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INTEREST ARBITRATION LAW: THE NEW ORDER A Summary of A-3393 (P.L. 2010, Chapter 105)

On December 21, 2010, the Governor signed Chapter 105 into law. It radically alters the interest arbitration process, in both its substance and its procedures. With respect to substance, the key feature of this new law imposes a 2% cap on arbitration awards. Procedurally, it mandates very severe time limits by requiring the entire arbitration process to be completed within 45 days of the arbitrator's appointment and imposes harsh restrictions on fees which arbitrators may charge. The law was hastily drafted and is vague and unclear in many of its provisions. Following is a summary of the key features of Chapter 105 as compared to the law (referred to below as the "old law") in effect prior to January 1, 2011.

I. Effective Date

- Takes effect January 1, 2011 for all agreements;
- Section 2, which concerns the 2% cap (see Section X below), applies only to agreements which expire on or after January 1, 2011 up to April 1, 2014;
- If your contract expires between January 1, 2011 and April 1, 2014, and you have not reached an agreement before April 1, 2014, Section 2 concerning the 2% cap will still apply;
- If a local PBA enters into a contract that expires between January 1, 2011 and April 1, 2014, and meets the criteria in Section 2 concerning the 2% cap, that PBA is no longer subject to provisions of Section 2 in negotiating a future contract.

II. Chapter 105, Section 4 (excerpt)

“This act shall take effect January 1, 2011; provided however, section 2 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 or any date thereafter until April 1, 2014, whereupon the provisions of section 2 shall become inoperative for all parties except those whose collective negotiations agreements expire prior to April 1, 2014 but for whom a final settlement has not been reached.”

Examples: How Does the Effective Date of the New Law Apply?¹

- Q. Contract expired 12/31/2009
IA Petition filed in June 2010
Award Pending
- A. 2% cap on base salary does not apply.
(Contract began and ended before new law effective date).
All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection do not apply.
(IA petition filed before new law effective date).
- Q. Contract expired 12/31/2009
Parties engaged in negotiations, mediation
IA Petition filed 1/5/2011
- A. 2% cap on base salary does not apply.
(Contract began and ended before new law effective date).
All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection apply.
(IA petition filed after new law effective date).
- Q. Contract expired 12/31/2010
IA Petition filed 1/10/2011
- A. 2% cap on base salary does not apply.
(Contract began and ended before new law effective date).
All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection apply.
(IA petition filed after new law effective date).

¹ These examples are taken directly from the PERC FAQs dated February 4, 2011 and published on PERC's website: www.state.nj.us/perc

Q. Contract expires 6/30/2011
IA Petition filed 7/1/2011

A. 2% cap on base salary applies.
(Contract began before and ended before new law effective date).
All other provisions in the new law including but not limited to new time
lines, fees, Arbitrator selection apply.
(IA petition filed after new law effective date).

III. Negotiations Prior to Interest Arbitration

Provisions Under the “Old” Law:

- Negotiations shall begin at least 120 days prior to the expiration of the contract and the parties must meet at least 3 times during that 120-day period;
- The first meeting must take place no later than the 90th day prior to the expiration of the contract (or basically in September if the contract expires on December 31st);
- The parties may agree to extend the period of time for the second and third meeting;
- A violation of this procedure is an unfair labor practice.

Provisions Under Chapter 105:

- The same procedure exists as existed under the “old” law;
- If a party fails to negotiate in good faith, the aggrieved party may file an unfair practice charge;
- If the charge is sustained, the Commission must order the charged party to pay all legal and administrative costs associated with the filing and resolution of the charge;
- If the charge is dismissed, the Commission must order that the charging party be assessed for all legal and administrative costs associated with the filing of the charge;
- The filing of a charge does not delay the interest arbitration process.

IV. Selection of Arbitrators

Provisions Under the “Old” Law:

- The parties may agree upon the designation from the special panel of arbitrators;
- If the parties are unable to agree, PERC will select an arbitrator by lot;
- In almost all cases under the “old” law, the parties were able to agree upon the designation of an arbitrator. There were very few cases in which PERC had to designate an arbitrator by lot.

Provisions Under Chapter 105:

- The parties no longer have the ability to mutually agree upon the designation of an arbitrator;
- The Commission must randomly select an arbitrator from its special panel of arbitrators on the first business day following receipt of an interest arbitration petition;
- The Commission’s designation of the arbitrator is final and is not subject to review or appeal.

V. Time to Complete Arbitration

Provisions Under the “Old” Law:

- The decision of an arbitrator must be rendered within 120 days of the Commission’s assignment of that arbitrator;
- The arbitrator may petition the Commission for an extension of not more than 60 days;
- The parties may agree to an extension;
- The parties must notify the arbitrator and PERC of any agreement to an extension in writing and the notice shall specify the date on which the extension shall expire.

