

CHAPTER 16

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:16-2.1 Commencement of negotiations

SUBCHAPTER 3. MEDIATION

19:16-3.1 Initiation of mediation

19:16-3.2 Appointment of a mediator

19:16-3.3 Mediator's function

19:16-3.4 Mediator's confidentiality

19:16-3.5 Mediator's report

SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding

19:16-4.2 Appointment of a fact-finder

19:16-4.3 Fact-finder's function

SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION

19:16-5.1 Scope of compulsory interest arbitration

19:16-5.2 Initiation of compulsory interest arbitration

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

19:16-5.4 Conventional arbitration to be terminal procedure

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

19:16-5.6 Appointment of an arbitrator; arbitrator training and discipline

19:16-5.7 Conduct of the arbitration proceeding

19:16-5.8 Stenographic record

19:16-5.9 Opinion and award

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

19:16-5.11 Cost of arbitration

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

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

19:16-5.14 Comparability guidelines

19:16-5.15 Standards for appointment and reappointment to the special panel

19:16-5.16 Suspension, removal or discipline of members of the special panel

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

SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION

19:16-6.1 Purpose of procedure

19:16-6.2 (Reserved)

SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT

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

SUBCHAPTER 8. APPEALS

19:16-8.1 Appeals and cross-appeals

19:16-8.2 Oral argument

19:16-8.3 Action by the Commission

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, as amended by P.L. 2010, c. 105, and P.L. 2014, c. 11, and codified at N.J.S.A. 34:13A-14 et seq., providing for compulsory interest arbitration of labor disputes in public fire and police departments.

(b) 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, at the request of 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) 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.

(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.

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 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 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 addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) Nothing in this subchapter shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

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. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;

3. A description of the collective negotiations unit, including the approximate number of employees in the unit;

4. The dates and duration of negotiations sessions;

5. The termination date of the current agreement, if any;

6. The public employer's required budget submission date;

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.

(b) A blank form for filing a Notice of Impasse to request mediation may be downloaded from the Commission's web site 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, NJ 08625-0429.

(c) Upon receipt of the 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 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.

19:16-3.3 Mediator's function

The function of a mediator shall be to assist the parties to reach a voluntary agreement. A mediator may hold separate or joint conferences as he or she deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties.

19:16-3.4 Mediator's confidentiality

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding, under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

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 normally be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;
3. A statement of the issues which have been resolved through mediation;
4. A statement of the issues which are still unresolved if any; and
5. A statement setting forth any other relevant information in connection with the mediator's involvement in the performance of his or her functions.

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. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;
3. A description of the collective negotiations unit, including the approximate number of employees in the unit;
4. The name of the mediator;
5. The number and duration of mediation sessions;
6. The date of the last mediation effort;
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.

(b) A blank form for filing a request for fact-finding 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, 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. Any additional unresolved issues to be submitted to the fact-finder;
2. A statement as to whether it refuses to submit any of the issues listed on the request to fact-finding on the ground that such issue is not within the required scope of negotiations; and
3. Any other relevant information with respect to the nature of the impasse.

(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) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the request for fact-finding or within five days after receipt of the response to a request for fact-finding. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to fact-finding.

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) The fact-finder appointed pursuant to this subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's fact-finding panel, or any other appointee, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement and/or making findings of fact and recommending the terms of settlement. If an appointed fact-finder cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable by the Commission.

(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) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or their representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties agree to have them public, or take other steps deemed appropriate in order to discharge the function of the fact-finder.

(b) For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum and require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before the fact-finder.

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) If the impasse is not resolved during fact-finding, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the process as possible.

(e) Any findings of fact and recommended terms of settlement shall be limited to those issues that are within the required scope of negotiations, unless the parties have agreed to submit issues to the fact-finder which involved permissive subjects of negotiations.

(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) The parties shall meet within five days after receipt of the fact-finder's findings of fact and recommended terms of settlement, to exchange statements of position and to have an opportunity to reach an agreement.

