

## **Frequently Asked Questions Interest Arbitration Procedures**

**Introduction:** This document is intended to inform parties to the interest arbitration process about the impact of amendments to the interest arbitration law (N.J.S.A. 34:13A-14a *et seq.*) made by the passage of P.L. 2010, Ch. 105, effective January 1, 2011. The law may be viewed through this link:

[http://www.njleg.state.nj.us/2010/Bills/A3500/3393\\_R1a.HTM](http://www.njleg.state.nj.us/2010/Bills/A3500/3393_R1a.HTM)

**1 Q Do all of the Commission's current rules reflect the December 2010 changes to the interest arbitration statute?**

A No. However the Commission will engage in rulemaking to conform its rules to the recent statutory changes. In the meantime, parties should refer to the statute and these frequently asked questions.

**2 Q What if a party refuses to negotiate prior to the expiration of the contract?**

A The new law expressly provides that either party may, prior to contract expiration, file an unfair practice charge with the Commission alleging that the other party is refusing to negotiate in good faith. The Commission shall order the non-prevailing party to bear all legal and administrative costs associated with the filing and resolution of the charge. Impasse resolution procedures will not be delayed by the processing of the charge.<sup>1</sup>

**3 Q When may the employer or employee organization file for interest arbitration?**

A The earliest filing date continues to be on or after the date on which their collective negotiations agreement expires.<sup>2</sup>

**4 Q Does the law change the method for filing an interest arbitration petition?**

A The method of filing for interest arbitration is unchanged, as is the requirement that both parties pay filing fees. As conventional arbitration is the only terminal procedure under the new law, the form for filing an interest arbitration petition is being changed to omit the choice of alternative types of interest arbitration. Hard copies of the new form will be available upon request. It may also be downloaded from the Commission's web site ([http://www.state.nj.us/perc/NJ\\_PERC\\_Petition\\_to\\_Initiate\\_Compulsory\\_Interest\\_Arbitration\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Petition_to_Initiate_Compulsory_Interest_Arbitration_-_Form.pdf)).<sup>3</sup>

- 5 **Q When must a response to a petition be filed?**  
A The non-petitioning party shall notify the Commission in writing of all issues in dispute within five days of receipt of the petition.<sup>4</sup>
- 6 **Q When and how are arbitrators selected?**  
A On the first business day after the Commission receives a petition, the Commission shall select an arbitrator using a computer program that will make a random selection from its special panel of interest arbitrators.<sup>5</sup> Mutual selection of an interest arbitrator is no longer permitted.
- 7 **Q May the parties still invoke mediation or fact-finding?**  
A Yes, but those proceedings terminate immediately upon the filing of an interest arbitration petition.<sup>6</sup>
- 8 **Q What is the terminal procedure in interest arbitration?**  
A The unsettled issues shall be determined by conventional arbitration only.<sup>7</sup>
- 9 **Q What are the parties' responsibilities at an arbitration hearing?**  
A The parties shall submit their final offers on economic and non-economic issues in dispute. In addition to presenting evidence relevant to the nine statutory factors that an arbitrator must consider in rendering an award, all parties shall introduce evidence regarding the limitations imposed upon the local unit's property tax levy and present written estimates of the financial impact of their last offer on the taxpayers with the submission of their last offer.<sup>8</sup>
- 10 **Q When must an arbitration award be issued?**  
A The arbitrator shall issue an award within 45 days of assignment.<sup>9</sup> An arbitrator who fails to render a timely award shall be fined \$1,000 for each day the award is late.<sup>10</sup>
- 11 **Q When will the award be implemented?**  
A An arbitrator's award shall be implemented immediately.<sup>11</sup>
- 12 **Q How can a party appeal an arbitration award that is issued after January 1, 2011, but was docketed under the former law?**  
A For any award received after January 1, 2011, within seven days of receiving an award, an aggrieved party may file a notice of appeal with the Commission. As a decision on an appeal must be issued within 30 days, the Commission has suspended application of the briefing schedule in N.J.A.C.

19:16-8.1. The appellant shall file an original and nine copies of a brief along with its notice of appeal. The respondent has seven days to file any cross-appeal or its answering brief.<sup>12</sup>

**13 Q When will the Commission decide an appeal?**

A The Commission's decision shall be rendered no later than 30 days after the filing of the appeal with the Commission.<sup>13</sup>

**14 Q What about a scope of negotiations dispute that arises during an interest arbitration proceeding?**

A In addition to the rules that are superceded by the recent statutory changes, the Commission has suspended application of N.J.A.C. 19:16-5.7(h), which prohibits an arbitrator from rendering a decision on any issue which is the subject of a petition for scope of negotiations determination filed with the Commission. The requirement that an arbitrator issue a decision within 45 days of assignment precludes application of this rule. Any scope of negotiations dispute can be decided by the Commission as part of any appeal of an arbitration award.

