

## CHAPTER 12

### NEGOTIATIONS AND IMPASSE PROCEDURES, MEDIATION, FACT-FINDING, SUPER CONCILIATION, GRIEVANCE ARBITRATION, SPECIAL DISCIPLINARY ARBITRATION, AND BINDING ARBITRATION TO REVIEW IMPASSES OVER EMPLOYEE ORGANIZATION ACCESS TO EMPLOYEES, AND NOTICE OF SUBCONTRACTING<sup>1</sup>

#### SUBCHAPTER 1. PURPOSE OF PROCEDURES

##### § 19:12-1.1 Purpose of procedures

N.J.S.A. 34:13A-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 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 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 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](http://www.state.nj.us/perc).

#### SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

##### § 19:12-2.1 Commencement of negotiations

(a) The parties to a collective negotiations agreement shall commence negotiations for a successor agreement, or in the case of an agreed reopener provision shall commence negotiations pursuant to such reopener provision, no later than 120 days prior to the public employer's required budget submission date. The term "required budget submission date" shall refer to the first budget implementing the successor agreement or the agreement pursuant to the reopener provision, as the case may be. In circumstances where the Commission has not determined the public employer's required budget submission date, the public employer shall notify the employee representative in writing of the required budget submission date no later than 150 days prior to such date. The foregoing provisions shall not preclude the parties from agreeing to the automatic renewal of the collective negotiations agreement

unless either party shall have notified the other party of its intention to terminate or modify the agreement, nor shall it preclude the parties from establishing by mutual agreement an alternative date for the commencement of negotiations.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this section or any alternate commencement date agreed to by the parties, 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. A form for filing such notice may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/counciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) Nothing in this section 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

##### § 19:12-3.1 Initiation of mediation

(a) In the event that a public employer and a certified or recognized employee representative have failed to achieve an agreement through direct negotiation, either the public employer, the employee representative, or the parties jointly, may notify the Director of Conciliation, 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 who 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 employee representative who 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 form for filing a request for the appointment of a mediator may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c) Upon receipt of the notification and request, the Director of Conciliation 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 agreement through direct negotiation, and that an impasse exists in negotiations concerning the terms and conditions of the employment of the affected employees.

#### **§ 19:12-3.2 Appointment of mediator**

The mediator appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation panel, or any other mediator, 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 shall have the express reserved authority to appoint a mediator without regard to the parties' joint request if such is deemed to best effectuate the purposes of the act. If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this subchapter shall not be reviewable.

#### **§ 19:12-3.3 Mediator's function**

The function of a mediator shall be to assist all parties to come to 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. In the absence of an agreement between the parties, the mediator, at any time after appointment, may recommend to the Director of Conciliation that fact-finding procedures should be invoked.

#### **§ 19:12-3.4 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.

#### **§ 19:12-3.5 Mediator's report**

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation which shall, in general, 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;
5. A recommendation as to whether or not the Director of Conciliation should invoke fact-finding with recommendations for settlement.

(b) The confidential report(s) submitted by the mediator may be utilized by the Director of Conciliation in considering whether or not fact-finding with recommendations for settlement should be invoked. Such reports shall not be considered in any other proceedings before the Commission or be made available or disclosed to any party or any other tribunal.

### **SUBCHAPTER 4. FACT-FINDING AND SUPER CONCILIATION**

#### **§ 19:12-4.1 Initiation of fact-finding**

(a) Upon a mediator's report of a failure to resolve the impasse by mediation, the Director of Conciliation may invoke fact-finding with recommendations for settlement and appoint a fact-finder. The public employer, the employee representative, or the parties jointly, may request the Director of Conciliation, in writing, to invoke fact-finding. An original and four copies of such 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 who 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 who 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. The name of the mediator;
4. The number and duration of mediation sessions;
5. The date of the last mediation effort;
6. The unresolved issues to be submitted to a fact-finder; and
7. Whether the request is a joint request.

