



Presented by

Joseph M. Hannon, Esq.

An Orientation for Municipal
Officials

That are Newly Elected,
Reelected or Experienced

Labor Relations-What You
Need to Know

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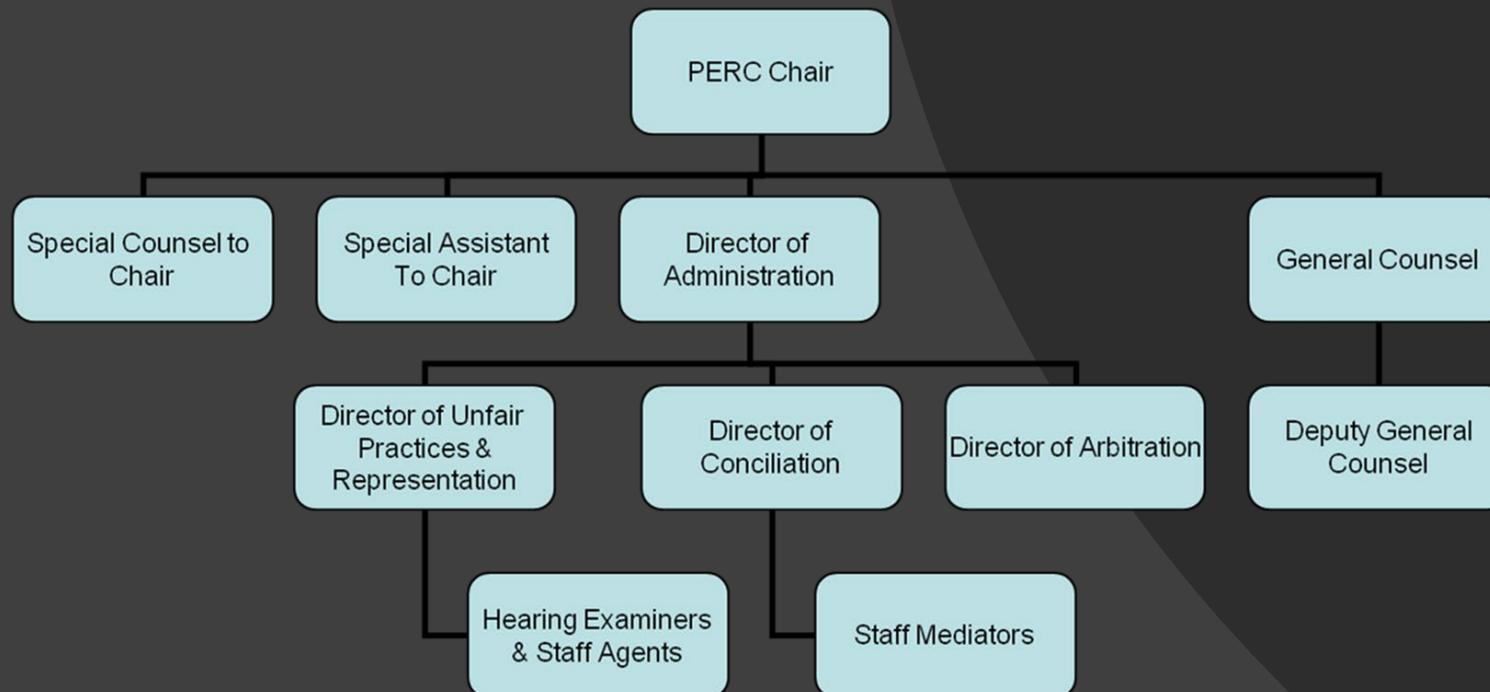
TODAY'S AGENDA

- Public Employment Relations Commission Overview
- Top 10 Rules for Public Sector Bargaining
- Current Bargaining Trends

PUBLIC EMPLOYMENT RELATIONS COMMISSION

- 7-Member Tri-Partite Structure-two members are representative of public employee organizations, two are representative of public employers, and three are representative of the general public
- “The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievance procedures.” N.J.S.A. 34:13A-2”
- All public employers – State of New Jersey, counties, municipalities, school boards, independent agencies and authorities (Meadowlands, N.J. Turnpike Authority, Sewerage Authorities, etc.)

