

# SENATE, No. 5

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED DECEMBER 9, 2010

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator MICHAEL J. DOHERTY**

**District 23 (Warren and Hunterdon)**

**Senator JOSEPH M. KYRILLOS, JR.**

**District 13 (Middlesex and Monmouth)**

**SYNOPSIS**

Revises procedure for police and fire contract disputes; imposes a “cap” on certain arbitration awards.

**CURRENT VERSION OF TEXT**

As introduced.



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

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 read  
8 as follows:

9 3. a. (1) Negotiations between a public fire or police department  
10 and an exclusive representative concerning the terms and conditions  
11 of employment shall begin at least 120 days prior to the day on  
12 which their collective negotiation agreement is to expire. The  
13 parties shall meet at least three times during that 120-day period.  
14 The first of those three meetings shall take place no later than the  
15 90th day prior to the day on which their collective negotiation  
16 agreement is to expire. By mutual consent, the parties may agree to  
17 extend the period during which the second and third meetings are  
18 required to take place beyond the day on which their collective  
19 negotiation agreement is to expire. A violation of this paragraph  
20 shall constitute an unfair practice and the violator shall be subject to  
21 the penalties prescribed by the commission pursuant to rule and  
22 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  
45 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.**

1 factfinder's report and recommended terms of settlement.  
2 Factfindings shall be limited to those issues that are within the  
3 required scope of negotiations unless the parties to the factfinding  
4 agree to factfinding on permissive subjects of negotiation. **【In the**  
5 **event of a continuing failure to resolve an impasse by means of the**  
6 **procedure set forth in this paragraph, and notwithstanding the fact**  
7 **that such procedures have not been exhausted, the parties shall**  
8 **notify the commission, at a time and in a manner prescribed by the**  
9 **commission, as to whether or not they have agreed upon a terminal**  
10 **procedure for resolving the issues in dispute. Any terminal**  
11 **procedure mutually agreed upon by the parties shall be reduced to**  
12 **writing, provide for finality in resolving the issues in dispute, and**  
13 **shall be submitted to the commission for approval.】**

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

22 **【Within 10 days of the receipt of the notice by the non-**  
23 **petitioning party, the parties shall notify the commission as to**  
24 **whether or not they have agreed upon a terminal procedure for**  
25 **resolving the issues in dispute. Any terminal procedure mutually**  
26 **agreed upon by the parties shall be reduced to writing, provide for**  
27 **finality in resolving the issues in dispute, and shall be submitted to**  
28 **the commission for approval. If the parties fail to agree on a**  
29 **terminal procedure, they shall be subject to the provisions of**  
30 **subsection d. of this section.】** Any mediation or factfinding  
31 invoked pursuant to paragraph (2) of subsection a. of this section or  
32 paragraph (1) of subsection b. of this section shall terminate  
33 immediately upon the filing of a petition for arbitration.

34 c. **【Terminal procedures that are approvable include, but shall**  
35 **not be limited to the following:**

36 (1) Conventional arbitration of all unsettled items.

37 (2) Arbitration under which the award by an arbitrator or panel  
38 of arbitrators is confined to a choice between (a) the last offer of the  
39 employer and (b) the last offer of the employees' representative, as  
40 a single package.

41 (3) Arbitration under which the award is confined to a choice  
42 between (a) the last offer of the employer and (b) the last offer of  
43 the employees' representative, on each issue in dispute, with the  
44 decision on an issue-by-issue basis.

45 (4) If there is a factfinder's report with recommendations on the  
46 issues in dispute, the parties may agree to arbitration under which  
47 the award would be confined to a choice among three positions: (a)

1 the last offer of the employer as a single package, (b) the last offer  
2 of the employees' representative as a single package, or (c) the  
3 factfinder's recommendations as a single package.

4 (5) If there is a factfinder's report with a recommendation on  
5 each of the issues in dispute, the parties may agree to arbitration  
6 under which the award would be confined to a choice on each issue  
7 from among three positions: (a) the last offer of the employer on  
8 the issue, (b) the employee representative's last offer on the issue,  
9 or (c) the factfinder's recommendation on the issue.