(b) A form for filing a request for invocation of fact-finding may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 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 invoke fact-finding on the ground that they are 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. 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.

#### **§ 19:12-4.2 Appointment of fact-finder**

(a) Upon the invocation of fact-finding pursuant to this subsection, the Director of Conciliation 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 its preference regarding the remaining names, and communicate the foregoing to the Director of Conciliation 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 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 the foregoing provisions, the Director of Conciliation 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 or employee of the Commission, a member of the Commission's fact-finding panel, or any other fact-finder, 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.

#### **§ 19:12-4.3 Fact-finder's function**

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or other 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 his or her function.

(b) For the purposes 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, 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, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible.

(e) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties and the Director of Conciliation.

(f) All individually incurred costs shall be borne by the party incurring them. The cost of the services of the fact-finder, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, and any other necessary expenses of the fact-finding proceeding, shall be borne by the Commission unless mandated otherwise by subsequent legislation.

(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 try to reach an agreement. In the event of a continuing impasse, the Commission or the Director of Conciliation may take whatever steps are deemed expedient to effect a voluntary settlement of the impasse, including the appointment of a super conciliator, where appropriate.

#### **§ 19:12-4.4 Appointment of a super conciliator**

(a) In proceedings conducted pursuant to the School Employees Contract Resolution and Equity Act, P.L. 2003, c.126 (N.J.S.A. 34:13A-31 et seq.), if the employer and the majority representative do not reach a voluntary negotiated agreement within 20 days after the issuance of the fact-finder's report, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation, in writing, to invoke super conciliation. An original and four copies of such 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 who 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 who 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; and
3. Whether the request is a joint request.

(b) Forms for filing a petition to request a super conciliator may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c) The parties may jointly request the appointment of a particular super conciliator, subject to the approval of the Director of Conciliation. Absent an approved joint request, the Director shall designate a super conciliator.

(d) The super conciliator appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation or fact-finding panel, or any other super conciliator approved by the Director of Conciliation, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement. If an appointed super conciliator cannot proceed pursuant to the appointment, another super conciliator shall be appointed. The appointment of a super conciliator pursuant to this subchapter is not reviewable.

(e) The super conciliator shall have the authority to exercise the powers granted by P.L. 2003, c.126 to institute non-binding procedures deemed appropriate to resolve the parties' negotiations impasse.

(f) The super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by him or her or to testify with regard to mediation conducted under the Act. Nothing

contained in this section shall exempt an individual from disclosing information relating to the commission of a crime.

### **SUBCHAPTER 5. GRIEVANCE ARBITRATION**

#### **§ 19:12-5.1 Function of the Commission**

The Commission deems it in the interests of the public to maintain an arbitration panel whose members are available to assist in the arbitration of unresolved labor relations grievances. Arbitration of such disputes is governed by N.J.S.A. 2A:24-1 et seq., not N.J.S.A. 2A:23B-1 et seq., the statute applicable to arbitration of non-labor disputes. The availability of the Commission's arbitration service is intended to comply with the requirement of N.J.S.A. 2A:24-5 that the method for naming or appointing an arbitrator provided in the parties' agreement shall be followed. Accordingly, the release of a panel of arbitrators is predicated solely upon a prima facie showing of the parties' intention to utilize the Commission's arbitration service. Parties are referred to the judicial proceedings available under N.J.S.A. 2A:24-3 and N.J.S.A. 2A:24-5 in the event of a dispute regarding arbitrability or the method for naming or appointing an arbitrator. The Commission is not a necessary party to judicial proceedings relating to the arbitration under N.J.S.A. 2A:24-3 or N.J.S.A. 2A:24-5, but shall, upon the written request of a party, furnish to such party at the party's expense, photostatic copies of any papers in the Commission's possession that may be required in any such judicial proceedings.