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

(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. 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, either party may file a petition with the Director of Conciliation and Arbitration requesting the initiation of compulsory interest arbitration.

3. Any mediation or fact-finding 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. Name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. Name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;

3. A description of the collective negotiations unit and the approximate number of employees involved;

4. A statement as to whether either party has previously requested mediation, whether a mediator has been appointed, the name of the mediator, and the dates and duration of mediation sessions, if any;

5. A statement as to whether fact-finding with recommendations for settlement has been invoked, whether a fact-finder has been appointed, and whether a fact-finding report and recommendations have been issued, and the date of such report, if any;

6. The termination date of the current agreement, if any;

7. The required budget submission date of the public employer;

8. Whether the request is a joint request;

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

(b) In the absence of a joint petition, the petitioner shall file proof of service of a copy of the petition on the other party.

(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 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, 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. Any additional unresolved issues to be submitted to arbitration;

2. A statement as to whether it disputes the identification of any of the issues as economic or noneconomic;
3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and
4. Any other relevant information with respect to the nature of the impasse.

(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) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission Chair, a petition for an expedited scope of negotiations determination. The failure to file a request for a scope determination pursuant to N.J.A.C. 19:13 or this chapter shall be deemed a waiver of the negotiability objection.

1. A request for an expedited scope of negotiations determination shall be accompanied by a scope of negotiations petition in the form published on the Commission's website (<http://www.nj.gov/perc/html/forms.htm>) and shall be filed and served, where the requestor is not the party who petitioned for interest arbitration, within 10 days after receipt of the interest arbitration petition, or where the requestor is the petitioner for interest arbitration, within 10 days after receipt of the response to the interest arbitration petition.

2. The issues for which a negotiability determination is sought must be among those identified as being in dispute in either the interest arbitration petition or the response to the interest arbitration petition. The Commission will not determine the negotiability of any issues that are no longer in dispute during the pending interest arbitration. It shall be the obligation of all parties to immediately advise the Commission Chair and the assigned interest arbitrator that an issue that is the subject of a pending scope of negotiations petition is no longer actively in dispute during interest arbitration.

3. The party filing a request for an expedited scope determination shall file a supporting brief with its request, a copy of which shall be served simultaneously upon the other party. The other party shall file with the Commission Chair a brief in response to the request within seven business days of receipt of the request and shall serve simultaneously a copy of the brief upon the party who requested the expedited scope determination. All briefs shall conform to the requirements set forth in N.J.A.C. 19:13-3.6(f). No additional briefs or submissions shall be filed.

4. Within 10 days after receipt of an expedited scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure. The decision to issue an expedited scope of negotiations ruling during the pendency of a compulsory interest arbitration proceeding shall be within the sole, non-reviewable discretion of the Commission Chair.

5. If the Commission Chair decides to issue an expedited scope of negotiations ruling, the Commission or Commission Chair, pursuant to the authority delegated to the Chair by the full Commission, shall issue a written decision within 21 days after the respondent's brief is due. A copy of the decision shall be simultaneously sent to the assigned interest arbitrator.

6. Any contract language or proposals that are determined in the expedited scope of negotiations ruling to be not mandatorily negotiable shall not be considered by the interest arbitrator. If time permits, and in accordance with N.J.A.C. 19:16-5.7, the interest arbitrator may allow the parties to amend their final offers to take into account the negotiability determination.

7. A decision by the Commission or Commission Chair pursuant to this expedited scope of negotiations process shall be a final agency decision. Any appeal must be made to the Superior Court, Appellate Division.

8. If the Commission Chair decides not to issue an expedited scope of negotiations ruling, then any negotiability issues pending in interest arbitration may be raised to the interest arbitrator and either party may seek a negotiability determination by the Commission as part of an appeal from an interest arbitration award. See N.J.A.C. 19:16-5.7(i).

(d) Where a dispute exists regarding the identification of an issue as economic or noneconomic, the party contesting the identification of the issue shall file with the Commission a petition for issue definition determination. This petition must be filed within five days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

19:16-5.6 Appointment of an arbitrator; 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 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.

