



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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December 3, 2012

TO: All Interested Parties

FROM: Lorraine H. Tesauro,
Director of Conciliation and Arbitration

RE: Pilot Program -
New Process for Expediting Scope of Negotiations Petitions
filed during Interest Arbitration Proceedings

The Public Employment Relations Commission is introducing a pilot program where, in limited cases, the Commission will issue expedited scope of negotiations determinations on issues that are actively in dispute in interest arbitration proceedings subject to the 45 day processing timeline pursuant to P.L. 2010 c. 2. The attached Pilot Program Notice explains eligibility and procedure requirements including the modified timelines. We hope this new program will accelerate the processing of petitions for the parties and the arbitrators.

Please visit our website www.state.nj.us/perc for further information.

Thank you for your cooperation.

EXPEDITED SCOPE RULINGS FOR INTEREST ARBITRATION

I. Purpose and Applicability of Procedure

In limited cases, the Commission will issue expedited scope of negotiations determinations on issues that are actively in dispute in current interest arbitration proceedings.

A. To be eligible for expedited processing of a petition for scope of negotiations determination emanating from a current interest arbitration proceeding, all of these conditions must be present:

1. The petition for scope of negotiations determination was filed:
 - a. By the respondent no later than five days after receipt of the petition to initiate compulsory interest arbitration;
 - b. By the party filing for interest arbitration, no later than five days after receipt of the response to the petition for compulsory interest arbitration.
2. The issues for which a negotiability determination is sought are:
 - a. Listed, in writing, among the issues in dispute by the party submitting the petition for compulsory interest arbitration and/or by the party filing a written response to the petition for compulsory interest arbitration.
 - b. All language alleged to be not mandatorily negotiable must be identified with specificity. A reference to a contract article in a prior agreement or to a paragraph or section number in a negotiations proposal, is insufficient to meet this requirement. Where only a portion of the pertinent contract language or negotiations proposal is alleged to be not mandatorily negotiable, the portion asserted to be not mandatorily negotiable must be identified.

B. The Commission will not determine the negotiability of any issues that are no longer in dispute during the pending interest arbitration. It shall be the obligation of all parties to immediately advise the Commission Chair and the assigned interest arbitrator that an issue that is the subject of a pending scope of negotiations petition is no longer actively in dispute during interest arbitration.

C. This procedure will be used only where the issue(s) arose during the course of interest arbitration. It is not applicable to scope of negotiations petitions relating to issues sought to be submitted to a contractual or statutory grievance procedure, nor is it applicable to units of public employees not eligible for compulsory interest arbitration.

II. Procedure for expedited scope of negotiations determinations:

A. The decision to issue an expedited scope of negotiations ruling during the pendency of a compulsory interest arbitration proceeding shall be within the sole, non-reviewable discretion of the Commission Chair.

B. If the Commission Chair determines not to issue an expedited scope of negotiations ruling, then any scope of negotiations issues pending in interest arbitration shall be within the jurisdiction of the interest arbitrator and either party may challenge a negotiability ruling as part of an appeal from an interest arbitration award. See N.J.A.C. 19:16-5.7(i) as amended effective October 1, 2012.

C. Briefs:

1. The party filing a scope of negotiations determination during interest arbitration must file its brief simultaneously with the petition;
2. The Respondent shall submit a brief to the Commission Chair within three business days of receipt of the petitioner's petition and brief;
3. All briefs shall conform to the requirements set forth in N.J.A.C. 19:13- 3.6(f)(2) and (3);
4. No additional briefs or submissions shall be filed.

D. Within five days after receipt of a scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure.

E. The failure of a party to submit a brief or other document shall not delay the issuance of the expedited scope of negotiations ruling.

F. The Commission or Commission Chair pursuant to the authority delegated to her by the full Commission shall issue a written decision within 14 days of receipt of the parties briefs. The decision shall be immediately served on all parties and signed interest arbitrator(s).

G. Any contract language or proposals that are determined to be not mandatorily negotiable shall not be considered by the interest arbitrator. If time permits, and in accordance with the rules governing interest arbitration proceedings, the interest arbitrator may allow the parties to amend their final offers to take into account the negotiability determination.

H. A decision issued by the Commission or Chair pursuant to this process shall be a final Agency decision. Any appeal must be made to the Superior Court Appellate Division.