#### **§ 19:12-5.2 Request for submission of panel**

Arbitration pursuant to this subchapter is initiated by written request to the Director of Arbitration. A form for filing a request for submission of a panel of arbitrators may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429. Such request for a submission of a panel of arbitrators shall be filed by email to: [grievance@perc.state.nj.us](mailto:grievance@perc.state.nj.us). Alternatively, one original and four copies of such request, signed and dated by the requesting party or parties, may be filed. The request shall set forth the names and addresses of the parties; the names, titles, and telephone numbers of the parties' representatives to contact; the names, addresses, and telephone numbers of any attorneys/consultants representing the parties; whether the request is a joint request and a statement identifying the grievance to be arbitrated. The request shall be accompanied by a copy of the arbitration provisions of the parties' agreement.

#### **§ 19:12-5.3 Appointment of an arbitrator**

Upon receipt of a written request pursuant to N.J.A.C. 19:12-5.2, Request for submission of panel, the Director of Arbitration shall submit simultaneously to each party a copy of such request and an identical list of names of at least five persons chosen from the Arbitration Panel. Each party shall have 10 days in which to cross off any names to which it objects, number the remaining names in order of preference, and return the list to the Director of

Arbitration. Such responses shall be submitted by email to: grievance@perc.state.nj.us. If a party does not return the list within the time specified, all arbitrators named shall be deemed acceptable. The Director of Arbitration shall appoint an arbitrator giving recognition to the parties' preferences. If the parties' preferences do not result in agreement upon any of the persons named, the Director of Arbitration shall submit a second list and the procedures set forth above shall be repeated, except that each party shall number at least three names in order of preference. If the arbitrator appointed pursuant to this section declines or is unable to serve, the Director of Arbitration shall have the power to appoint an arbitrator not previously rejected by any party, without submission of any additional list. If the parties have agreed upon a method of appointment different from that set forth above, such method shall be followed. Action of the Director of Arbitration pursuant to this section shall not be reviewable by the Commission.

#### **§ 19:12-5.4 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes**

The arbitrator 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.

#### **§ 19:12-5.5 Time and place of hearing**

The arbitrator shall communicate with the parties to arrange for a mutually satisfactory date, time and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time and place for a hearing. The arbitrator shall submit a notice containing arrangements for a hearing within a reasonable time period before hearing.

#### **§ 19:12-5.6 Adjournments**

The arbitrator shall have the authority to grant adjournments for good cause shown, upon either party's application or the arbitrator's own motion.

#### **§ 19:12-5.7 Arbitration in the absence of a party**

After duly scheduling the hearing, the arbitrator 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.

#### **§ 19:12-5.8 Filing of briefs**

The parties at their option or at the request of the arbitrator, may file pre-hearing or post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs. They shall be submitted to the arbitrator along with submission of proof of service on all parties. In the event that post-hearing briefs are to be submitted, the hearing shall be deemed closed upon receipt of post-hearing briefs by the arbitrator or upon the expiration of the time period allowed for the submission of the post-hearing briefs.

#### **§ 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.

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

#### **§ 19:12-5.10 Subpoena power**

The arbitrator shall have subpoena power in accordance with N.J.S.A. 2A:24-1 et seq.

#### **§ 19:12-5.11 Cost of arbitration**

The cost of such arbitration shall be borne by the parties in accordance with their agreement, and not by the Commission. The arbitrator shall charge pursuant to a per diem fee schedule set forth on a resume sent to the parties when a panel of arbitrators is submitted. The arbitrator shall not change any fee noted on the resume without giving 30 days' written notice to the Commission.

### **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 eligible 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) Eligible 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.

(c) Any assertion by the employer that the law enforcement officer or firefighter is not eligible for Special Disciplinary Arbitration at (a) or (b) above must be made by a motion to dismiss, pursuant to N.J.A.C. 19:12-6.5.