Provisions Under Chapter 105:

- The decision of the arbitrator must be issued within 45 days of the Commission’s assignment of the arbitrator;

- No extensions are permitted;
- An arbitrator who fails to issue a decision within the 45 days, will be fined \$1,000 for each day the award is late.

VI. Statutory Criteria

Provisions Under the “Old” Law:

- Arbitrator is required to issue a decision based upon a reasonable determination of the issues giving due weight to the 9 statutory factors that he or she judges relevant for the resolution of the specific dispute. The arbitrator must indicate which factors are deemed relevant and explain why others are not relevant and provide an analysis of the evidence on each relevant factor;
- The 9 statutory factors are listed at page 51 and 52 of the materials;
- Under criteria 6, which concerns the financial impact on the governing unit, residents and taxpayers, the parties were not required to submit evidence but were permitted to do so.

VII. Statutory Criteria

Provisions Under Chapter 105:

- In addition to the requirements under the “old” law, the parties are now required to introduce evidence regarding criteria number 6 which concerns the financial impact on the governing unit, the residents, taxpayers and the property tax levy law;
- The arbitrator must analyze and consider the factors set forth in 6th criteria. It is no longer discretionary.

VIII. Salary Cap

Provisions Under the “Old” Law:

- There was no cap limiting the amount of an award issued by the arbitrator.

IX. Chapter 105, Section 2(b) (excerpt)

“The arbitrator shall not render any award . . . 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 negotiations 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 . . .”

X. Salary Cap

Provisions Under Chapter 105:

- The salary cap only applies to arbitrators’ awards; it does not prevent the parties from agreeing upon the terms of a contract which exceed the 2% cap;
- Under Section 2(b) an arbitrator may not issue any award which, on an annual basis, increases base salary items by more than 2% of the aggregate amount expended by the public employer on base salary items for members of the bargaining unit in the 12 months immediately preceding the expiration of the contract;
- An arbitrator may award unequal percentages as long as the award averages 2.0% per year over the term of the agreement;
- An arbitrator may not award a new economic item which was not included in the prior contract;
- Base salary items are defined to mean salary provided pursuant to a salary guide or table, salary increments, longevity or any other item agreed upon by the parties that is included in base salaries.
- Base salary items do not include non-salary economic issues, pension and health and medical insurance costs;
- Non-salary economic issues mean any economic issue that is not included in the definition of base salary.

XI. Arbitrators' Fees

Provisions Under the "Old" Law:

- No cap on the arbitrator's daily fee or total fees for the case;
- The arbitrator's cancellation fee differs from arbitrator to arbitrator although it is the arbitrator's *per diem* fee;
- The parties share the cancellation fee if it is a joint request to adjourn or cancel the hearing within the arbitrator's cancellation period. If it is not a joint request, the party who adjourns or cancels the arbitration within the time period is responsible for the cancellation fee.

Provisions Under Chapter 105:

- An arbitrator cannot charge more than \$1,000 per day and services for the arbitrator for the whole case cannot exceed \$7,500;
- If the parties cancel an arbitration proceeding without good cause, the arbitrator may impose a fee of not more than \$500 ("good cause" is not defined);
- The parties share equally in paying the cancellation fee if it is a joint request; otherwise, the party causing the cancellation shall be responsible for payment of the fee.

XII. Terminal Procedure

Provisions Under the "Old" Law:

- The parties had the option of selecting 6 different terminal procedures;
- If the parties were unable to agree upon one of the 6 procedures, the dispute would be decided by conventional arbitration;
- Almost all cases under the "old" law were decided by conventional arbitration since the Reform Act was passed in 1996.

Provisions Under Chapter 105:

- The parties no longer have the ability to agree upon a terminal procedure;
- All interest arbitration disputes are decided via conventional arbitration.

XIII. Appeal Procedure

Provisions Under the “Old” Law:

- An appeal of an arbitrator’s opinion and award must be filed within 14 days of receiving the award;
- There is no time limit for PERC to issue a decision on an appeal.

Provisions Under Chapter 105:

- The appeal of an arbitrator’s award must be filed within 7 days of receiving the award;
- A respondent then has 7 days to file a cross-appeal or responding brief;
- PERC’s decision must be issued no later than 30 days after the filing of an appeal;
- PERC decisions must be accompanied by a written decision explaining how each of the statutory criteria played into the determination of the final award and, as part of the decision, PERC must certify that it took the local levy cap into account in deciding the appeal.

XIV. Sunset Provision

- Section 2, concerning the 2% salary cap, sunsets, or terminates, on April 1, 2014;
- Section 3 of Chapter 105 establishes a task force called the Police & Fire Public Interest Arbitration Impact Task Force. The purpose of this Task Force is to study the effectiveness and impact of Chapter 105 in a variety of different areas and to report its findings on or before April 1st of each year. In its final report due on or before April 1, 2014, the Task Force must include a specific recommendation for any amendment to the arbitration cap;
- The sunset provision does not affect any other provisions of Chapter 105. All other provisions will continue in effect beyond April 1, 2014 unless amended by the Legislature.