

34: 13A-14 et seq.

LEGISLATIVE HISTORY CHECKLIST

R.I.S.A. 34:13A-14 et seq. (Compulsory Arbitration--Police & Firemen)

LAWS OF 1977 CHAPTER 85

Bill No. S482

Sponsor(s) Maressa & Others

Date Introduced Pre-filed

Committee: Assembly Labor, Industry & Professions

Senate County & Municipal Gov't.

Amended during passage Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly February 17, 1977

Senate November 8, 1976

Date of approval May 10, 1977

Following statements are attached if available:

Sponsor statement Yes xto

Committee Statement: Assembly Yes xto

Senate Yes xto

Fiscal Note Yes No

Veto Message Yes No

Message on signing Yes xto

Following were printed:

Reports Yes xto

Hearings Yes xto

For background see:

974.90 N.J. Public Employer-Employee Relations Study Commission. E54 1976 Report to the Governor (pursuant to P.L. 1974, c.124) Trenton, 1976

974.90 N.J. Public Employer-Employee Relations Study Commission. E54 1975 Public hearing held 3/5/75 v.1 - see especially pp. 67-81 9/1/78 v.2 - see especially pp. 9A-20A, 67A-78A

DO NOT WRITE IN THESE SPACES

CHAPTER 85 AMENDED BY S. 1107
APPROVED 5-10-77

[FIFTH OFFICIAL COPY REPRINT]

SENATE, No. 482

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Senators MARESSA, McGAHN, ORECHIO, HORN, FAY,
AMMOND, RUSSO, LIPMAN, MUSTO, ZANE, HIRKALA,
FELDMAN and IMPERIALE

AN ACT providing for compulsory arbitration of labor disputes in public fire and police departments; prescribing a procedure therefor, and the enforcement thereof, and supplementing the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100, C. 34:13A-1 et seq.), as said short title was amended by P. L. 1968, c. 303.

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

1 1. It is the public policy of this State that in public fire and
2 police departments, where *****[the right of employees to strike
3 is by law prohibited]***** public employees do not enjoy the
4 right to strike*****, it is requisite to the high morale of such em-
5 ployees and the efficient operation of such departments to afford an
6 alternate, expeditious, effective and binding procedure for the reso-
7 lution of disputes, and to that end the provisions of this act, pro-
8 viding for compulsory arbitration, shall be liberally construed.

1 *****[***2. "Package final offer arbitration" means that form of
2 arbitration that permits the arbitrator to fashion a package award
3 only on the basis of a choice by him between the entire last offers
4 of the parties to the impasse.***]*****

5 ***[2.]*** *****2.*** "Public fire department" means any
6 department of a municipality, county, fire district or the State or
7 any agency thereof having employees engaged in firefighting
7A *****provided that such firefighting employees are included
7B in a negotiating unit exclusively comprised of firefighting
7C employees*****.

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

8 “Public police department” means any police department or
 9 organization of a municipality, county or park, or the State, or
 10 any agency thereof having employees engaged in performing police
 11 services *****including but not necessarily limited to units com-*
 12 *posed of State troopers, police officers, detectives and investigators*
 13 *of counties, county parks and park commissions, grades of sheriff’s*
 14 *officers and investigators; State motor vehicle officers, inspectors*
 15 *and investigators of the Alcoholic Beverage Commission, conserva-*
 16 *tion officers in Fish, Game and Shell Fisheries, rangers in parks,*
 17 *marine patrolmen; correction officers, keepers, cottage officers,*
 18 *interstate escort officers, juvenile officers in the Department of*
 19 *Corrections and patrolmen of the Human Services and Corrections*
 20 *Departments; patrolmen of Capitol police and patrolmen of the*
 21 *Palisades Interstate Park Commission****.*

1 *****[3. ****[***a.***]**** When a public fire or police depart-
 2 ment employees’ dispute has not been resolved to the agreement of
 3 both parties ***[within *[60]* *30* days of the submission of the
 4 dispute to *[mediation and]* factfinding]***, *****within 30 days*
 5 *of the ****[submission of the dispute to]***** receipt of*
 6 *a***** factfinding***** report******, pursuant to the rules and
 7 regulations of the New Jersey Public Employment Relations Com-
 8 mission, or within such further additional periods to which the
 9 parties may agree, either party may initiate binding arbitration
 10 proceedings **on any negotiable issue, as prescribed by law or the*
 11 *determination of the Public Employment Relations Commission,**
 11A *by prompt request therefor, in writing, to the other, a copy of which*
 11B *shall be sent to the Public Employment Relations Commis-*
 11C *sion.]******