(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 shall be under the exclusive jurisdiction and control of the arbitrator.

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

(c) The appointed arbitrator shall conduct an initial meeting as a mediation session to effect a voluntary resolution of the impasse. In addition, the appointed arbitrator, throughout formal arbitration proceedings, may mediate or assist the parties in reaching a mutually agreeable settlement.

(d) Information disclosed by a party to an arbitrator while functioning in a mediatory capacity shall not be divulged by the arbitrator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by an arbitrator while serving in a mediatory capacity shall be classified as confidential. The arbitrator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the arbitrator, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(e) The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas and shall entertain any motions to quash such subpoenas. Any

hearings conducted shall not be public unless all parties agree to have them public.

(f) 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 statutory criteria set forth in N.J.S.A. 34:13A-16.g.

(g) The arbitrator, after appointment, shall communicate with the parties to arrange for a 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.

1. Such notice shall also set forth the dates, both of which shall precede the hearing, by which the public employer shall provide the arbitrator and the employee representative with the following information and the format in which it shall be provided and by which the employee representative shall respond to the information:

i. A list of all unit members during the final year of the expired agreement, their salary guide step(s) during the final year of the expired agreement, and their anniversary date of hire (that is, the date or dates on which unit members advance on the guide);

ii. Costs of increments and the specific date(s) on which they are paid;

iii. Costs of any other base salary items (for example, longevity) and the specific date(s) on which they are paid;

iv. The total cost of all base salary items for the 12 months immediately preceding the first year of the new agreement; and

v. A list of all unit members as of the last day of the year immediately preceding the new agreement, their step, and their rate of salary as of that same day.

2. At least 10 days before the hearing, the parties shall submit to the arbitrator 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.

(h) The arbitrator's authority shall be limited to those issues which are within the required scope of negotiations, unless the parties have mutually agreed to submit issues to the arbitrator which involve permissive subjects of negotiation.

(i) Unless the Commission Chair decides to issue an expedited scope of negotiations determination pursuant to N.J.A.C. 19:16-5.5(c), 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 and render a preliminary decision on the issue for purposes of rendering the award. Any further negotiability argument may be made to the Commission post-award if the award is appealed.

(j) The arbitrator shall have the authority to grant adjournments.

(k) The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.

(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 stay the 90-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 90 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 90-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 14-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.

19:16-5.9 Opinion and award

(a) If the impasse is not otherwise resolved, the arbitrator shall decide the dispute and issue a written opinion and award within 90 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. Any arbitrator who fails to issue an award within 90 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.

(c) Where applicable, the arbitrator's economic award must comply with the two percent cap on average annual increases to base salary items pursuant to N.J.S.A. 34:13A-16.7, as amended by P.L. 2014, c. 11. In all awards, whether or not subject to the two percent cap, the arbitrator's decision shall set forth the costs of all "base salary" items for each year of the award, including the salary provided pursuant to a salary guide or table, any amount provided pursuant to a salary increment, any amount provided for longevity or length of service, and any other item agreed to by the parties or that was included as a base salary item in the prior award or as understood by the parties in the prior contract. These cost-out figures for the awarded base salary items are necessary in order for the arbitrator to determine, pursuant to N.J.S.A. 34:13A-16.d, whether the total net annual economic changes for each year of the award are reasonable under the statutory criteria.

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

(e) 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.

(f) 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.

ruling, the party shall pay a \$ 75.00 fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

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

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. Each party shall pay its share of the arbitrator's fee within 60 days of receipt of the arbitrator's bill or invoice.
- (b) The fee for services provided by the arbitrator shall not exceed \$1,000 per day, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq. The total cost of services provided by an arbitrator shall not exceed \$10,000, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq.
- (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 \$175.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a \$ 175.00 fee upon filing the petition and the non-petitioning party shall pay a \$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.
- (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 \$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 \$200.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or

19:16-5.14 Comparability guidelines

- (a) N.J.S.A. 34:13A-16.g identifies 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-16.g(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 N.J.S.A. 34:13A-16.g 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-16.g(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 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.
- (b) The guidelines set forth in (c) and (d) below are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. The guidelines are intended to be instructive but not exhaustive. The arbitrator shall consider any and all evidence submitted pursuant to the comparability guidelines and shall apply these guidelines in addressing the comparability criterion.

