

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Negotiations and Impasse Procedures; Mediation, Fact-Finding, Super Conciliation, Grievance Arbitration, and Binding Arbitration to Review Disciplinary Terminations, Not Involving Alleged Criminal Conduct, of Non-Civil Service Law Enforcement Officers and Firefighters

Proposed Readoption with Amendments: N.J.A.C. 19:12

Authorized By: Public Employment Relations Commission, P. Kelly Hatfield, Chair.

Authority: N.J.S.A. 34:13A-5.4.c, 34:13A-6.b, 34:13A-11, and 40A:14-211(a); and P.L. 2009, c. 16.

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

Proposal Number: PRN 2013-106.

Submit comments by August 30, 2013 to:

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

Comments may also be submitted by facsimile to 609-777-0089, or by electronic mail to: mail@perc.nj.us.

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1, the Public Employment Relations Commission proposes to readopt, with amendments, N.J.A.C. 19:12, which is set to expire July 14, 2013. This expiration date is extended 180 days to January 10, 2014, pursuant to N.J.S.A. 52:14B-5.1.c(2). Subchapters 1 through 4 of this chapter concern procedures for resolving negotiations impasses between public employers and the representatives of public employees, excepting police officers and firefighting employees of a public police or fire department as defined by N.J.S.A. 34:13A-15. Impasse resolution procedures for such employees are governed by N.J.A.C. 19:16. Subchapter 5 of this chapter applies to all public employers and public employees and contains the procedures for selecting grievance arbitrators from the Commission's panel. Subchapter 6 of this chapter contains rules to administer N.J.S.A. 40A:14-209 through 211 allowing non-civil service law enforcement officers and firefighters, who are terminated for disciplinary reasons not involving any alleged violation of criminal law, to have the option of having their terminations reviewed by means of binding arbitration as an alternative to review in Superior Court.

A summary of each section in N.J.A.C. 19:12, along with the two proposed amendments follows:

N.J.A.C. 19:12-1.1, Purpose of procedures, explains that the rules provide procedures for timely resolving negotiations impasses between public employers and the representatives of public employees, excepting police officers and firefighting employees of a public police or fire department as defined by N.J.S.A. 34:13A-15. Impasse resolution procedures for such employees are governed by N.J.A.C. 19:16. An amendment would advise that forms for initiating any of the procedures set forth in Chapter 12 may be downloaded from the Commission's website.

N.J.A.C. 19:12-2.1, Commencement of negotiations, specifies the time periods for commencing negotiations.

N.J.A.C. 19:12-3.1, Initiation of mediation, details the procedures for securing a Commission-appointed mediator.

N.J.A.C. 19:12-3.2, Appointment of mediator, specifies who may be appointed as a mediator.

N.J.A.C. 19:12-3.3, Mediator's function, states that a mediator is to assist all parties to reach an agreement and that the mediator may hold separate or joint conferences and recommend fact-finding.

N.J.A.C. 19:12-3.4, Mediator's confidentiality, provides that all information disclosed by a party to a mediator shall be confidential.

N.J.A.C. 19:12-3.5, 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. 19:12-4.1, Initiation of fact-finding, specifies the procedures for initiating fact-finding if mediation has been unsuccessful.

N.J.A.C. 19:12-4.2, Appointment of fact-finder, specifies the procedures for appointing a fact-finder and who may be appointed.

N.J.A.C. 19:12-4.3, Fact-finder's function, specifies the duties and powers of fact-finders and the allocation of fact-finding costs.

N.J.A.C. 19:12-4.4, Appointment of a super conciliator, sets forth the procedures for appointing a super conciliator pursuant to the School Employees Contract Resolution and Equity Act, N.J.S.A. 34:13A-31 et seq.

N.J.A.C. 19:12-5.1, Function of the Commission, provides that the Commission will maintain a grievance arbitration panel.

N.J.A.C. 19:12-5.2, Request for submission of a panel, specifies the procedures for requesting the submission of a grievance arbitration panel to hear a particular grievance.

N.J.A.C. 19:12-5.3, Appointment of an arbitrator, describes the method for appointing a grievance arbitrator and the procedures for giving recognition to the parties' preferences.

