

[First Reprint]

SENATE, No. 1869

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED MARCH 24, 2014

Sponsored by:

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District 3 (Cumberland, Gloucester and Salem)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman CARMELO G. GARCIA

District 33 (Hudson)

SYNOPSIS

Revises certain laws governing police and fire interest arbitration; extends two-percent cap on base salary awards.

CURRENT VERSION OF TEXT

As amended on March 27, 2014 by the Senate pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 3/28/2014)

1 AN ACT concerning police and fire interest arbitration and
2 amending P.L.1977, c.85 and P.L.2010, c.105.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to
8 read as follows:

9 3. a. (1) Negotiations between a public fire or police
10 department and an exclusive representative concerning the terms
11 and conditions of employment shall begin at least 120 days prior to
12 the day on which their collective negotiation agreement is to expire.
13 The parties shall meet at least three times during that 120-day
14 period. The first of those three meetings shall take place no later
15 than the 90th day prior to the day on which their collective
16 negotiation agreement is to expire. By mutual consent, the parties
17 may agree to extend the period during which the second and third
18 meetings are required to take place beyond the day on which their
19 collective negotiation agreement is to expire. A violation of this
20 paragraph shall constitute an unfair practice and the violator shall
21 be subject to the penalties prescribed by the commission pursuant to
22 rule and regulation.

23 Prior to the expiration of their collective negotiation agreement,
24 either party may file an unfair practice charge with the commission
25 alleging that the other party is refusing to negotiate in good faith.
26 The charge shall be filed in the manner, form and time specified by
27 the commission in rule and regulation. If the charge is sustained,
28 the commission shall order that the respondent be assessed for all
29 legal and administrative costs associated with the filing and
30 resolution of the charge; if the charge is dismissed, the commission
31 shall order that the charging party be assessed for all legal and
32 administrative costs associated with the filing and resolution of the
33 charge. The filing and resolution of the unfair practice charge shall
34 not delay or impair the impasse resolution process.

35 (2) Whenever those negotiations concerning the terms and
36 conditions of employment shall reach an impasse, the commission,
37 through the Division of Public Employment Relations shall, upon
38 the request of either party, or upon its own motion take such steps,
39 including the assignment of a mediator, as it may deem expedient to
40 effect a voluntary resolution of the impasse.

41 b. (1) In the event of a failure to resolve the impasse by
42 mediation, the Division of Public Employment Relations, at the
43 request of either party, shall invoke factfinding with
44 recommendation for settlement of all issues in dispute unless the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate amendments adopted in accordance with Governor's
recommendations March 27, 2014.

1 parties reach a voluntary settlement prior to the issuance of the
2 factfinder's report and recommended terms of settlement.
3 Factfindings shall be limited to those issues that are within the
4 required scope of negotiations unless the parties to the factfinding
5 agree to factfinding on permissive subjects of negotiation.

6 (2) Notwithstanding the provisions of paragraph (2) of
7 subsection a. of this section or paragraph (1) of this subsection,
8 either party may petition the commission for arbitration on or after
9 the date on which their collective negotiation agreement expires.
10 The petition shall be filed in a manner and form prescribed by the
11 commission. The party filing the petition shall notify the other
12 party of its action. The notice shall be given in a manner and form
13 prescribed by the commission.

14 Any mediation or factfinding invoked pursuant to paragraph (2)
15 of subsection a. of this section or paragraph (1) of subsection b. of
16 this section shall terminate immediately upon the filing of a petition
17 for arbitration.

18 (3) Upon the filing of a petition for arbitration pursuant to
19 paragraph (2) of this subsection, an arbitrator selected pursuant to
20 paragraph (1) of subsection e. of this section shall conduct an initial
21 meeting as 'a' mediation 'session' to effect a voluntary resolution
22 of the impasse. 'The interest arbitration process shall not proceed
23 until 14 days following the initial meeting.'

