruling or order in question. An original and nine copies of the request shall be filed with the Chair, together with the [\$ 25.00] **\$ 75.00** fee required under N.J.A.C. 19:16-5.13 and proof of service of a copy of the request on all other parties and the arbitrator assigned to the case. A party opposing the request may file an original and nine copies of a statement in opposition within [five] **two business** days of service on it of the request for special permission to appeal and shall briefly state the grounds for denying special permission to appeal and the grounds for affirming the ruling or order in question. An original and nine copies of the statement shall be filed with the Chair, together with proof of service of a copy on all other parties and the arbitrator assigned to the case.

(c) (No change.)

SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION

19:16-6.1 Purpose of procedure

[The purpose of this subchapter is to provide an expeditious procedure for the resolution of] **The Commission has the**

statutory authority to resolve disputes as to whether an issue is an economic or a noneconomic issue as defined in N.J.S.A. 34:13A-[16(i)(2)]16f(2). **After the filing of a petition to initiate compulsory interest arbitration, the Commission will not exercise that authority until an award has been issued and will do so only if necessary to resolve an appeal of an interest arbitration award.**

SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT

19:16-7.1 Failure to submit a notice or other document

The failure to submit any notification, petition, statement, or other document as set forth in [these rules] **this chapter** shall not provide the basis for any delay in these proceedings, nor shall it otherwise prevent or preclude the resolution of a dispute through compulsory interest arbitration pursuant to this chapter, **except as provided by N.J.A.C. 19:16-5.12.**

SUBCHAPTER 8. APPEALS

19:16-8.1 Appeals and cross-appeals

(a) Within [14] **seven calendar days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.,** after receiving an award forwarded by the Director of **Conciliation and** Arbitration, an aggrieved party may file an original and nine copies of [a notice of] **an appeal [to] brief with** the Commission, together with the [\$ 135.00] \$ **200.00** fee required under N.J.A.C. 19:16-5.13.

1. The [notice] **brief** shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16g and each alleged violation of the standards set forth in N.J.S.A. 2A:24-8 or 2A:24-9.

2. The appellant shall simultaneously file an original and nine copies of an appendix containing those parts of the record the appellant considers necessary to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.

[2.] **3.** If a stenographic record of the hearing was prepared, the appellant shall **certify to its existence and** provide a copy of the transcript to the Commission **upon receipt.**

[3.] **4.** (No change in text.)

[4.] **5.** The appellant shall also file a copy of the [notice] **brief** on the arbitrator.

[5. Within 14 days after filing a notice of appeal, the appellant shall file an original and nine copies of a brief in support of the appeal, together with proof of service of a copy on the other party. The appellant shall simultaneously file an original and nine copies of an appendix containing those parts of the record the appellant considers necessary to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.]

(b) Within seven days after the service of an appeal, the respondent may file a [notice of] cross-appeal [to] **brief with** the Commission, together with the [\$ 135.00] \$ **200.00** fee required under N.J.A.C. 19:16-5.13.

1. The [notice] **brief** shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16g and each alleged violation of the standards set forth in N.J.S.A. 2A:24-8 or 2A:24-9.

2. (No change.)

3. The cross-appellant shall also file a copy of the [notice of cross-appeal] **brief** on the arbitrator.

4. [Within 14 days after filing a notice of cross-appeal, the] **The** cross-appellant shall **simultaneously** file an original and nine copies of [a] **the** brief in support of the cross-appeal and in response to the appeal, together with proof of service of a copy on the other party. The respondent/cross-appellant may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's appendix that the respondent/cross-appellant considers necessary to the proper consideration of the issues.

(c) (No change.)

(d) Where a cross-appeal has been filed, within [seven] **three** days after the service of the brief in support of the cross-appeal, the appellant/cross-respondent may file an original and nine copies of an answering brief limited to the issues raised in the cross-appeal and the brief in support of the cross-appeal. The appellant/cross-respondent may also file an appendix containing those parts of the record not included in any earlier appendix that the appellant/cross-respondent considers necessary to the proper consideration of the issues raised in the cross-appeal. Filing shall be accompanied by the proof of service of a copy on the other party.

(e) (No change.)

(f) The Commission shall render a decision within 30 days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., from receipt of the appeal.

(g) The Commission decision shall be in writing and shall include an explanation as to how each statutory criterion was considered on appeal and that the statutory tax levy cap was considered.

19:16-8.3 Action by the Commission

The Commission may affirm, modify, correct, or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator [for reconsideration. If the parties are unable to agree upon a replacement arbitrator within 10 days of the remand order, the arbitrator shall be selected by lot] **selected at random by computer.**