1. The Public Employment Relations Commission recognizes that the extent to which a party to an arbitration proceeding asserts that comparisons to public employment in the same or similar comparable jurisdictions are relevant to that proceeding is a matter to be determined by that party. The Commission also recognizes that it is the responsibility of each party to submit evidence and argument with respect to the weight to be accorded any such evidence.
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 of the factors set forth in N.J.S.A. 34:13A-16.g. 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) The following are comparability considerations within the same jurisdiction:

1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;
2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;
3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;
4. History of negotiations:
 - i. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and
 - ii. History of differentials between uniformed and non-uniformed employees;
5. Pattern of salary and benefit changes; and
6. Any other considerations deemed relevant by the arbitrator.

(d) The following are comparability considerations for similar comparable jurisdictions:

1. Geographic:
 - i. Neighboring or overlapping jurisdictions;
 - ii. Nearby jurisdictions;
 - iii. Size; and
 - iv. Nature of employing entity.
2. Socio-economic considerations:
 - i. Size, density, and characteristics of population;
 - ii. Per capita income;
 - iii. Average household income;
 - iv. Average property values;
 - v. Gain or loss of assessed value;
 - vi. Ratable increases/decreases from year to year;
 - vii. Tax increases/decreases over last few years;
 - viii. Cost-of-living (locally);
 - ix. Size and composition of police force or fire department;
 - x. Nature of services provided;
 - xi. Crime rate;
 - xii. Violent crime rate;
 - xiii. Fire incident rate; and
 - xiv. Fire crime rate.

3. Financial considerations:

i. Revenue:

- (1) Taxes:
 - (A) School;
 - (B) County;
 - (C) Municipal;
 - (D) Special district;
 - (E) State equalization valuation and ratio; and
 - (F) Other taxes;
 - (2) Tax base/ratables;
 - (3) Equalized tax rate;
 - (4) Tax collections;
 - (5) Payments in lieu of taxes;
 - (6) Delinquent tax and lien collections;
 - (7) State aid revenues;
 - (8) Federal aid revenues;
 - (9) Sale of acquired property;
 - (10) Budget surplus;
 - (11) Other miscellaneous revenues;
 - (12) Prior years surplus appropriated;
 - (13) Total revenues;
 - (14) Reserve for uncollected taxes;
 - (15) Taxes as percentage of total municipal revenues;
 - (16) All other municipal revenues;
 - (17) Any other sources of revenue;
 - (18) Total municipal revenues; and
 - (19) Budget cap considerations;
- ii. Expenditures:
- (1) Police protection;
 - (2) Fire protection;
 - (3) Total municipal functions;
 - (4) Police protection as percentage of total municipal functions;
 - (5) Fire protection as percentage of total municipal functions; and
 - (6) Percentage of net debt/bond rating;

- iii. Trends in revenues and expenditures;
- 4. Compensation and other conditions of employment:
 - i. Relative rank within jurisdictions asserted to be comparable;
 - ii. Wage and salary settlements of uniformed employees;
 - iii. Wage and salary settlements of non-uniformed employees in negotiations units;
 - iv. Wage and salary settlements of employees not in negotiations units;
 - v. Top step salaries;
 - vi. Overall compensation:
 - (1) Wage and salaries;
 - (2) Longevity;
 - (3) Holidays;
 - (4) Vacations;
 - (5) Uniform allowance;
 - (6) Medical and hospitalization benefits;
 - (7) Overtime;
 - (8) Leaves of absence;
 - (9) Pensions; and
 - (10) Other retiree benefits;
 - vii. Work schedules;
 - viii. Work hours;
 - ix. Workload:
 - (1) Number of calls or runs per officer; and
 - (2) Other relevant standards for measuring workload; and
 - x. Other conditions of employment; and
- 5. Any other comparability considerations deemed relevant by the arbitrator.