24 c. (Deleted by amendment, P.L.2010, c.105)

25 d. The resolution of issues in dispute shall be binding
26 arbitration under which the award on the unsettled issues is
27 determined by conventional arbitration. The arbitrator shall
28 determine whether the total net annual economic changes for each
29 year of the agreement are reasonable under the nine statutory
30 criteria set forth in subsection g. of this section and shall adhere to
31 the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-
32 16.7). The non-petitioning party, within five days of receipt of the
33 petition, shall separately notify the commission in writing of all
34 issues in dispute. The filing of the written response shall not delay,
35 in any manner, the interest arbitration process.

36 e. (1) The commission shall take measures to assure the
37 impartial selection of an arbitrator or arbitrators from its special
38 panel of arbitrators. **On the first business day following receipt of**
39 **an interest arbitration petition, 'Each party shall submit three**
40 **names of arbitrators from the special panel. If none of the names**
41 **submitted by each party are the same, On the first business day**
42 **following receipt of an interest arbitration petition, the commission**
43 **shall, independent of and without any participation by either of the**
44 **parties, randomly select an arbitrator from its special panel of**
45 **arbitrators. 'If one name submitted by each party is the same, that**
46 **arbitrator shall be selected. If two or three of the names submitted**
47 **are the same, then the commission shall randomly select an**

1 arbitrator from among the names submitted that were the same.】¹

2 The selection by the commission shall be final and shall not be
3 subject to review or appeal.

4 (2) Applicants for initial appointment to the commission's special
5 panel of arbitrators shall be chosen based on their professional
6 qualifications, knowledge, and experience, in accordance with the
7 criteria and rules adopted by the commission. Such rules shall
8 include relevant knowledge of local government operations and
9 budgeting. Appointment to the commission's special panel of
10 arbitrators shall be for a three-year term, with reappointment
11 contingent upon a screening process similar to that used for
12 determining initial appointments. Arbitrators currently serving on
13 the panel shall demonstrate to the commission their professional
14 qualification, knowledge and experience, in accordance with the
15 criteria and rules adopted by the commission, within one year of the
16 effective date of this act. Any arbitrator who does not satisfactorily
17 demonstrate such to the commission within the specified time shall
18 be disqualified.

19 (3) Arbitrators serving on the commission's special panel shall be
20 guided by and subject to the objectives and principles set forth in
21 the "Code of Professional Responsibility for Arbitrators of Labor-
22 Management Disputers" of the National Academy of Arbitrators,
23 the American Arbitration Association, and the Federal Mediation
24 and Conciliation Service.

25 (4) Arbitrators shall be required to complete annual training
26 offered by the State Ethics Commission. Any arbitrator failing to
27 satisfactorily complete the annual training shall be immediately
28 removed from the special panel.

29 The commission may suspend, remove, or otherwise discipline
30 an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.),
31 section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause.
32 An arbitrator who fails to render an award within the time
33 requirements set forth in this section shall be fined \$1,000 for each
34 day that the award is late.

35 f. (1) At a time prescribed by the commission, the parties shall
36 submit to the arbitrator their final offers on each economic and non-
37 economic issue in dispute. The offers submitted pursuant to this
38 section shall be used by the arbitrator for the purposes of
39 determining an award pursuant to subsection d. of this section.

40 (2) In the event of a dispute, the commission shall have the
41 power to decide which issues are economic issues. Economic
42 issues include those items which have a direct relation to employee
43 income including wages, salaries, hours in relation to earnings, and
44 other forms of compensation such as paid vacation, paid holidays,
45 health and medical insurance, and other economic benefits to
46 employees.

1 (3) Throughout formal arbitration proceedings the chosen
2 arbitrator may mediate or assist the parties in reaching a mutually
3 agreeable settlement.

4 All parties to arbitration shall present, at the formal hearing
5 before the issuance of the award, written estimates of the financial
6 impact of their last offer on the taxpayers of the local unit to the
7 arbitrator with the submission of their last offer.

8 (4) Arbitration shall be limited to those subjects that are within
9 the required scope of collective negotiations, except that the parties
10 may agree to submit to arbitration one or more permissive subjects
11 of negotiation.

12 (5) The decision of an arbitrator or panel of arbitrators shall
13 include an opinion and an award, and shall be rendered within **[45]**
14 90 calendar days of the commission's assignment of that arbitrator.