10 (6) Arbitration under which the award on the economic issues in  
11 dispute is confined to a choice between (a) the last offer of the  
12 employer on the economic issues as a single package and (b) the  
13 employee representative's last offer on the economic issues as a  
14 single package; and, on any noneconomic issues in dispute, the  
15 award is confined to a choice between (a) the last offer of the  
16 employer on each issue in dispute and (b) the employee  
17 representative's last offer on that issue. Deleted by amendment,  
18 P.L. , c. (pending before the Legislature as this bill)

19 d. The following procedure shall be utilized if parties fail to  
20 agree on a terminal procedure for the settlement of an impasse  
21 dispute:

22 (1) In the event of a failure of the parties to agree upon an  
23 acceptable terminal procedure the parties shall separately so notify  
24 the commission in writing, indicating all issues in dispute and the  
25 reasons for their inability to agree on the procedure. The substance  
26 of a written notification shall not provide the basis for any delay in  
27 effectuating the provisions of this subsection.

28 (2) Upon receipt of such notification from either party or on the  
29 commission's own motion, the procedure to provide finality for the  
30 resolution of issues in dispute shall be binding arbitration under  
31 which the award on the unsettled issues is determined by  
32 conventional arbitration. The arbitrator shall separately  
33 determine whether the total net annual economic changes for each  
34 year of the agreement are reasonable under the nine statutory  
35 criteria set forth in subsection g. of this section and shall adhere to  
36 the limitations set forth in section 2 of P.L. , c. (C. )  
37 (pending before the Legislature as this bill). The non-petitioning  
38 party, within five days of receipt of the petition, shall separately  
39 notify the commission in writing of all issues in dispute. The filing  
40 of the written response shall not delay, in any manner, the interest  
41 arbitration process.

42 e. (1) The commission shall take measures to assure the impartial  
43 selection of an arbitrator or arbitrators from its special panel of  
44 arbitrators. Unless the parties, in a time and manner prescribed by  
45 the commission, mutually agree upon the selection of an arbitrator  
46 from the commission's special panel of arbitrators and so notify the  
47 commission in writing of that selection, the assignment of any

1 arbitrator for the purposes of this act shall be the responsibility of  
2 the commission, independent of and without any participation by  
3 either of the parties. The commission shall select the arbitrator for  
4 assignment by lot.

5 In any proceeding where an arbitrator selected by mutual  
6 agreement is unable to serve, the two parties shall be afforded an  
7 opportunity to select a replacement. If the two parties are unable to  
8 mutually agree upon the selection of a replacement within a time  
9 period prescribed by the commission, the commission shall select  
10 the replacement in the manner hereinafter provided.

11 In any proceeding where an assigned arbitrator is unable to serve  
12 or, pursuant to the preceding paragraph, the two parties are unable  
13 to mutually agree upon a replacement, the commission shall assign  
14 a replacement arbitrator. The assignment shall be the responsibility  
15 of the commission, independent of and without any participation by  
16 either of the parties. The commission shall select the replacement  
17 arbitrator for assignment by lot.】 On the first business day  
18 following receipt of an interest arbitration petition, the commission  
19 shall, independent of and without any participation by either of the  
20 parties, randomly select an arbitrator from its special panel of  
21 arbitrators. The selection by the commission shall be final and shall  
22 not be subject to review or appeal.

23 (2) Applicants for initial appointment to the commission's  
24 special panel of arbitrators shall be chosen based on their  
25 professional qualifications, knowledge, and experience, in  
26 accordance with the criteria and rules adopted by the commission.  
27 Such rules shall include relevant knowledge of local government  
28 operations and budgeting. Appointment to the commission's special  
29 panel of arbitrators shall be for a three-year term, with  
30 reappointment contingent upon a screening process similar to that  
31 used for determining initial appointments. Arbitrators currently  
32 serving on the panel shall demonstrate to the commission their  
33 professional qualification, knowledge and experience, in accordance  
34 with the criteria and rules adopted by the commission, within one  
35 year of the effective date of this act. Any arbitrator who does not  
36 satisfactorily demonstrate such to the commission within the  
37 specified time shall be disqualified.

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

44 The commission may suspend, remove, or otherwise discipline  
45 an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.),  
46 section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause.  
47 An arbitrator who fails to render an award within the time

1 requirements set forth in this section shall be fined \$1,000 for each  
2 day that the award is late.