N.J.A.C. 19:12-5.4, Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, subjects arbitrators to the codes of professional responsibility of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

N.J.A.C. 19:12-5.5, Time and place of hearing, specifies the procedures for setting a hearing.

N.J.A.C. 19:12-5.6, Adjournments, sets the standard for granting adjournments.

N.J.A.C. 19:12-5.7, Arbitration in the absence of a party, empowers the arbitrator to proceed with a scheduled hearing in the absence of a party who has failed to obtain an adjournment.

N.J.A.C. 19:12-5.8, Filing of briefs, specifies the procedures for filing briefs.

N.J.A.C. 19:12-5.9, Award, specifies when an award must be issued, how it must be issued, and what must be in writing. An amendment would provide that the arbitrator send an electronic copy of the arbitration award to the Commission.

N.J.A.C. 19:12-5.10, Subpoena power, authorizes the arbitrator to issue a subpoena.

N.J.A.C. 19:12-5.11, Cost of arbitration, provides that the parties must bear the cost of arbitration.

N.J.A.C. 19:12-6.1, Purpose of procedures, provides that the procedures are intended to implement the provisions of P.L. 2009, c. 16, allowing non-civil service law enforcement officers and firefighters who are terminated for disciplinary reasons not involving any alleged violation of criminal law, to have the option of having their terminations reviewed by means of binding arbitration as an alternative to review in Superior Court pursuant to N.J.S.A. 40A:14-22 for firefighters, and N.J.S.A. 40A:14-150 for law enforcement officers. The rule further provides that arbitration is available only in cases where termination is imposed based on a complaint or charges and are not available to review terminations based on alleged violations of criminal laws.

N.J.A.C. 19:12-6.2, Special Disciplinary Arbitration Panel, provides that the Commission shall maintain a Special Disciplinary Arbitration Panel to hear cases involving the disciplinary terminations of non-civil service law enforcement officers and firefighters and that the panel be composed of neutrals, appointed for three-year terms, with experience and expertise in employee discipline cases. The rule further specifies an application and screening process, criteria for appointment, codes of professional responsibility to be deemed applicable to members of the panel, and a procedure relating to the suspension, removal, or discipline of members of the panel.

N.J.A.C. 19:12-6.3, Who may file; when to file, provides that non-civil service law enforcement officers or fire fighters or their authorized representatives may file a request for the appointment of a member of the Special Disciplinary Arbitration Panel and that such request shall be filed with the Commission within 20 days of the date the law enforcement officer or firefighter has been personally served with a notice of termination.

N.J.A.C. 19:12-6.4, Contents of appeal, to review the termination of a law enforcement officer or firefighter through binding arbitration, provides that an appeal of a disciplinary termination of a non-civil service firefighter or law enforcement officer shall be initiated by the employee or the employee's authorized representative by filing an original and four copies of a written request with the Director of Arbitration for the appointment of an arbitrator from the Commission's Special Disciplinary Arbitration Panel. The rule further sets forth the required contents of the request and the address where it is to be filed, and advises that a form for filing a request may be obtained from the Commission and is also available on the Commission's website.

N.J.A.C. 19:12-6.5, Appointment of disciplinary arbitrator, describes the procedures for advising the employing agency of the filing of the appeal and that each party shall simultaneously receive the names of the members of the Special Disciplinary Arbitration Panel and advises that their resumes can be viewed on the Commission's website. The rule further provides that if the parties within 10 days of receiving the list do not advise the Director of Arbitration that they have mutually agreed on an arbitrator, the Director shall select the arbitrator for assignment by lot. The rule further sets forth procedures governing situations where the appointed arbitrator is unable to serve and must be replaced, as well as the obligation of any arbitrator who is unable to serve to advise the parties and the Director of that circumstance within three days.

