

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Negotiations and Impasse Procedures; Mediation, Fact-Finding, Super Conciliation, and Grievance Arbitration

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

Proposed New Rules: N.J.A.C. 19:12-6.5 and 8

Authorized By: Public Employment Relations Commission, Joel M. Weisblatt, Chair.

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.

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

Proposal Number: PRN 2021-012.

Submit comments by April 17, 2021, to:

Joel M. Weisblatt, Chair
Public Employment Relations Commission
PO Box 429
Trenton, New Jersey 08625-0429

Comments may also be submitted via email to rulecomments@perc.state.nj.us or by facsimile to 609-777-0089.

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1, the Public Employment Relations Commission (Commission) proposes to readopt N.J.A.C. 19:12 with amendments and new rules to implement the notice, discussion, and negotiations provisions of P.L. 2020, c. 79. N.J.A.C. 19:12 was scheduled to expire on December 19, 2020. This expiration date is extended 180 days to June 17, 2021, pursuant to N.J.S.A. 52:14B-5.1.c(2). N.J.A.C. 19:12-1, 2, 3, and 4 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 at N.J.S.A. 34:13A-15. Impasse resolution procedures for such police and fire employees are governed by N.J.A.C. 19:16. N.J.A.C. 19:12-5 applies to all public employers and public employees and contains the procedures for selecting grievance arbitrators from the Commission's panel. N.J.A.C. 19:12-6 contains rules to administer N.J.S.A. 40A:14-209 through 211, allowing eligible 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. N.J.A.C. 19:12-7 contains rules to administer N.J.S.A. 34:13A-5.13, which provides that impasses in collective negotiations between a public employer and an employee organization over access to employees in a collective negotiations unit shall be resolved by a Commission-appointed arbitrator with authority to issue a binding decision or to resolve the impasse through voluntary mediation. Proposed new N.J.A.C. 19:12-8 contains rules to implement N.J.S.A. 34:13A-46, requiring certain public employers, as defined by N.J.S.A. 34:13-44, to provide a majority representative with notice of intent to enter into a subcontracting agreement that may affect the employees represented by that majority representative, as well as an opportunity to discuss the decision to subcontract and engage in impact negotiations.

Proposed new N.J.A.C. 19:12-6.3(c) and 6.5 would adopt formal motion to dismiss procedures for challenges to a Request for Appointment from the Special Disciplinary Arbitration Panel. Proposed amendments at N.J.A.C. 19:12-5.2 and 5.3 would require that a Request for Submission of a Panel of Grievance Arbitrators and related correspondence with the Director of Arbitration be submitted by email to the following new Commission email address: grievance@perc.state.nj.us. At N.J.A.C. 19:12-5.9, an amendment would provide that the arbitrator send an electronic copy of the arbitration award to the Commission. The proposed

amendments at N.J.A.C. 19:12-6.1, 6.3, and 6.4(a) clarify that the Special Disciplinary Arbitration procedures are only applicable to police officers and firefighters who are eligible under the provisions of P.L. 2009, c. 16. At recodified N.J.A.C. 19:12-6.6, subsection (a) is proposed for relocation as proposed new N.J.A.C. 19:12-6.5(d). Amendments are proposed throughout the chapter to specify that the forms required for filing the various requests and petitions for the procedures set forth at Chapter 12 are available on the Commission's website at: <https://www.state.nj.us/perc/conciliation/forms/> and to make technical and grammatical changes that do not change the substance of the rules.

Proposed new N.J.A.C. 19:12-8, Notice of Subcontracting, implements the notice, discussion, and negotiations provisions of P.L. 2020, c. 79. Pursuant to N.J.S.A. 34:13A-46, the proposed new rules provide a procedure by which an employer, as defined at N.J.S.A. 34:13A-44, shall notify the Commission's Director of Conciliation at least 90 days prior to requesting bids or soliciting contract proposals for a subcontracting agreement for a period following the term of a collective negotiations agreement. The proposed new rules also require that such notice of subcontracting delineate the employer's compliance with the statute regarding notice to the affected majority representative(s) and the opportunity for the majority representative(s) to meet with the employer to discuss the decision to subcontract and to engage in negotiations over the impact of subcontracting.

A summary of each section at N.J.A.C. 19:12, including the proposed new rules, 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 police and fire employees are governed by N.J.A.C. 19:16. An amendment would advise that forms for initiating any of the procedures set forth at 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, delineates 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.

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 eligible 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.

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 eligible 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, specifies the procedures and required contents for filing a request for Special Disciplinary Arbitration with the Commission's Director of Arbitration, and 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.

Proposed new N.J.A.C. 19:12-6.5, Motions to dismiss a request for appointment from the Special Disciplinary Arbitration Panel, specifies the procedures for filing and responding to a motion to dismiss a request for Special Disciplinary Arbitration.

Recodified N.J.A.C. 19:12-6.6, Appointment of disciplinary arbitrator, provides that if the parties, within 10 days of receiving the list of disciplinary arbitrators, 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 of receiving the notice of appointment.

Recodified N.J.A.C. 19:12-6.7, 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, no later than 10 days prior to the first date 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 the parties' agreement as to time and place 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.

Recodified N.J.A.C. 19:12-6.8, 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.

Recodified N.J.A.C. 19:12-6.9, 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.

N.J.A.C. 19:12-7.1, Purpose of procedures, provides that the procedures are intended to implement N.J.S.A. 34:13A-5.13, which provides that impasses in collective negotiations between a public employer and an employee organization over access to employees in a collective negotiations unit shall be resolved by a Commission-appointed arbitrator with authority to issue a binding decision or to resolve the impasse through voluntary mediation.