3 f. (1) At a time prescribed by the commission, the parties shall  
4 submit to the arbitrator **[or tripartite panel of arbitrators]** their final  
5 offers on each economic and non-economic issue in dispute. The  
6 offers submitted pursuant to this section shall be used by the  
7 arbitrator for the purposes of determining an award pursuant to  
8 paragraph (2) of subsection d. of this section. **[The commission**  
9 **shall promulgate rules and procedures governing the submission of**  
10 **the offers required under this paragraph, including when those**  
11 **offers shall be deemed final, binding and irreversible.]**

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

19 (3) Throughout formal arbitration proceedings the chosen  
20 arbitrator **[or panel of arbitrators]** may mediate or assist the parties  
21 in reaching a mutually agreeable settlement.

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

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

30 (5) The decision of an arbitrator or panel of arbitrators shall  
31 include an opinion and an award, and shall be rendered within  
32 **[120] 45** days of the **[selection of the arbitrator by the mutual**  
33 **agreement of both parties or the]** commission's assignment of that  
34 arbitrator **[or panel of arbitrators, as the case may be, pursuant to**  
35 **paragraph (1) of subsection e. of this section; provided, however,**  
36 **the arbitrator or panel of arbitrators, for good cause, may petition**  
37 **the commission for an extension of not more than 60 days. The two**  
38 **parties, by mutual consent, may agree to an extension. The parties**  
39 **shall notify the arbitrator and the commission of any such**  
40 **agreement in writing. The notice shall set forth the specific date on**  
41 **which the extension shall expire].**

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

1 Any arbitrator [or panel of arbitrators] violating the provisions  
2 of this paragraph may be subject to the commission's powers under  
3 paragraph [(2)] (3) of subsection e. of this section. The decision  
4 shall be final and binding upon the parties and shall be irreversible,  
5 except:

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

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

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

26 (b) An arbitrator's award [that is not appealed to the  
27 commission] shall be implemented immediately. [An award that is  
28 appealed and not set aside by the commission shall be implemented  
29 within 14 days of the receipt of the commission's decision absent a  
30 stay.]

31 (6) The parties shall [bear] share equally the costs of arbitration  
32 subject to a fee schedule approved by the commission. The fee  
33 schedule shall provide that the cost of services provided by the  
34 arbitrator shall not exceed \$1,000 per day. The total cost of  
35 services of an arbitrator shall not exceed \$7,500. If the parties  
36 cancel an arbitration proceeding without good cause, the arbitrator  
37 may impose a fee of not more than \$500. The parties shall share  
38 equally in paying that fee if the request to cancel or adjourn is a  
39 joint request. Otherwise, the party causing such cancellation shall  
40 be responsible for payment of the entire fee.

41 g. The arbitrator [or panel of arbitrators] shall decide the  
42 dispute based on a reasonable determination of the issues, giving  
43 due weight to those factors listed below that are judged relevant for  
44 the resolution of the specific dispute. In the award, the arbitrator or  
45 panel of arbitrators shall indicate which of the factors are deemed  
46 relevant, satisfactorily explain why the others are not relevant, and  
47 provide an analysis of the evidence on each relevant factor;

1 provided, however, that in every interest arbitration proceeding, the  
2 parties shall introduce evidence regarding the factor set forth in  
3 paragraph (6) of this subsection and the arbitrator shall analyze and  
4 consider the factors set forth in paragraph (6) of this subsection in  
5 any award:

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

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

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

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

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

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

30 (4) Stipulations of the parties.

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

35 (6) The financial impact on the governing unit, its residents, the  
36 limitations imposed upon the local unit's property tax levy pursuant  
37 to section 10 of P.L.2007, c.62 (C40A:4-45.45), and taxpayers.  
38 When considering this factor in a dispute in which the public  
39 employer is a county or a municipality, the arbitrator or panel of  
40 arbitrators shall take into account, to the extent that evidence is  
41 introduced, how the award will affect the municipal or county  
42 purposes element, as the case may be, of the local property tax; a  
43 comparison of the percentage of the municipal purposes element or,  
44 in the case of a county, the county purposes element, required to  
45 fund the employees' contract in the preceding local budget year with  
46 that required under the award for the current local budget year; the  
47 impact of the award for each income sector of the property  
48 taxpayers of the local unit; the impact of the award on the ability of

1 the governing body to (a) maintain existing local programs and  
2 services, (b) expand existing local programs and services for which  
3 public moneys have been designated by the governing body in a  
4 proposed local budget, or (c) initiate any new programs and services  
5 for which public moneys have been designated by the governing  
6 body in a proposed local budget.