N.J.A.C. 19:12-6.6, Powers and duties of disciplinary arbitrator, authorizes the arbitrator to administer oaths and issue subpoenas for the production of documents and the attendance of witnesses, as well as invoke the aid of the Superior Court, or request that the Attorney General do so, to deal with contemptuous conduct during the arbitration hearing. The rule further provides that the arbitrator shall resolve any discovery issues and shall direct the parties within 10 days of the hearing to produce and exchange employee records, evidence to be introduced, and witness lists. In addition, the rule provides that the arbitrator shall arrange for a mutually satisfactory time and place, or in the absence of agreement to be determined by the arbitrator, for a hearing to be held within 60 days after the arbitrator is appointed, and that there shall be no pre-hearing motions unless permitted or adjournments absent extraordinary circumstances, which shall not delay the hearing by more than 14 days.

N.J.A.C. 19:12-6.7, Arbitrator's decision: timing; service; implementation, provides that the arbitrator shall render an opinion and final binding determination to be served on the parties and implemented immediately within 90 days of his or her appointment. The rule provides that if the final determination sustains the officer's or the firefighter's appeal, the officer or firefighter shall be reinstated immediately with full pay rights and benefits and shall, within 30 days, be paid any salary moneys withheld by the officer's employing agency or the firefighter's department.

N.J.A.C. 19:12-6.8, Cost of arbitration; arbitrator's fee, provides that each party shall equally share the cost of arbitration, the fee for arbitrators appointed by lot will be \$1,000 per day, and arbitrators mutually selected may charge their grievance arbitration fee on file with the Director as of the date of the arbitrator's appointment.

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

Social Impact

The readoption of this chapter with the proposed amendments will permit the continued smooth functioning of mediation, fact-finding, super conciliation, grievance arbitration services, and special disciplinary arbitration to review terminations of non-civil service law enforcement officers and fire fighters in cases where the reasons do not involve alleged violations of criminal laws. These services have helped resolve negotiations impasses and contractual disputes without the disruption of

public services and within budgetary deadlines. Public employers and employees will continue to benefit from prompt, precise, and clear procedures for resolving their labor relations disputes and the public will continue to benefit from the prompt and peaceful resolution of such disputes.

Economic Impact

The readoption of these rules with the proposed amendments will promote harmonious labor-management relations and reduce disruption in governmental services. The parties to fact-finding shall continue to bear their own costs while the Commission shall bear the costs of the fact-finder's services and necessary expenses unless subsequent legislation mandates otherwise. The parties shall continue to bear the cost of grievance arbitration.

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 New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The rules proposed for readoption with amendments are thus necessary and proper.

Jobs Impact

The Commission does not expect that any jobs will be generated or lost as a consequence of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The Commission's jurisdiction is limited to employer-employee relations in public employment. The rules proposed for readoption with amendments 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 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 would not have an impact on the average costs associated with housing, as the rules concern employer-employee relations in public employment.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments would not have an impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as the rules concern employer-employee relations in public employment.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:12.

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

SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:12-1.1 Purpose of procedures

N.J.S.A. 34:13A-[5.4(e)]**5.4.e** provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasse prior to required budget submission dates. Further, N.J.S.A. 34:13A-[6(b)]**6.b** provides that whenever negotiations between the public employer and exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission is empowered upon the request of either party 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 recommend or invoke fact-finding with recommendation for settlement. Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations, utilizing the public employer's required budget submission date as a definitive reference point to afford the parties a full opportunity

for negotiations and resolution of impasses [which] **that** are reached prior to the required budget submission date and for utilization of impasse procedures for parties who reach impasse during alternative time periods. N.J.A.C. 19:12-2.1 through [19:12-]4.3 do not apply to negotiations between a public fire or police department as defined by N.J.S.A. 34:13A-15 and an exclusive representative. See N.J.A.C. 19:16. **Forms needed to initiate any of the procedures set forth in this chapter may be downloaded from the Commission's website at: www.state.nj.us/perc.**

SUBCHAPTER 5. GRIEVANCE ARBITRATION

19:12-5.9 Award

(a) The arbitrator shall issue an award as soon as possible after the close of hearing, but not more than 45 days thereafter or such other time for date of award that the arbitrator shall fix upon written notice to the parties.

(b) The award shall be in writing and shall be submitted to the parties simultaneously, **and electronically to the Public Employment Relations Commission.**

(c) If the parties agree, the arbitrator may submit the award without a written opinion.