12 *****3. a. *Whenever negotiations between a public fire or police*
 13 *department and an exclusive representative concerning the terms*
 14 *and conditions of employment shall reach an impasse, the com-*
 15 *mission, through the Division of Public Employment Relations*
 16 *shall, upon the request of either party, or upon its own motion*
 17 *take such steps including the assignment of a mediator as it may*
 18 *deem expedient to effect a voluntary resolution of the impasse.*
 19 *The cost of mediation shall be borne by the commission.*

20 b. *In the event of a failure to resolve the impasse by mediation,*
 21 *the Division of Public Employment Relations, at the request of*
 22 *either party, shall invoke factfinding with recommendation for set-*
 23 *tlement of all issues in dispute unless the parties reach a voluntary*
 24 *settlement prior to the issuance of the factfinders report and recom-*
 25 *mended terms of settlement. Factfindings shall be limited to those*
 26 *issues that are within the required scope of negotiations unless the*

27 parties to the factfinding agree to factfinding on permissive
28 subjects of negotiation. The cost of factfinding shall be borne by
29 the commission. In the event of a continuing failure to resolve an
30 impasse by means of the procedure set forth above, and notwith-
31 standing the fact that such procedures have not been exhausted,
32 the parties shall notify the commission 60 days prior to the required
33 budget submission date of the public employer as to whether or
34 not they have agreed upon a terminal procedure for resolving the
35 issues in dispute. Any terminal procedure mutually agreed upon
36 by the parties shall be reduced to writing, provide for finality in
37 resolving the issues in dispute, and shall be submitted to the com-
38 mission for approval.

39 c. Terminal procedures that are approvable include, but shall
40 not be limited to the following:

41 (1) Conventional arbitration of all unsettled items.

42 (2) Arbitration under which the award by an arbitrator or panel
43 of arbitrators is confined to a choice between (a) the last offer of
44 the employer and (b) the last offer of the employees' representa-
45 tive, as a single package.

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

50 (4) If there is a factfinder's report with recommendations on the
51 issues in dispute, the parties may agree to arbitration under which
52 the award would be confined to a choice among three positions:
53 (a) the last offer of the employer as a single package, (b) the last
54 offer of the employees' representative as a single package, or
55 (c) the factfinder's recommendations as a single package.

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

62 (6) Arbitration under which the award on the economic issues in
63 dispute is confined to a choice between (a) the last offer of the
64 employer on the economic issues as a single package and (b) the
65 employee representative's last offer on the economic issues as a
66 single package; and, on any noneconomic issues in dispute, the
67 award is confined to a choice between (a) the last offer of the
68 employer on each issue in dispute and (b) the employee repre-
69 sentative's last offer on that issue.

70 *d. The following procedure shall be utilized if parties fail to*
71 *agree on a terminal procedure for the settlement of an impasse*
72 *dispute:*

73 *(1) In the event of a failure of the parties to agree upon an*
74 *acceptable terminal procedure 50 days prior to the public*
75 *employer's budget-submission date, no later than the aforesaid*
76 *time the parties shall separately so notify the commission in*
77 *writing, indicating all issues in dispute and the reasons for their*
78 *inability to agree on the procedure. The substance of a written*
79 *notification shall not provide the basis for any delay in effectuating*
80 *the provisions of this subsection.*

81 *(2) Upon receipt of such notification from either party or on the*
82 *commission's own motion, the procedure to provide finality for the*
83 *resolution of issues in dispute shall be binding arbitration under*
84 *which the award on the economic issues in dispute shall be confined*
85 *to a choice between: (a) the last offer of the employer on such issues*
86 *as a single package and (b) the employee representative's last*
87 *offer, on such issues, as a single package; and, on the noneconomic*
88 *issues in dispute, the award shall be confined to a choice between:*
89 *(a) the last offer of the employer on each issue in dispute and*
90 *(b) the employee representative's last offer on such issue.*

91 *e. The commission shall take measures to assure the selection of*
92 *an arbitrator or arbitrators from its special panel of arbitrators.*
93 *Appointment of an arbitrator to the commission's special panel*
94 *shall be for a 3-year term, with reappointment contingent upon a*
95 *screening process similar to that used for determining initial*
96 *appointments.*

97 *f. (1) Prior to the arbitration proceedings, the parties shall*
98 *submit to the arbitrator or tripartite panel of arbitrators, pursuant*
99 *to rules and procedures established by the commission, their final*
100 *offers in two separate parts: (a) a single package containing all*
101 *the economic issues in dispute and (b) the individual issues in*
102 *dispute not included in the economic package, each set forth sepa-*
103 *rately by issue.*