7 (7) The cost of living.

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

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

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

26 (cf: P.L.2007, c.62, s.14)

27  
28 2. (New section) a. As used in this section:

29 “Base salary” means the salary provided pursuant to a salary  
30 increment, including any amount provided for longevity or length of  
31 service. It also shall include any other item agreed to by the parties,  
32 or any other item that was included in the base salary as understood  
33 by the parties in the prior contract. Base salary shall not include  
34 non-salary economic issues, pension and health and medical  
35 insurance costs.

36 “Non-salary economic issues” means any economic issue that is  
37 not included in the definition of base salary.

38 b. An arbitrator shall not render any award pursuant to section 3  
39 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis,  
40 increases base salary items by more than 2.0 percent of the  
41 aggregate amount expended by the public employer on base salary  
42 items for the members of the affected employee organization in the  
43 twelve months immediately preceding the expiration of the  
44 collective negotiation agreement subject to arbitration; provided,  
45 however, the parties may agree, or the arbitrator may decide, to  
46 distribute the aggregate monetary value of the award over the term  
47 of the collective negotiation agreement in unequal annual  
48 percentages. An award of an arbitrator shall not include base salary

1 items and non-salary economic issues which were not included in  
2 the prior collective negotiations agreement.

3

4 3. (New Section) a. There is established a task force, to be  
5 known as the Police and Fire Public Interest Arbitration Impact  
6 Task Force.

7 b. The task force shall be comprised of eight members as  
8 follows:

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

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

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

12 c. All appointments shall be made within 30 days of the  
13 effective date of P.L. , c. (C. ) (pending before the  
14 Legislature as this bill). Vacancies in the membership shall be  
15 filled in the same manner as the original appointments. The  
16 members of the task force shall serve without compensation but  
17 may be reimbursed, within the limits of funds made available to the  
18 task force, for necessary travel expenses incurred in the  
19 performance of their duties.

20 d. (1) The task force shall organize as soon as is practicable  
21 upon the appointment of a majority of its members and shall select  
22 a chairperson from among the appointees of the Governor and a  
23 vice chairperson from among the appointees of the Legislature. The  
24 Chair of the Public Employment Relations Commission shall serve  
25 as non-voting executive director of the task force.

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

1 submitted to the Public Employment Relations Commission within  
2 15 days of contract execution.

3 e. (1) It shall be the duty of the task force to study the effect  
4 and impact of the arbitration award cap upon local property taxes;  
5 collective bargaining agreements; arbitration awards; municipal  
6 services; municipal expenditures; municipal public safety services,  
7 particularly changes in crime rates and response times to emergency  
8 situations; police and fire recruitment, hiring and retention; the  
9 professional profile of police and fire departments, particularly with  
10 regard to age, experience, and staffing levels; and such other  
11 matters as the members deem appropriate and necessary to evaluate  
12 the effects and impact of the arbitration award cap.

13 (2) Specifically, the task force shall study total compensation  
14 rates, including factors subject to the arbitration award cap and  
15 factors exempt from the arbitration award cap, of police and fire  
16 personnel throughout the state and make recommendations thereon.  
17 The task force also shall study the interest arbitration process and  
18 make recommendation concerning its continued use in connection  
19 with police and fire labor contracts disputes. The task force shall  
20 make findings as to the relative growth in total compensation cost  
21 attributable to factors subject to the arbitration award cap and to  
22 factors exempt from the arbitration award cap, for both collective  
23 bargaining agreements and arbitration awards.

24 f. The task force shall report its findings, along with any  
25 recommendations it may have, to the Governor and the Legislature  
26 annually, on or before April 1 of each year. The task force's final  
27 report due on or before April 1, 2014 shall include, in addition to  
28 any other findings and recommendations, a specific  
29 recommendation for any amendments to the arbitration award  
30 cap. Upon the filing of its final report on or before April 1, 2014,  
31 the task force shall expire.