#### **§ 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 an eligible 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) A form for filing a request for the appointment of a Special Disciplinary Arbitrator may be downloaded from the Commission's website at:

<http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(d) Upon receipt of a request for appointment of a Special Disciplinary Arbitrator, 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 shall be posted on the Commission's website: [www.state.nj.us/perc](http://www.state.nj.us/perc).

#### **§ 19:12-6.5 Motions to dismiss a request for appointment from the Special Disciplinary Arbitration Panel**

(a) A motion to dismiss a request for appointment from the Special Disciplinary Arbitration Panel shall be made to the Director of Arbitration within five days of the filing. The motion shall be accompanied by a brief explaining the reason(s) for disqualification from the special disciplinary arbitration process, which shall include affidavits and documentary evidence.

(b) Within five days of service on it of the motion to dismiss, the responding party shall serve and file its answering brief, documents, and affidavits.

(c) The motion to dismiss shall be decided on the papers filed. No further arguments, documents, or affidavits shall be served, except by leave or request of the Director of Arbitration. The Director of Arbitration shall issue a decision in writing, which shall be a final agency decision.

(d) If the Director determines, in his or her sole discretion, that a factual dispute exists which prevents him or her

from deciding the motion, the Director may transfer the motion for further proceedings.

#### **§ 19:12-6.6 Appointment of disciplinary arbitrator**

(a) 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.

(b) 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 at (c) below.

(c) 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.

(d) 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.

#### **§ 19:12-6.7 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.

#### **§ 19:12-6.8 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.

#### **§ 19:12-6.9 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.

## **SUBCHAPTER 7. IMPASSES OVER EMPLOYEE ORGANIZATION ACCESS TO EMPLOYEES**

### **§ 19:12-7.1 Purpose of procedures**

N.J.S.A. 34:13A-5.13, Access to members of negotiations units, mandates that public employers shall provide to exclusive representative employee organizations access to members of the negotiations units. These procedures are designed to implement N.J.S.A. 34:13A-5.13, including 34:13A-5.13g and h, which provide that impasses in collective negotiations between a public employer and an employee organization that has been designated as the exclusive representative of employees in a collective negotiations unit, over access to employees in a collective negotiations unit as described in N.J.S.A. 34:13A-5.13a through f, shall be resolved by a Commission-appointed arbitrator with authority to issue a binding decision or to resolve the impasse through voluntary mediation.

### **§ 19:12-7.2 Resolution of collective negotiations impasses over access to employees**

(a) If the parties are unable to reach agreement within 30 calendar days from the commencement of negotiations in accordance with N.J.S.A. 34:13A-5.13g regarding access to, and communications with, negotiations unit members, the exclusive employee organization, or the public employer may file a petition with the Public Employment Relations Commission to resolve the negotiations dispute.

1. Forms for filing a request for the appointment of an arbitrator to resolve a negotiations impasse regarding access to, and communications with, negotiations unit members 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 website: [www.state.nj.us/perc](http://www.state.nj.us/perc).

(b) The Commission shall create an arbitration panel drawn from experienced members of its grievance arbitration panel who indicate a willingness to resolve negotiations impasses through voluntary mediation or the issuance of a binding award concerning disputes about proposed contract language pertaining to access to, and communications with, negotiations unit members as set forth in N.J.S.A. 34:13A-5.13a through f.

(c) The Director of Conciliation and Arbitration shall assign arbitrators to cases, who:

1. May resolve the dispute through voluntary mediation; or

2. Shall issue a binding award resolving the parties' negotiations disputes consistent with N.J.S.A. 34:13A-5.13a through f.

(d) The arbitrator shall charge a fee pursuant to a per diem fee schedule as set forth in the arbitrator's Commission grievance arbitration panel resume.

(e) The arbitrator's fees and expenses shall be borne equally between the parties.

(f) The arbitrator 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 Services.

(g) 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.

(h) The conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator.

(i) 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 the hearing.

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

(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 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 in public.