ORGANIZATION OF PERC STAFF AND FUNCTIONS



PERC OVERSIGHT – SCOPE OF NEGOTIATIONS

- Scope of negotiations
 - Mandatory negotiations – intimately and directly affect the employee’s work and welfare, *not* with public employer’s determination of governmental policy
 - Permissive negotiations – not permissively negotiable if agreement would place “substantial limitations on government’s policymaking powers”
 - Standard: Topic is negotiable if
 - Intimately and directly affects work and welfare of employees
 - Not fully or partly preempted
 - Would not significantly interfere with determination of government policy

PERC OVERSIGHT : UNFAIR PRACTICES

- **An employer is prohibited from :**
 - (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.
 - (2) Dominating or interfering with the formation, existence or administration of any employee organization.
 - (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.
 - (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.
 - (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.
 - (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.
 - (7) Violating any of the rules and regulations established by the commission.
 - N.J.S.A. 34:13A-5.4(a)

NEGOTIATIONS, MEDIATION, AND FACT-FINDING

Regulatory and Statutory Framework of Negotiations

- Commencement of negotiations
 - Start within 120 days before the contract expires
 - First meeting within 90 days and meet 3 times prior to the conclusion
 - May be extended by mutual consent
 - A violation shall constitute an unfair practice charge

Negotiations – Good Faith

- Bargaining in good faith
- Hard bargaining vs. bad faith bargaining
 - Right to say no
 - Cannot get to the table with no intention to agree

Mediation

- Either party or jointly – civilian or police/fire
- Mediator appointed by Director of Conciliation
- Assist parties in reaching a voluntary agreement
- At conclusion, if no settlement, mediator issues report

Fact-Finding

- If mediation is not successful, parties will proceed to fact-finding
- Similar information is provided, but add dates of mediation
- If not a joint request, non-petitioning party has 7 days to list additional unresolved issues

Fact-Finding

- Failure to file a scope petition on any issues submitted to fact-finding is deemed an agreement to submit the issue to fact-finding

Fact-Finding

- Choosing a fact-finder
 - Provided list of 3 names
 - Parties eliminate 1 name and rank the other two
 - If not provided within the time allotted, all fact-finders will be deemed acceptable by the delinquent party
 - Practical factors

Fact-Finding

- Function of fact-finder
 - Meet with the parties
 - Hold hearing which will not be public unless the parties agree
 - Subpoena witnesses
 - Make findings and recommend a settlement
 - Parties meet five days after receipt of report to exchange position statements and accept settlement

Interest Arbitration

- Impasse in collective negotiations involving public employers and exclusive employee representatives representing Public Fire Departments or Public Police Departments

Interest Arbitration

- Public Police Departments
 - Police departments, State troopers, county police, county investigators, county detectives, sheriff's officers, corrections officers and others set forth in statute
- Public Fire Department
 - Any department of a municipality, county, fire district or State, or any agency thereof having employees engaged in firefighting

Interest Arbitration

- Petition
 - After 3 meetings
 - At expiration of collective negotiations agreement either party may file
 - Essex County – if you do not have your 3 meetings and the CNA has expired, either party may file for interest arbitration
 - Mediation or fact-finding?
 - List in the petition ALL items you wish to submit to the interest arbitrator

Interest Arbitration

- Non-petitioning party, within 5 days of receipt of petition, shall respond listing all issues in dispute
- Bloomingtondale – party failed to list an issue to submit to arbitration in their response to the petition and tried to bring the issue at arbitration; the party was precluded from bringing that issue.

Interest Arbitration

- Conventional arbitration only
- Arbitrator selection – random selection by PERC
- Arbitrator's role
 - Conduct mandatory initial mediation session
 - Hear the case and apply all 9 statutory factors while staying within the relevant statutory caps

Interest Arbitration

- Statute requires analysis of:
 - Interest and welfare of the public
 - Comparison of wages, salaries, hours and conditions of employment of those providing similar services, those in private employment, those in public employment
 - Overall compensation received by the employees
 - Stipulations of the parties
 - Lawful authority of the employer
 - Financial impact
 - Cost of living
 - Continuity and stability of employment
 - Statutory restrictions

Interest Arbitration

- Arbitrator's decision shall be rendered within 90 days of the Commission's assignment of an arbitrator
- Arbitrator's fees may not exceed \$10,000 for the entire case