19:16-5.15 Standards for appointment and reappointment to the special panel

(a) Because any special panel member may be assigned 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) An applicant shall already be a member of the Commission's mediation, fact-finding and grievance arbitration panels, have an impeccable reputation in the labor-management community for professional competence, ethics and integrity, shall have complied with all applicable codes of conduct, and shall demonstrate:

1. Ability to write a well-reasoned decision consistent with applicable legal standards and within statutory deadlines;
2. Knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings;
3. Substantial experience both as a mediator and arbitrator; and
4. Competent performance on the Commission's mediation, fact-finding and grievance arbitration panels.

(c) An applicant's qualifications shall be determined by an overall assessment of the following considerations, with special emphasis to be given to considerations (c)1 through 3 below. An applicant shall, at a minimum, satisfy either considerations (c)1 and 2 below, or (c)2 and 3 below.

1. Demonstrated experience as an interest arbitrator and demonstrated ability to write well-reasoned interest arbitration decisions consistent with applicable legal standards and within statutory deadlines. Experience and writing ability shall be evaluated by a review of the cases where the applicant served as an interest arbitrator and a review of the quality of the arbitrator's work product.

i. To satisfy this consideration, an applicant shall have had at least 15 interest arbitration appointments in the last five years and shall have performed assignments in a superior manner. An applicant shall also submit at least five interest arbitration awards written by the applicant, which awards shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector appointments and awards.

2. Demonstrated experience and acceptability as a public or private sector mediator and/or fact-finder. An applicant shall exhibit the ability to serve in complex and difficult public sector negotiations disputes and shall be evaluated by a review of his or her cases as a mediator and/or fact-finder and the quality of the applicant's performance in those cases.

i. To satisfy this consideration, an applicant shall have the equivalent of three years of mediation and/or fact-finding experience and shall have performed assignments in a superior manner. Special emphasis will be given to New Jersey public sector assignments.

3. Demonstrated experience as a public or private sector grievance arbitrator involving the ability to decide complex and difficult labor relations issues in a fair and objective manner. Experience shall be evaluated by a review of the

cases where an applicant served as a grievance arbitrator and the quality of the applicant's work product in those cases.

i. To satisfy this consideration, an applicant shall have the equivalent of three years of grievance arbitration experience. An applicant shall submit at least 10 awards written by the applicant, which awards shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector awards.

4. Membership and offices in the National Academy of Arbitrators or other relevant professional organizations and panel memberships in any labor dispute settlement agency.

i. This consideration simply augments the considerations in (c)1 through 3 above.

5. Formal educational attainments, teaching positions, and professional publications demonstrating knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings.

i. This consideration simply augments the considerations in (c)1 through 3 above.

6. Other labor relations, arbitration, governmental or fiscal experience.

i. This consideration simply augments the considerations in (c)1 through 3 above.

(d) Every applicant shall complete an application form prepared by the Director of Conciliation and Arbitration. That form is designed to solicit information concerning the foregoing requirements and considerations. The form also allows an applicant the opportunity to submit any other information he or she deems relevant. The Director shall review all applications and make a recommendation to the Commission regarding each one within 60 days. The Commission shall notify an applicant in writing of any action taken upon an application.

(e) In addition to the requirements and considerations listed in (c) above, an applicant seeking reappointment shall have demonstrated successful service during the terms of his or her previous appointments to the special panel, as measured by:

1. The issuance of well-reasoned, legally sound, and timely awards;
2. Compliance with statutory standards and deadlines; case law requirements; agency regulations, rules, policies, administrative memoranda, and reporting procedures; and
3. Any other applicable requirements.

(f) An applicant for reappointment shall also have abided by the Code of Professional Responsibility for Interest Arbitrators adopted by the New Jersey Public Employment Relations Commission; the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes adopted by the National Academy of Arbitrators, American Arbitration

Association, and Federal Mediation and Conciliation Service; and the Code of Professional Conduct for Labor Mediators adopted by the Association of Labor Relations Agencies and the Federal Mediation and Conciliation Service. An applicant for reappointment shall also have attended the Commission's continuing education programs, as directed, per N.J.S.A. 34:13A-16.1.

