

OTHER AGENCIES  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

42 N.J.R. 2433(c)

Readoption: N.J.A.C. 19 12-6

Binding Arbitration to Review Disciplinary Terminations, Not Involving Alleged Criminal Conduct, of Non-Civil Service Law Enforcement Officers and Firefighters

Proposed: July 6, 2010 at 42 N.J.R. 1344(a).

Adopted: September 23, 2010 by the Public Employment Relations Commission, Paula Voos, Commissioner and Commission Designee.

Filed: September 23, 2010 as R.2010 d.236, without change.

Authority: N.J.S.A. 40A:14-211(a); P.L. 2009, c. 16, § 16.

Effective Date: September 23, 2010.

Expiration Date: July 14, 2013.

On July 6, 2010, the Public Employment Relations Commission proposed to readopt rules governing binding arbitration to review disciplinary terminations, not involving alleged criminal conduct, of non-civil service law enforcement officers and firefighters. On May 28, 2009, as expressly authorized by N.J.S.A. 40A:14-211(a), the Commission adopted temporary rules to implement N.J.S.A. 40A:14-209 and 40A:14-210. It has now readopted those rules as permanent rules.

Summary of Public Comment and Agency Response:

No comments were received.

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 readopted temporary rules as permanent rules are necessary and proper.

Full text of the readopted rules follows:

[page=2434] SUBCHAPTER 6. BINDING ARBITRATION TO REVIEW DISCIPLINARY TERMINATIONS, NOT INVOLVING ALLEGED CRIMINAL CONDUCT, OF NON-CIVIL SERVICE LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS

19:12-6.1 Purpose of procedures

(a) These procedures are intended to implement the provisions of P.L. 2009, c. 16, effective June 1, 2009, which allow law enforcement officers and firefighters employed by a law enforcement agency or department that is not subject to the provisions of Title 11A of the New Jersey Statutes, who are terminated based on a complaint or charges issued 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. Review through binding arbitration is an alternative to review through a proceeding in the

Superior Court of New Jersey pursuant to N.J.S.A. 40A:14-22 pertaining to firefighters, and N.J.S.A. 40A:14-150 pertaining to law enforcement personnel.

(b) Arbitration pursuant to these procedures is available only in cases where termination is imposed based on a complaint or charges. These procedures are not applicable to review of terminations relating to a pending criminal investigation, inquiry, complaint or charge, whether implemented before or after criminal charges have been filed or when the disciplinary complaint or charge alleges conduct that would also constitute a violation of the criminal laws of the State or any other jurisdiction.

#### 19:12-6.2 Special Disciplinary Arbitration Panel

(a) The Commission shall maintain a Special Disciplinary Arbitration Panel to hear cases involving the disciplinary terminations of law enforcement officers and firefighters from a law enforcement agency or department that is not subject to the provisions of Title 11A of the New Jersey Statutes. Members of this panel must have experience and expertise as neutrals making decisions in employee discipline cases. Following a screening process as set forth in this section, they shall be appointed for three-year terms.

(b) To be eligible for appointment to the Special Disciplinary Arbitration Panel, an arbitrator applying for panel membership must:

1. Be a member of, or simultaneously apply for membership on, the Commission's panel of grievance arbitrators, N.J.A.C. 19:12-5.1; and

2. In the three years before applying for panel membership, not have served as an advocate for private or public sector labor or management.

(c) An applicant's qualifications shall be determined by an overall assessment of the following considerations:

1. Demonstrated experience and ability to decide cases involving the discipline of employees in a fair and objective manner. Experience shall be evaluated by a review of the cases where an applicant served as a grievance arbitrator, or in an analogous capacity, and the quality of the applicant's work product in those cases; and

2. The equivalent of three years of grievance arbitration experience. An applicant shall submit at least 10 awards or decisions written by the applicant, which shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector discipline cases and awards or decisions in other jurisdictions in cases involving the discipline of members of the uniformed and public safety services.

(d) Every applicant shall complete an application form prepared by the Director of 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) Members of the Special Disciplinary Arbitration 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.

(f) This subsection concerns suspension, removal or discipline of members of the Special Disciplinary Arbitration Panel.

1. This subsection 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.

2. If it appears that suspension, removal, or discipline may be warranted, the Director of 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.
3. 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.
4. The Director may temporarily suspend an arbitrator from the panel pending any hearing.
5. After receiving the arbitrator's response, meeting with the arbitrator, and considering the facts found at any hearing, the Director may reprimand, suspend, or remove an arbitrator or may decide that no action is warranted. The Director shall send a written decision to the arbitrator.
6. Within 14 days of receiving the Director's decision, an arbitrator may file a written appeal with the Commission, specifying the grounds for disagreeing with the Director's decision.
7. A temporary suspension may continue pending that appeal.
8. The Commission or its designee may sustain, modify, or reverse the Director's action and shall provide the arbitrator with a written statement explaining the basis for that decision.

#### 19:12-6.3 Who may file; when to file

- (a) Law enforcement officers or firefighters employed by a law enforcement agency or department that is not subject to the provisions of Title 11A of the New Jersey Statutes, who are terminated based on a complaint or charges issued for disciplinary reasons not involving any alleged violation of criminal law, may appeal their terminations by filing a request for the appointment of a member of the Special Disciplinary Arbitration Panel. An appeal may be filed only by the terminated employee or the employee's authorized representative.
- (b) An appeal of the termination of a non-civil service law enforcement officer or firefighter shall be filed within 20 days after the employee has been personally served with a notice of termination.