Interest Arbitration

- Appeals
 - Within 14 days of an award, either party may file a notice of appeal to the Commission which includes a brief
 - Responding party has 14 days to file an opposition
 - Commission must issue a decision within 60 days of filing the notice of appeal
 - Immediate implementation remains

Rules of Bargaining

RULES OF BARGAINING

Rule #1: UNION REPRESENTATION IS AN EMPLOYEE'S RIGHT

- The EERA gives the employees the right to be represented (or not) by a majority representative.
- Janus Decision
 - Supreme Court invalidates mandatory agency shop fees
 - Any payment to the union **MUST** be the result of affirmative consent
- WDEA Implications
 - Bargaining Unit Work
 - Access to employees

RULES OF BARGAINING

RULE #2: EXERCISE OF UNION RIGHTS MAY NOT BE PUNISHED

- Protected activity is a legal right!
- Grievances, meetings, organizing campaigns, unfair practices, testifying, serving as a union representative.
- May not take actions in hiring, tenure of employment or impacting terms and conditions of which are meant to encourage or discourage employees in the exercise of their rights under the Act.

RULES OF BARGAINING

RULE #3: UNION AUTONOMY IS ABSOLUTE!

- The Union operates under its own set of rules and bylaws which control how it operates.
- The Employer may not “dominate and control” the Union’s formation, actions or business.
- This means working with the Union based on its operations, not controlling how the Union operates.

RULES OF BARGAINING

RULE #4: KNOW YOUR CONTRACT

- Contract governs the negotiable terms and conditions of employment for that bargaining unit.
- Unilateral changes to contract are prohibited by EERA if the change relates to a mandatory subject of bargaining.
 - ULP is created when an employer ceases to adhere to contract language because of the belief it is not a mandatory subject of negotiations.
 - May also be a grievance for a breach of contract claim.
- Past practice IS your contract
 - Open and obvious practice
 - Occurs for a long period of time and
 - Is accepted by the parties
- Changes to terms and conditions of employment require bargaining unless employer can establish that it maintained a right to unilaterally make the change.

RULES OF BARGAINING

RULE #5: BE PREPARED TO REACH AN AGREEMENT

- EERA requires bargaining in good faith for terms and conditions of employment.
- Must have a sincere desire to reach an agreement.
 - This does not preclude hard bargaining
- Provide information when asked
 - “Must supply information if there is a probability that the information is potentially relevant and that it will be of use to the representative in carrying out its statutory duties.” City of Newark, 39 NJPER ¶ 152 (2013).
- Be prepared for bargaining sessions

RULES OF BARGAINING

RULE #6: BE PREPARED TO BARGAIN

- Review your contract
 - Changes in law
 - Changes in policies/procedures
- Rely on management team, professionals
 - Operational issues
 - Grievances and ULPS
- Evaluate Costs
 - Current cost of the agreement
 - Scattergram
- Develop strategies
 - Reasonable outcome

RULES OF BARGAINING

RULE #7: DON'T MAKE PROMISES YOU WON'T KEEP

- Direct dealing is almost always prohibited.
 - Terms and conditions of employment are the result of bargaining.
- Agreement reached at the table must be reduced to writing
 - Sign as you go.
 - Promise to recommend to respective voting bodies.

RULES OF BARGAINING

RULE #8: DON'T MAKE THREATS YOU CAN'T KEEP!

- It is an unfair practice to interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by the Act.
 - Violation occurs when the actions tend to interfere with an employee's rights and lack a legitimate and substantial business justification. Commercial Tp. Bd. of Educ., 8 NJPER 550 (¶13253 1982).
 - Balance between free speech rights and the employee's right to engage in protected activity. Atlantic Co. Utilities Authority, 20 NJPER P25,064 (1994) citing County of Mercer, P.E.R.C. 86-33, 11 NJPER 589 (P16207 1985).
- Commission "will weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act." Fairview Free Public Library, 25 NJPER 20 (P30007 1998).
- Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary; the determination of whether a violation occurred is based on the **totality of the circumstances**. Florham Park Bd. of Educ. v. Florham Park Educ. Ass'n, 30 NJPER P64 (2004).

RULES OF BARGAINING

RULE #8: DON'T MAKE THREATS YOU CAN'T KEEP!