15 Each arbitrator's decision shall be accompanied by a written
16 report explaining how each of the statutory criteria played into the
17 arbitrator's determination of the final award. The report shall
18 certify that the arbitrator took the statutory limitations imposed on
19 the local levy cap into account in making the award.

20 Any arbitrator violating the provisions of this paragraph may be
21 subject to the commission's powers under paragraph (3) of
22 subsection e. of this section. The decision shall be final and
23 binding upon the parties and shall be irreversible, except:

24 (a) Within **[seven]** 14 calendar days of receiving an award, an
25 aggrieved party may file notice of an appeal of an award to the
26 commission on the grounds that the arbitrator failed to apply the
27 criteria specified in subsection g. of this section or violated the
28 standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal
29 shall be filed in a form and manner prescribed by the commission.
30 In deciding an appeal, the commission, pursuant to rule and
31 regulation and upon petition, may afford the parties the opportunity
32 to present oral arguments. The commission may affirm, modify,
33 correct or vacate the award or may, at its discretion, remand the
34 award to the same arbitrator or to another arbitrator, selected by lot,
35 for reconsideration. The commission's decision shall be rendered
36 no later than **[30]** 60 calendar days after the filing of the appeal
37 with the commission.

38 Arbitration appeal decisions shall be accompanied by a written
39 report explaining how each of the statutory criteria played into their
40 determination of the final award. The report shall certify that in
41 deciding the appeal, the commission took the local levy cap into
42 account in making the award.

43 An aggrieved party may appeal a decision of the commission to
44 the Appellate Division of the Superior Court.

45 (b) An arbitrator's award shall be implemented immediately.

46 (6) The parties shall share equally the costs of arbitration
47 subject to a fee schedule approved by the commission. The fee
48 schedule shall provide that the cost of services provided by the

1 arbitrator shall not exceed \$1,000 per day. The total cost of
2 services of an arbitrator shall not exceed ~~[\$7,500]~~ \$10,000. If the
3 parties cancel an arbitration proceeding without good cause, the
4 arbitrator may impose a fee of not more than \$500. The parties
5 shall share equally in paying that fee if the request to cancel or
6 adjourn is a joint request. Otherwise, the party causing such
7 cancellation shall be responsible for payment of the entire fee.

8 g. The arbitrator shall decide the dispute based on a reasonable
9 determination of the issues, giving due weight to those factors listed
10 below that are judged relevant for the resolution of the specific
11 dispute. In the award, the arbitrator or panel of arbitrators shall
12 indicate which of the factors are deemed relevant, satisfactorily
13 explain why the others are not relevant, and provide an analysis of
14 the evidence on each relevant factor; provided, however, that in
15 every interest arbitration proceeding, the parties shall introduce
16 evidence regarding the factor set forth in paragraph (6) of this
17 subsection and the arbitrator shall analyze and consider the factors
18 set forth in paragraph (6) of this subsection in any award:

19 (1) The interests and welfare of the public. Among the items
20 the arbitrator or panel of arbitrators shall assess when considering
21 this factor are the limitations imposed upon the employer by
22 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

23 (2) Comparison of the wages, salaries, hours, and conditions of
24 employment of the employees involved in the arbitration
25 proceedings with the wages, hours, and conditions of employment
26 of other employees performing the same or similar services and
27 with other employees generally:

28 (a) In private employment in general; provided, however, each
29 party shall have the right to submit additional evidence for the
30 arbitrator's consideration.

31 (b) In public employment in general; provided, however, each
32 party shall have the right to submit additional evidence for the
33 arbitrator's consideration.

34 (c) In public employment in the same or similar comparable
35 jurisdictions, as determined in accordance with section 5 of
36 P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each
37 party shall have the right to submit additional evidence concerning
38 the comparability of jurisdictions for the arbitrator's consideration.

39 (3) The overall compensation presently received by the
40 employees, inclusive of direct wages, salary, vacations, holidays,
41 excused leaves, insurance and pensions, medical and hospitalization
42 benefits, and all other economic benefits received.

43 (4) Stipulations of the parties.