32

33 4. This act shall take effect immediately, and shall apply to all  
34 collective negotiations between a public employer and the exclusive  
35 representative of a public police department or public fire  
36 department that relate to a negotiated agreement expiring on that  
37 effective date or any date thereafter until the first day of the 40th  
38 month, whereupon its provisions shall become inoperative for all  
39 parties except those whose collective negotiations agreements  
40 expired prior to the first day of the 40th month but for whom a final  
41 settlement has not been reached; provided, however, when final  
42 settlement between the parties is reached in all such negotiations,  
43 the provisions of this amendatory and supplementary act shall  
44 expire. Any party that entered into a contract that expires on the  
45 effective date of this act or any date thereafter until the first day of  
46 the 40th month, and where the terms of that contract otherwise meet  
47 the criteria of this act, shall not be subject to this act when  
48 negotiating a future contract.

STATEMENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48

This bill streamlines the procedure for resolving contractual impasses between public employers and their police and fire departments and imposes a 2 percent cap on arbitration awards under certain circumstances.

The bill streamlines the process by mandating that the parties at impasse go directly to conventional arbitration to resolve their contract dispute. Currently the parties are afforded an opportunity to mutually agree upon a variety of terminal procedures to resolve their dispute. Among the procedures the parties may now utilize are last offer, factfinding, and conventional arbitration.

The bill also establishes a 2 percent cap on arbitration awards. Under provisions of the bill, an arbitrator’s award on disputed base salary is subject to a 2 percent cap, calculated on an annual basis over the term of the collective negotiation agreement governed by the award. The aggregate monetary value of the award, however, does not have to be distributed in equal annual percentages. Consequently, the monetary value of an award may exceed the 2 percent in a contract year, but the monetary value of the award allocated in the other contract years must be adjusted so that the aggregate monetary value of the award over the term of the agreement does not exceed the maximum monetary award permitted under the 2 percent cap.

The bill also changes the procedure for selecting an arbitrator. Currently, if the parties are unable to mutually agree upon the selection of an arbitrator, the Public Employment Relations Commission (PERC) selects the arbitrator by lot. Under this bill, PERC will randomly select the arbitrator. The decision of PERC is final and is not subject to review or appeal.

However, the bill provides that if the parties agree to a method of appointment that differs from the formal procedure set forth in the bill, the terms of that agreement are to be followed.

An arbitrator’s award on economic issues not included in base salary is not subject to a cap. Similarly, agreements arrived at through independent negotiation between the parties, and agreements reached with the assistance of a mediator or factfinder are not subject to the contractual cap.

Pension costs as well as health and medical insurance costs are excluded from the contract cap established in the bill. This provision mirrors the exclusion afforded local governments when calculating the “adjusted tax levy” used to calculate the mandatory 2 percent cap governing their expenditures under P.L.2010, c.85.

The bill specifies that an arbitrator who renders an award may not be assigned responsibility for hearing an appeal of that award.

The bill revises and clarifies certain arbitration timelines, processes, and procedures; and provides new statutory language concerning the qualifications, duties, and responsibilities of

1 arbitrators, specifically one that would require candidates for initial  
2 appointment to have relevant knowledge of local government  
3 operations and budgeting.

4 In addition, the bill allows either party to petition PERC, alleging  
5 that the other is not negotiating in good faith. As part of its finding,  
6 the commission is authorized to assess the non-prevailing party for  
7 all the legal and administrative costs associated with the filing and  
8 resolution of the petition.

9 Further, the bill requires arbitrators to provide a written report  
10 along with each award decision, certifying that the arbitrator took  
11 into consideration the statutory limitations imposed on the local cap  
12 levy. The bill requires the arbitration appeal panel to submit a  
13 similar written report along with their final determination of an  
14 appeal.

15 The bill also establishes an eight member task force to study the  
16 effect and impact of the arbitration changes made under this bill.  
17 Specifically, the task force is to focus on local property taxes;  
18 overall municipal services; municipal public safety, particularly  
19 with regard to crime rates and response times to emergency  
20 situations; hiring and retention of police and fire; and personnel  
21 changes in the professional profile of police and fire departments,  
22 specifically with regard to age, experience, and staffing levels.

23 Finally, the provisions of the bill are to sunset in 39 months. All  
24 police and fire collective negotiation agreements that expire during  
25 that period are subject to the bill's provisions. The provisions of  
26 the bill continue to apply in arbitration cases that began during the  
27 three year period, but where the arbitrator's award is not rendered  
28 until after the sunset date. Parties that enter into contracts that  
29 expire during the sunset period, but otherwise meet the criteria  
30 enumerated in the bill, are not subject to the provisions of the bill  
31 when negotiating future contracts.