**15 Q What are the costs?**

A The parties share equally in the costs of arbitration. The arbitrator's fee shall not exceed \$1,000 per day and the total cost of the services of the arbitrator shall not exceed \$7,500. If the parties cancel an arbitration hearing without good cause, the arbitrator may impose a \$500 fee. The parties shall share equally in paying that fee if the request to cancel or adjourn is a joint request. Otherwise, the party causing such cancellation shall be responsible for payment of the entire fee.<sup>14</sup>

**16 Q What are the statutory restrictions on the economic components of an arbitration award?**

A. If the contract expires on January 1, 2011 or any date thereafter until April 1, 2014, then the 2% cap on arbitration applies and,

1. An arbitrator shall not issue any award which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on the bargaining units base salary items in the twelve months immediately preceding the expiration of the collective negotiations agreement.

2. The parties may agree or the arbitrator may decide to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages.

3. No new monetary items shall be introduced. An award of an arbitrator shall not introduce base salary items and non-salary economic issues that were not included in the prior collective negotiations agreement.<sup>15</sup>

B. Beginning April 1, 2014, the 2.0% arbitration cap shall become inoperative for all parties except those whose contracts expired prior to April 1, 2014 but for whom a final settlement has not been reached. When final settlement in all such negotiations is reached, the 2.0% arbitration cap shall expire.<sup>16</sup>

C. In the case of a party that entered into a contract that expires on January 1, 2011 or any date thereafter until April 1, 2014, and where the terms of that contract otherwise meet the criteria set forth in the 2% arbitration cap, that party shall not be subject to the 2% arbitration cap when negotiating a future contract.<sup>17</sup>

**17 Q What is the definition of "base salary"?**

A. "Base salary" includes:

1. The salary set forth in a salary guide or table and any amount provided for salary increments.
2. Any amount provided for longevity or length of service.
3. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract.
4. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
5. "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.)<sup>18</sup>

**EXAMPLES**

How does the new law apply?

**18 Q Contract expired 12/31/2009  
IA petition filed in June 2010.  
Award pending (as of 1/1/11)**

A 2% cap on base salary does not apply  
(Contract began and ended before new law effective date)

All other time provisions\*, in the new law including but not limited to new time lines for the arbitrator, fees, arbitrator selection do not apply  
(IA petition filed before new law effective date).

**\*Once issued: Appeal time of 7 days applies and Commission has 30 days to issue a decision. See FAQ No. 12.**

**19 Q Contract expired 12/31/2009  
Parties engaged in negotiations, mediation.  
IA petition filed 1/5/2011**

A 2% cap on base salary does not apply  
(Contract began and ended before new law effective date)

All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection apply.  
(IA petition filed after new law effective date)

**20 Q Contract expired 12/31/2010  
IA petition filed 1/10/2011**

A 2% cap on base salary does not apply  
(Contract began and ended before new law effective date)

All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection apply.

(IA petition filed after new law effective date)

21 Q **Contract expires 6/30/2011**  
**IA petition filed 7/1/2011**

A 2% cap on base salary applies  
(Contract began before and ended after new law effective date)

All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection apply.

(IA petition filed after new law effective date)

Footnotes

1. N.J.S.A. 34:13A-16a(1)
2. N.J.S.A. 34:13A-16b(2)
3. N.J.A.C. 19:16-5.12
4. N.J.S.A. 34:13A-16d(2), as amended by P.L. 2010, Ch. 105
5. N.J.S.A. 34:13A-16e(1), as amended by P.L. 2010, Ch. 105
6. N.J.S.A. 34:13A-16b(2), as amended by P.L. 2010, Ch. 105
7. N.J.S.A. 34:13A-16d(2), as amended by P.L. 2010, Ch. 105
8. N.J.S.A. 34:13A-16f(3), as amended by P.L. 2010, Ch. 105
9. N.J.S.A. 34:13A-16f(5), as amended by P.L. 2010, Ch. 105
10. N.J.S.A. 34:13A-16e(4), as amended by P.L. 2010, Ch. 105
11. N.J.S.A. 34:13A-16f(5)(b), as amended by P.L. 2010, Ch. 105
12. N.J.S.A. 34:13A-16f(5)(a), as amended by P.L. 2010, Ch. 105
13. N.J.S.A. 34:13A-16f(5)(a), as amended by P.L. 2010, Ch. 105
14. N.J.S.A. 34:13A-16f(6), as amended by P.L. 2010, Ch. 105
15. P.L. 2010, Ch 105, §2b.
16. P.L. 2010, Ch 105, §4
17. P.L. 2010, Ch 105, §4
18. P.L. 2010, Ch. 105, §2a