

53 N.J.R. 1167(a)

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RULE ADOPTIONS

Reporter

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Agency

OTHER AGENCIES > PUBLIC EMPLOYMENT RELATIONS COMMISSION

Administrative Code Citation

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

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

Text

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

Proposed: February 16, 2021, at 53 N.J.R. 234(a).

Adopted: May 27, 2021, by the Public Employment Relations Commission, Joel M. Weisblatt, Chair.

Filed: June 7, 2021, as R.2021 d.069, **without change**.

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.

Effective Dates: June 7, 2021, Readoption;

July 6, 2021, Amendments and New Rules.

Expiration Date: June 7, 2028.

[page=1168] **Summary** of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

The National Labor Relations Act excludes "any State or political subdivision thereof." See 29 U.S.C. § 152(2). No Federal law or regulation applies and the Commission cannot rely upon a comparable Federal rule or standard to achieve the aims of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The rules readopted with amendments and new rules are, thus, necessary and proper.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 19:12.

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Full text of the adopted amendments and new rules follows:

CHAPTER 12

NEGOTIATIONS AND IMPASSE PROCEDURES; MEDIATION, FACT-FINDING, SUPER CONCILIATION,
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: <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.

(c) (No change.)

SUBCHAPTER 3. MEDIATION

19:12-3.1 Initiation of mediation

(a) (No change.)

(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) (No change.)

SUBCHAPTER 4. FACT-FINDING AND SUPER CONCILIATION

19:12-4.1 Initiation of fact-finding

(a) (No change.)

(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)-(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

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(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: <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)-(f) (No change.)

SUBCHAPTER 5. GRIEVANCE ARBITRATION

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. 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.

19:12-5.9 Award

(a) (No change.)

(b) The award shall be in writing and shall be submitted to the parties simultaneously.

(c) (No change.)

[page=1169] 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

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.

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) (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 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) 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. 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.

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(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) (No change in text.)

(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.

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;

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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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