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

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 3/28/2014)
AN ACT concerning police and fire interest arbitration and

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

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

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

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

b. (1) In the event of a failure to resolve the impasse by
mediation, the Division of Public Employment Relations, at the
request of either party, shall invoke factfinding with
recommendation for settlement of all issues in dispute unless the
parties reach a voluntary settlement prior to the issuance of 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.
factfinder's report and recommended terms of settlement. Factfindings shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation.

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

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

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

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

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its special panel of arbitrators. [On the first business day following receipt of an interest arbitration petition.] Each party shall submit three names of arbitrators from the special panel. If none of the names submitted by each party are the same, the commission shall, independent of and without any participation by either of the parties, randomly select an arbitrator from its special panel of arbitrators. If one name submitted by each party is the same, that arbitrator shall be selected. If two or three of the names submitted are the same, then the commission shall randomly select an arbitrator from among the names submitted that were the same. The selection by the commission shall be final and shall not be subject to review or appeal.
(2) Applicants for initial appointment to the commission's special panel of arbitrators shall be chosen based on their professional qualifications, knowledge, and experience, in accordance with the criteria and rules adopted by the commission. Such rules shall include relevant knowledge of local government operations and budgeting. Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments. Arbitrators currently serving on the panel shall demonstrate to the commission their professional qualification, knowledge and experience, in accordance with the criteria and rules adopted by the commission, within one year of the effective date of this act. Any arbitrator who does not satisfactorily demonstrate such to the commission within the specified time shall be disqualified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The parties shall share equally the costs of arbitration subject to a fee schedule approved by the commission. The fee schedule shall provide that the cost of services provided by the arbitrator shall not exceed $1,000 per day. The total cost of services of an arbitrator shall not exceed $7,500. If the parties cancel an arbitration proceeding without good cause, the arbitrator may impose a fee of not more than $500. 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.

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

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

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

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

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

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

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

(4) Stipulations of the parties.

(5) The lawful authority of 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 P.L.1976, 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)

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

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.
b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) 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 base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, 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. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

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

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

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

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

(cf: P.L.2010, c.105, s.2)

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

4. This act shall take effect January 1, 2011; provided however, section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on [that effective date] April 2, 2014 or any date thereafter until [April 1, 2014] December 31, 2017, whereupon the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired on or after April 2, 2014 but prior to [April 1, 2014 but] December 31, 2017 and for whom a final settlement has not been reached. When final settlement between the parties in all such
negotiations is reached, the provisions of section 2 of this act shall expire. In the case of a party that entered into a contract that expires on the effective date of this act or any date thereafter until April 1, 2014 or any date thereafter until December 31, 2017, and where the terms of that contract otherwise meet the criteria set forth in section 2 of this act that party shall not be subject to the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7) when negotiating a future contract.

(cf: P.L.2010, c.105, s.4)

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

STATEMENT

This bill makes several changes to the current law governing arbitration awards in disputes between public employers and their police and fire departments.

Under current law, any time after a collective negotiation agreement between a public employer and a public police or fire department expires, either party may petition the New Jersey Public Employment Relations Commission (PERC) for arbitration. Arbitrators in these cases are required to render their decision within 45 days of the case being assigned to them. This bill extends the time to render the decision to 90 days. Current law allows an aggrieved party seven days to file notice of appeal of the arbitrator’s decision. This bill extends the time to appeal to 14 days. The bill also increases the time frame within which PERC has to render its decision in an appeal of an arbitration award from 30 to 60 days. The bill further increases the maximum amount arbitrators can be compensated for their services from $7,500 to $10,000.

Currently, PERC randomly selects an arbitrator for a case from a special panel of qualified and eligible arbitrators. Under the bill, the parties are required to submit three names of arbitrators from the special panel. If none of the names submitted by each party are the same, the bill requires the commission to randomly select an arbitrator from its special panel of arbitrators. If one name submitted by each party is the same, then that arbitrator is to be selected. If two or three of the names submitted are the same, then the commission is required to randomly select an arbitrator from among the names submitted that were the same.

Under current law, there is a two-percent cap on base salary increases in arbitration awards. This cap is scheduled to expire on April 1, 2014. The bill extends the cap until December 31, 2017.

Finally, the bill includes in the base salary computation overall savings realized by a public employer as a result of increased
employee contributions towards health and medical insurance
premiums based on a single contract year, as well as savings
resulting from a reduction in force of police and fire personnel. In
these cases, the arbitrator also may render an award increasing base
salary by more than two percent, but not more than three percent.