N.J.A.C. 19:12-7.2, Resolution of collective negotiations impasses over access to employees, specifies the procedures for filing a petition to request an arbitrator to resolve an impasse regarding access to and communications with negotiations unit members. The rule provides that the arbitrators will be drawn from the Commission's grievance arbitration panel. The rule also provides that the arbitrator may resolve the dispute through voluntary mediation or a binding arbitration award. The rule specifies the arbitrator shall charge the same fee as on the arbitrator's grievance arbitration panel resume and that the parties shall equally bear the cost of arbitration. The rule provides the applicable ethical guidelines for the arbitrators and the duty of confidentiality of the arbitrator while serving in a mediatory capacity. The rule delineates the arbitrator's authority and discretion in conducting the arbitration proceeding, including scheduling, administering oaths, issuing subpoenas, and requesting post-hearing briefs.

N.J.A.C. 19:12-7.3, Award, specifies that an arbitration award under this subchapter shall be due 45 days after the close of the record unless the Commission approves an extension request. The rule provides that the award shall be in writing and submitted to the parties and Commission. The rule specifies multiple factors the arbitrator may take into account in the award, and that the award or settlement must provide that language on the statutory employee access and communication issues be incorporated into the parties' collective negotiations agreement.

Proposed new N.J.A.C. 19:12-8.1, Purposes of procedures, provides that the procedures are intended to implement P.L. 2020, c. 79, as codified at N.J.S.A. 34:13A-46, requiring certain public employers, as defined at N.J.S.A. 34:13-44, to provide a majority representative and the Commission with notice of subcontracting and an opportunity for the majority representative to discuss with the public employer the decision to subcontract and engage in impact negotiations.

Proposed new N.J.A.C. 19:12-8.2, Notice to the Commission of subcontracting, specifies the procedures for the public employer to provide the Commission with notice of subcontracting and compliance with the statutory requirements of notice to the affected majority representative(s) and the opportunity for the majority representative(s) to meet with the employer to discuss the decision to subcontract and to engage in negotiations over the impact of subcontracting.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted 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 and new rules 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 and new rules 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 and shall bear the cost of arbitration over majority representative access to employees.

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 and new rules 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 and new rules.

Agriculture Industry Impact

The Commission's jurisdiction is limited to employer-employee relations in public employment. The rules proposed for readoption with amendments and new rules 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 and new rules 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 and new rules 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 and new rules 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.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The rules proposed for readoption with amendments and new rules will not have an impact on pre-trial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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 and new rules follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

CHAPTER 12

NEGOTIATIONS AND IMPASSE PROCEDURES; MEDIATION, FACT-FINDING, SUPER CONCILIATION, [AND] GRIEVANCE ARBITRATION, **SPECIAL DISCIPLINARY ARBITRATION, BINDING ARBITRATION TO REVIEW IMPASSES OVER EMPLOYEE ORGANIZATION ACCESS TO EMPLOYEES, AND NOTICE OF SUBCONTRACTING**

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:12-2.1 Commencement of negotiations

(a) (No change.)

(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: <https://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) (No change.)

SUBCHAPTER 3. MEDIATION

19:12-3.1 Initiation of mediation

(a) (No change.)

(b) A [blank] form for filing a request for the appointment of a mediator **may be downloaded from the Commission's website at: <https://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request[. Address requests], addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.**

(c) (No change.)

SUBCHAPTER 4. FACT-FINDING AND SUPER CONCILIATION

19:12-4.1 Initiation of fact-finding

(a) (No change.)

(b) [Forms] **A form for filing a [petition to request a fact-finding] request for invocation of fact-finding may be downloaded from the Commission's website at: <https://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request[. Address requests], addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.**

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

19:12-4.3 Fact-finder's function

(a)-(f) (No change.)

(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.-3. (No change.)

(b) Forms for filing a petition to request a super conciliator **may be downloaded from the Commission's website at: <https://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request[. Address**

requests], **addressed** to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c)-(f) (No change.)

SUBCHAPTER 5. GRIEVANCE ARBITRATION

19:12-5.2 Request for submission of panel

Arbitration [under these rules] **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: <https://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.** [One] **Alternatively, one** original and four copies of such request, signed and dated by the requesting party or parties, [shall] **may** be filed [requesting the submission of a panel of arbitrators]. 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. [Forms for filing a request for submission of a panel of arbitrators will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.]

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 [ten] **10** days [from the mailing date] 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 [hereunder] **pursuant to this section** shall not be reviewable **by the Commission**.

19:12-5.9 Award

(a) (No change.)

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

(c) (No change.)

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.]

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

(a) [Law] **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) (No change.)

(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 [a] **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) (No change.)

(c) [Forms] **A form for filing a request for the appointment of a Special Disciplinary Arbitrator may be downloaded from the Commission's website at: <https://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request.** Address requests], **addressed** 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/].

(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. The resumes of the members of the Special Disciplinary Arbitration Panel shall be posted on the Commission's website: 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-[6.5]6.6 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 resumes of the members of the Special Disciplinary Arbitration Panel shall be posted on the Commission's web site: www.state.nj.us/perc.]

[(b)] (a) (No change in text.)

[(c)] (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 [in (d)] at (c) below.

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

Recodify existing 19:12-6.6, 6.7, and 6.8 as 6.7, 6.8, and 6.9 (No change in text.)

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: <https://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.