(m) 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. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

### **§ 19:12-7.3 Award**

(a) The arbitrator shall issue an award as soon as possible after the close of the record, but not more than 45 days thereafter.

(b) An arbitrator may not extend the timeline for issuing a written award without approval from the Director of Conciliation and Arbitration (Director), or his or her designee.

Extension requests shall be in writing and filed before the 35th day. The Director, or his or her designee, shall respond to extension requests within five days of receipt.

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

(d) Where relevant, the arbitrator may take into account the following factors:

1. The interests and welfare of the public;
2. Any stipulations of the parties;
3. The lawful authority of the employer;
4. The financial impact on the employer;
5. Comparability;
6. Existing provisions bearing on the exclusive representative's access to employees, whether set by past practice, contract, statute, or case law; and
7. Any other factors the arbitrator identifies as relevant.

(e) The award or a voluntary settlement must provide that language on the subjects covered by N.J.S.A. 34:13A-5.15.a through f be incorporated into the parties' collective negotiations agreement.

## **SUBCHAPTER 8. NOTICE OF SUBCONTRACTING**

### **§ 19:12-8.1 Purpose of procedures**

(a) The procedures of this subchapter are intended to implement the provisions of P.L. 2020, c. 79, effective September 11, 2020, concerning employer notice of subcontracting and the opportunity of the majority representative to discuss the decision to subcontract and engage in impact negotiations.

(b) Pursuant to N.J.S.A. 34:13A-46, an employer, as defined at N.J.S.A. 34:13A-44, may not enter into a subcontracting agreement for a period following the term of the current collective negotiations/bargaining agreement unless the employer:

1. Provides written notice to the majority representative of employees in each collective bargaining unit that may be affected by the subcontracting agreement and to the New Jersey Public Employment Relations Commission, not less than 90 days before the employer requests bids, or solicits contractual proposals for the subcontracting agreement; and
2. Has offered the majority representative of the employees in each collective bargaining unit that may be affected by the subcontracting agreement the opportunity to meet and consult with the employer to discuss the decision to subcontract, and the opportunity to engage in negotiations over the impact of the subcontracting.

## § 19:12-8.2 Notice to the Commission of subcontracting

(a) At least 90 days prior to the employer requesting bids or soliciting contract proposals for the subcontracting agreement, the employer shall provide written notice to the Director of Conciliation. An original and four copies of such notice shall be filed, and shall be signed and dated and shall contain the following information:

1. Name, address, and contact information for the employer;
2. Name, address, and contact information for the majority representative(s) of any employees who may be affected by the subcontracting agreement;
3. Title(s) of employees who may be affected;
4. Number of employees who may be affected;
5. Expiration date of the current collective negotiations/bargaining agreement;
6. Date(s) the employer provided notice of planned subcontracting to the affected majority representative(s);
7. Date(s) the employer will request bids or solicit contracts for subcontracting;
8. Date(s) the employer has met or will meet with the affected majority representative(s) to discuss the planned subcontracting; and

9. Date(s) the employer has negotiated or will negotiate with the affected majority representative(s) over the impact of the planned subcontracting.

(b) Forms for filing a notice to the Commission of subcontracting may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

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<sup>i</sup> Title 19, Chapter 12 -- Chapter Notes  
CHAPTER AUTHORITY:

N.J.S.A. 34:13A-5.4.e, 34:13A-6.b, 34:13A-11, 34:13A-39, 34:13A-5.13.h, 34:13A-46, and 40A:14-211.b.

SOURCE AND EFFECTIVE DATE:

R.2021 d.069, readoption effective June 7, 2021, amendments and new rules effective July 6, 2021

See: 53 N.J.R. 234(a), 53 N.J.R. 1167(a)

EXPIRATION DATE:

Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding, Super Conciliation, Grievance Arbitration, Special Disciplinary Arbitration, and Binding Arbitration to Resolve Impasses Over Employee Organization Access to Employees and Notice of Subcontracting expires on June 7, 2028.