44 (5) The lawful authority of the employer. Among the items the
45 arbitrator or panel of arbitrators shall assess when considering this
46 factor are the limitations imposed upon the employer by P.L.1976,
47 c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

(cf: P.L.2010, c.105, s.1)

¹[2. Section 2 of P.L.2010, c.105 (C.34:13A-16.7) is amended to read as follows:

2. a. As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties,

1 or any other item that was included in the base salary as understood
2 by the parties in the prior contract. Base salary shall not include
3 non-salary economic issues, pension and health and medical
4 insurance costs.

5 "Non-salary economic issues" means any economic issue that is
6 not included in the definition of base salary.

7 b. An arbitrator shall not render any award pursuant to section
8 3 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis,
9 increases base salary items by more than 2.0 percent of the
10 aggregate amount expended by the public employer on base salary
11 items for the members of the affected employee organization in the
12 twelve months immediately preceding the expiration of the
13 collective negotiation agreement subject to arbitration; provided,
14 however, the parties may agree, or the arbitrator may decide, to
15 distribute the aggregate monetary value of the award over the term
16 of the collective negotiation agreement in unequal annual
17 percentages. An award of an arbitrator shall not include base salary
18 items and non-salary economic issues which were not included in
19 the prior collective negotiations agreement.

20 c. Notwithstanding the provisions of subsections a. and b. of
21 this section, base salary shall include the savings realized by a
22 public employer as a result of:

23 (1) increased employee contributions toward health and medical
24 insurance premiums occurring in the fourth year, and pursuant to,
25 sections 39, 40, 42, and 44 of P.L.2011, c.78 (C.52:14-17.28c;
26 52:14-17.28d; 40A:10-21.1; and 40A:5A-11.1) and section 80 of
27 P.L.2011, c.78; except if the increase in the employee contributions
28 toward health and medical insurance premiums are not in the fourth
29 year at the time of the new collective bargaining agreement, base
30 salary shall include the savings realized in the most recent year of
31 implementation of increased employee contributions toward health
32 and medical insurance premiums; and

33 (2) a reduction in force which occurred prior to the expiration of
34 the collective negotiations agreement.

35 In the case of savings realized by a public employer under
36 paragraphs (1) or (2) of this subsection, an arbitrator may render an
37 award which increases base salary items by more than 2.0 percent,
38 but not more than 3.0 percent.

39 (cf: P.L.2010, c.105, s.2) **1**¹

41 ¹². Section 3 of P.L.2010, c.105 (C.34:13A-16.8) is amended to
42 read as follows:

43 3. a. There is established a task force, to be known as the Police
44 and Fire Public Interest Arbitration Impact Task Force.

45 b. The task force shall be comprised of eight members as
46 follows:

47 (1) four to be appointed by the Governor;

48 (2) two to be appointed by the Senate President; and

1 (3) two to be appointed by the Speaker of the General
2 Assembly.

3 c. All appointments shall be made within 30 days of the
4 effective date of P.L.2010, c.105 (C.34:13A-16.7 et al.). Vacancies
5 in the membership shall be filled in the same manner as the original
6 appointments. The members of the task force shall serve without
7 compensation but may be reimbursed, within the limits of funds
8 made available to the task force, for necessary travel expenses
9 incurred in the performance of their duties.

10 d. (1) The task force shall organize as soon as is practicable upon
11 the appointment of a majority of its members and shall select a
12 chairperson from among the appointees of the Governor and a vice
13 chairperson from among the appointees of the Legislature. The
14 Chair of the Public Employment Relations Commission shall serve
15 as non-voting executive director of the task force.