#### 19:12-6.4 Contents of appeal to review the termination of a law enforcement officer or firefighter through binding arbitration

- (a) An appeal of a disciplinary termination of a non-civil service firefighter or law enforcement officer shall be initiated by filing a written request with the Director of Arbitration for the appointment of an arbitrator from the Commission's Special Disciplinary Arbitration Panel.
- (b) An original and four copies of such request, signed and dated by the non-civil service firefighter or law enforcement officer or his or her authorized representative, shall be filed. The request shall set forth the name and address of the terminated employee; the name and address of his or her employing agency or department; the names, titles and telephone numbers of the parties' representatives to contact; and the names, addresses and telephone numbers of any attorneys representing the parties.

(c) Forms for filing a request for the appointment of a Disciplinary Arbitrator will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429. The form is also available on the Commission's web site: [www.state.nj.us/perc](http://www.state.nj.us/perc).

#### 19:12-6.5 Appointment of disciplinary arbitrator

- (a) Upon receipt of an appeal, the Director shall forthwith submit:

1. A copy of the appeal to the employing agency or department, or its authorized representative; and
2. Simultaneously to each party or their authorized representatives, the names of the members of the Special Disciplinary Arbitration Panel. The [page=2435] resumes of the members of the Special Disciplinary Arbitration Panel shall be posted on the Commission's web site: [www.state.nj.us/perc](http://www.state.nj.us/perc).

(b) If within 10 days of receiving the list of disciplinary arbitrators, the parties have not notified the Director of Arbitration in writing of the name of an arbitrator that they have mutually selected, the assignment of the arbitrator for the purposes of this section shall be the responsibility of the Director, independent of and without any participation by any party. The Director shall select the arbitrator for assignment by lot.

(c) Should an arbitrator selected by mutual agreement be unable to serve, the parties shall be afforded one opportunity to select a replacement. If the parties are unable to mutually agree upon the selection of a replacement within 10 days after a mutually selected arbitrator has advised the parties and the Director of the arbitrator's unavailability to serve in the appeal, the Director shall select the replacement in the manner provided in (d) below.

(d) In any proceeding where an assigned arbitrator is unable to serve and the parties are unable to mutually agree upon a replacement, the Director shall assign a replacement arbitrator. The assignment shall be the responsibility of the Director, independent of and without any participation by any party. The Director shall select the replacement arbitrator for assignment by lot.

(e) Any arbitrator, whether mutually selected by the parties or appointed by the Director by lot, who is unable or unwilling to serve, shall so notify the parties and the Director within three days of receiving the notice of appointment.

#### 19:12-6.6 Powers and duties of disciplinary arbitrator

(a) The arbitrator may administer oaths and require the attendance of witnesses and the production of such documents as the arbitrator may deem material to a just determination of the appeal, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of contempt while in attendance of any hearing, the arbitrator may, or the Attorney General if requested shall, invoke the aid of the Superior Court within the county in which the hearing is being held, and that court shall issue an appropriate order. A failure to obey the order may be punished by the court as contempt.

(b) The arbitrator shall have the power to resolve any discovery issues. In all cases and no later than 10 days prior to the date of the hearing:

1. The employing agency or department shall provide the law enforcement officer or firefighter with a copy of the contents of his or her personnel file;
2. Both parties shall provide to one another copies of all documents that the parties plan to introduce into evidence at the hearing; and
3. Both parties shall provide to one another a list of the witnesses the parties plan to have testify at the hearing.

(c) The arbitrator shall communicate with the parties to arrange for a mutually satisfactory date, time and place for a hearing, which shall be conducted within 60 days after the arbitrator is appointed. 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 send a notice containing arrangements for a hearing within a reasonable time period before hearing.

(d) Hearings shall be de novo proceedings and shall not be limited to review of any prior proceedings or

hearings held in order to impose discipline in accordance with N.J.S.A. 40A:14-19, pertaining to firefighters, and N.J.S.A. 40A:14-147, pertaining to law enforcement personnel.

(e) Pre-hearing motions shall not be filed unless permitted by the arbitrator. All motions made during the hearing may be made orally to the arbitrator, unless the arbitrator requests that the motion be in writing. The arbitrator may issue an oral or written ruling on a motion or may issue a written ruling as part of the arbitrator's decision on the appeal.

(f) Except for extraordinary circumstances establishing good cause, no adjournments shall be granted. Any adjournments shall be for a total of no more than 14 days.

#### 19:12-6.7 Arbitrator's decision: timing; service; implementation

(a) The arbitrator shall render an opinion and final determination within 90 days of his or her appointment, whether that appointment is by mutual agreement of the parties or by the Director by lot.

(b) Copies of the arbitrator's final determination shall be served on the parties and the Director. The determination shall be binding and shall be implemented immediately.

(c) If the final determination sustains the officer's or the firefighter's appeal, the officer or firefighter shall be reinstated immediately with full pay, be restored all rights and benefits, including those accruable during the period of appeal, and shall, within 30 days, be paid any salary moneys withheld by the officer's employing agency or the firefighter's department.

#### 19:12-6.8 Cost of arbitration; arbitrator's fee

(a) The cost of arbitration shall be borne equally by the parties.

(b) Arbitrators shall be compensated in accordance with the following fee schedule:

1. For arbitrators assigned by lot, the fee shall be \$ 1,000 per day; and

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.