(g) Satisfying one or more of the considerations listed in (c) above does not necessarily qualify an applicant for appointment or reappointment to the special panel. An appointment or reappointment depends upon the Commission's overall expert assessment of an applicant's ability to handle the most complex and demanding interest arbitration assignments.

(h) No applicant shall be appointed to the panel who, in the three years prior to the application date, has:

1. Served as an advocate for labor or management in the public or private sector;
2. Been elected or appointed to a political office or a governing body; or
3. Has served in a partisan political capacity.

19:16-5.16 Suspension, removal or discipline of members of the special panel

(a) Pursuant to N.J.S.A. 34:13A-16(e), this section provides a procedure to be followed by the Commission in deciding whether to suspend, remove, or otherwise discipline an arbitrator during his or her three-year term.

(b) If it appears that suspension, removal, or discipline may be warranted, the Director of Conciliation and Arbitration shall provide a written statement to the arbitrator specifying the reasons for the action being considered. The arbitrator shall have an opportunity to submit a prompt written response to the Director. The arbitrator shall also be given an opportunity to meet with the Director to discuss the matter.

(c) If a suspension or removal is being contemplated, if the arbitrator requests a hearing, and if it appears to the Director that substantial and material facts are in dispute, the Director may designate a hearing officer to conduct a hearing and make findings of fact.

(d) The Director may temporarily suspend an arbitrator from the panel pending any hearing.

(e) After receiving the arbitrator's response, meeting with the arbitrator, and considering the facts found at any hearing, the Director may decide to reprimand, suspend, or remove an arbitrator or may decide that no action is warranted. The Director shall send a written decision to the arbitrator.

(f) Within 14 days of receiving the Director's decision, an arbitrator may file a written appeal of that decision with the Commission. Such appeal shall specify the grounds for disagreeing with the Director's decision.

(g) A temporary suspension may be continued pending that appeal.

(h) The Commission or its designee may sustain, modify, or reverse the action taken by the Director and shall provide the arbitrator with a written statement explaining the basis for that decision.

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-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 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 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 \$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 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) The Chair has the authority to grant or deny special permission to appeal. If the Chair grants special permission to appeal, the arbitration proceeding shall not be stayed unless otherwise ordered by the Chair. The Commission shall consider an appeal on the papers submitted to the Chair, or on such further submission as it may require.

SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION

19:16-6.1 Purpose of procedure

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-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.

19:16-6.2 (Reserved)

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 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 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 an appeal brief with the Commission, together with the \$200.00 fee required under N.J.A.C. 19:16-5.13. Any cross-appeal must also be filed within this same 14-day period and comply with the fee, briefing, and service requirements of this section.

1. The brief shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16.g 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.

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.

4. Filings shall be accompanied by proof of service of a copy to the other party.

5. The appellant shall also file a copy of the brief on the arbitrator.

(b) Within 14 days after the service of a brief in support of an appeal or cross-appeal, the respective respondents shall file an original and nine copies of an answering brief limited to the issues raised in the appeal or cross-appeal. The respective respondents may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's or cross-appellant's appendix that the respondent considers necessary to the proper consideration of the issues. Filings shall be accompanied by proof of service of a copy on the other party.

(c) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on the other party.

(d) The Commission shall render a decision within 60 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.

(e) 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.

19:16-8.2 Oral argument

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and shall be filed simultaneously with the appeal or cross-appeal, together with proof of service of a copy on the other party. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

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 selected at random by computer.

¹ Title 19, Chapter 16 -- Chapter Notes

CHAPTER AUTHORITY:

N.J.S.A. 34:13A-6(b), 34:13A-5.4(e), 34:13A-11, and 34:13A-16.5.

SOURCE AND EFFECTIVE DATE:

Effective: July 29, 2019

See: 51 N.J.R. 1429(a).

EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 16, Negotiations, Impasse Procedures, and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on July 29, 2026.