16 (2) The task force shall meet within 60 days of the effective date
17 of P.L.2010, c.105 (C.34:13A-16.7 et al.) and shall meet thereafter
18 at the call of its chair. In furtherance of its evaluation, the task
19 force may hold public meetings or hearings within the State on any
20 matter or matters related to the provisions of this act, and call to its
21 assistance and avail itself of the services of the Public Employment
22 Relations Commission and the employees of any State department,
23 board, task force or agency which the task force determines
24 possesses relevant data, analytical and professional expertise or
25 other resources which may assist the task force in discharging its
26 duties under this act. Each department, board, commission or
27 agency of this State is hereby directed, to the extent not inconsistent
28 with law, to cooperate fully with the task force and to furnish such
29 information and assistance as is necessary to accomplish the
30 purposes of this act. In addition, in order to facilitate the work of
31 the task force, the Public Employment Relations Commission shall
32 post on its website all collective negotiations agreements and
33 interest arbitration awards entered or awarded after the date of
34 enactment, including a summary of contract or arbitration award
35 terms in a standard format developed by the Public Employment
36 Relations Commission to facilitate comparisons. All collective
37 negotiations agreements shall be submitted to the Public
38 Employment Relations Commission within 15 days of contract
39 execution.

40 e. (1) It shall be the duty of the task force to study the effect
41 and impact of the arbitration award cap upon local property taxes;
42 collective bargaining agreements; arbitration awards; municipal
43 services; municipal expenditures; municipal public safety services,
44 particularly changes in crime rates and response times to emergency
45 situations; police and fire recruitment, hiring and retention; the
46 professional profile of police and fire departments, particularly with
47 regard to age, experience, and staffing levels; and such other

1 matters as the members deem appropriate and necessary to evaluate
2 the effects and impact of the arbitration award cap.

3 (2) Specifically, the task force shall study total compensation
4 rates, including factors subject to the arbitration award cap and
5 factors exempt from the arbitration award cap, of police and fire
6 personnel throughout the state and make recommendations thereon.
7 The task force also shall study the interest arbitration process and
8 make recommendations concerning its continued use in connection
9 with police and fire labor contracts disputes. The task force shall
10 make findings as to the relative growth in total compensation cost
11 attributable to factors subject to the arbitration award cap and to
12 factors exempt from the arbitration award cap, for both collective
13 bargaining agreements and arbitration awards.

14 f. The task force shall report its findings, along with any
15 recommendations it may have, to the Governor and the Legislature
16 annually **【**, on or before April 1 of each year**】**. The task force's
17 final report due on or before **【April 1, 2014】** December 31, 2017
18 shall include, in addition to any other findings and
19 recommendations, a specific recommendation for any amendments
20 to the arbitration award cap. Upon the filing of its final report on or
21 before **【April 1, 2014】** December 31, 2017, the task force shall
22 expire.¹

23 (cf: P.L.2010, c.105, s.3)

24
25 3. Section 4 of P.L.2010, c.105 (C.34:13A-16.9) is amended to
26 read as follows:

27 4. This act shall take effect January 1, 2011; provided however,
28 section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall apply only to
29 collective negotiations between a public employer and the exclusive
30 representative of a public police department or public fire
31 department that relate to ¹**【a】** negotiated ¹**【agreement】**
32 agreements¹ expiring on **【that effective date】** ¹**【April 2, 2014】** that
33 effective date¹ or any date thereafter until **【April 1, 2014】** ¹and
34 including¹ December 31, 2017, whereupon ¹after December 31,
35 2017¹ the provisions of section 2 of P.L.2010, c.105 (C.34:13A-
36 16.7) shall become inoperative for all parties except those whose
37 collective negotiations agreements expired ¹**【on or after April 2,**
38 2014 but】¹ prior to ¹or on¹ **【April 1, 2014 but】** December 31, 2017
39 ¹**【and】** but¹ for whom a final settlement has not been reached.
40 ¹**【When final settlement between the parties in all such negotiations**
41 is reached, the provisions of section 2 of 【this act】 P.L.2010, c.105
42 (C.34:13A-16.7) shall expire. In the case of a party that entered
43 into a contract that expires on 【the effective date of this act or any
44 date thereafter until April 1, 2014】 April 2, 2014 or any date
45 thereafter until December 31, 2017, and where the terms of that
46 contract otherwise meet the criteria set forth in section 2 of **【this**

1 act **】** P.L.2010, c.105 (C.34:13A-16.7) that party shall not be subject
2 to the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7)
3 when negotiating a future contract. **】**¹
4 (cf: P.L.2010, c.105, s.4)
5

6 4. This act shall take effect on April 1, 2014.