- **Threats to subcontract**
 - How this is raised may implicate an unfair practice but having an open discussion across the table may lead to alternative options (and your contract may already require this).
 - Decision to subcontract is managerial prerogative
 - Procedural requirements are negotiable
 - Timing
 - Once you've put this on the table, the tenor of negotiations changes.
 - Are you willing to follow through?

RULES OF BARGAINING

RULE #9: PUBLIC EMPLOYEES MAY BE ENJOINED FROM STRIKING

- In general, public employees may not strike unless expressly authorized by law. See, e.g., Norwalk Teachers' Ass'n v. Bd. of Ed., City of Norwalk, 138 Conn. 269 (1951); City of Manchester v. Manchester Teachers Guild, 100 N.H. 507 (1957); Potts v. Hay, 229 Ark. 830 (1958); Bd. of Ed., Martins Ferry City School Dist. v. Ohio Ed. Ass'n, 13 Ohio Misc. 308 (1967).
- Strike activity has increased in the private sector. So have other forms of job actions.
 - Hollywood
 - Auto-workers
 - Starbucks
- Post Rutgers, we have seen increased threats/interest in public sector:
 - There is no statutory right to strike under the Employer Employee Relations Act
 - The New Jersey Supreme Court has unequivocally stated that the illegality of strikes by public employees has “long been the rule in our State.” Bd. of Ed., Bor. of Union Beach v. N.J.E.A., 53 N.J. 29, 36 (1968).

RULES OF BARGAINING

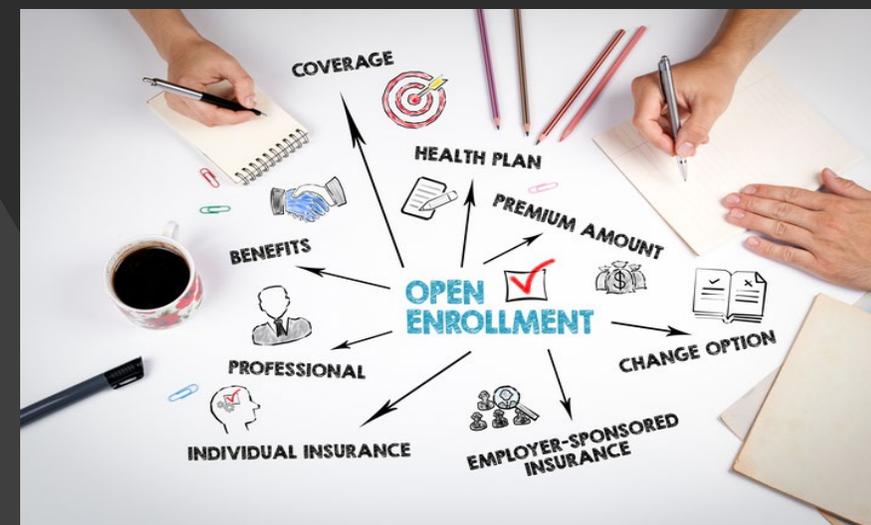
RULE #10: KNOW YOUR COMPS!

- Comparative Data defines the averages and norms (especially in impasse)
- This data is used in interest arbitration OR fact finding to establish reasonableness of party's position (and both sides present)
- Bolster's testimony from CFO and finance department

Negotiations Issues

HEALTH BENEFITS AND CONTRIBUTIONS

- Selection of carrier is non-negotiable **BUT**
- The Level of benefits is negotiable
 - Benefit level includes
 - Co-pays
 - Deductibles
 - Out of Pocket
 - Prescription
 - Out of Network Costs



HEALTH BENEFITS AND CONTRIBUTIONS

- General rule: May not change the level of benefits without first negotiating the change with the union
 - Equal to or better?
 - Substantially similar?
- SHBP Caveats
 - Plan Design Committee
 - Bargaining Impact
- Payment for employer ordered doctor visits
 - Reduced Contributions
 - Post Cpt. 78 negotiability
 - Proceed with Caution!
 - historical language
 - Minimum requirements
 - Retiree Benefits
 - Proceed with Caution!
 - Existing Retirees
 - Cpts. 44 and 88

HOW TO CONTACT US



Joseph M. Hannon, Esq.
jhannon@genovaburns.com

Founded over 35 years ago, Genova Burns works with many of the premier companies and business interests. Our firm stands at the intersection of law, government and business.



973-533-0777



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