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

110 *(3) Throughout formal arbitration proceedings the chosen arbi-*
111 *trator or panel of arbitrators may mediate or assist the parties in*
112 *reaching a mutually agreeable settlement.*

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

117 (5) *The decision of an arbitrator or panel of arbitrators shall*
118 *include an opinion and an award, which shall be final and binding*
119 *upon the parties and shall be irreversible, except where there is*
120 *submitted to the court extrinsic evidence upon which the court may*
121 *vacate, modify or correct such award pursuant to N. J. S. 2A:24-7*
122 *et seq. or for failure to apply the factors specified in subsection g.*
123 *below.*

124 (6) *The parties shall bear the costs of arbitration subject to a*
125 *fee schedule approved by the commission.*

126 g. *The arbitrator or panel of arbitrators shall decide the dispute*
127 *based on a reasonable determination of the issues, giving due*
128 *weight to those factors listed below that are judged relevant for the*
129 *resolution of the specific dispute:*

130 (1) *The interests and welfare of the public.*

131 (2) *Comparison of the wages, salaries, hours, and conditions of*
132 *employment of the employees involved in the arbitration proceed-*
133 *ings with the wages, hours, and conditions of employment of other*
134 *employees performing the same or similar services and with other*
135 *employees generally:*

136 (a) *In public employment in the same or similar comparable*
137 *jurisdictions.*

138 (b) *In comparable private employment.*

139 (c) *In public and private employment in general.*

140 (3) *The overall compensation presently received by the em-*
141 *ployees, inclusive of direct wages, salary, vacations, holidays,*
142 *excused leaves, insurance and pensions, medical and hospitalization*
143 *benefits, and all other economic benefits received.*

144 (4) *Stipulations of the parties.*

145 (5) *The lawful authority of the employer.*

146 (6) *The financial impact on the governing unit, its residents and*
147 *taxpayers.*

148 (7) *The cost of living.*

149 (8) *The continuity and stability of employment including senior-*
150 *ity rights and such other factors not confined to the foregoing which*
151 *are ordinarily or traditionally considered in the determination of*
152 *wages, hours, and conditions of employment through collective*
153 *negotiations and collective bargaining between the parties in the*
154 *public service and in private employment.*

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

163 *****[***b. In the event of a failure to resolve the impasse by*
 164 *means of the procedures set forth above 60 days prior to the*
 165 *required budget submission date of the public employer, and*
 166 *notwithstanding the fact that such procedures have not been*
 167 *exhausted, the Public Employment Relations Commission, through*
 168 *the Division of Public Employment Relations, shall submit the*
 169 *dispute to binding package final offer arbitration.*

170 *c. If there is a factfinder's report with recommendations on the*
 171 *issues in dispute, the parties may agree to arbitration under which*
 172 *the award would be confined to a choice among three positions:*
 173 *(1) the entire last offer of the employer as a single package, (2) the*
 174 *entire last offer of the employees' representative as a single*
 175 *package, or (3) the factfinder's recommendations as a single*
 176 *package.*

177 *d. Prior to the arbitration proceedings, the parties shall submit*
 178 *to the arbitrator, pursuant to rules and procedures established by*
 179 *the Public Employment Relations Commission, their final offers in*
 180 *a single package containing all the issues in dispute.***]*****

1 ******[4. Within 5 days after receiving the request for binding*
 2 *arbitration, the Public Employment Relations Commission shall*
 3 ******commence an investigation to determine if arbitration is not*
 4 *being resorted to prematurely, that the parties have been unable to*
 5 *reach agreement through negotiation and conciliation, and that an*
 6 *impasse does in fact exist. Upon such a determination, the commis-*
 7 *sion shall***** submit a panel of five arbitrators to the parties to*
 8 *the dispute and within 5 days after receiving said panel, the parties*
 9 *shall provide the Public Employment Relations Commission with*
 10 *the names of three of the arbitrators appearing on the panel in*
 11 *order of preference. If the parties fail to agree on an arbitrator*
 12 *by the above method, the Public Employment Relations Commis-*
 13 *sion shall designate an arbitrator to preside at a hearing.*

1 *5. Upon his appointment, the arbitrator shall call a hearing to*
 2 *begin within *****[10]***** *****30***** days and give reasonable*
 3 *notice to the parties of the time and place of the hearing. The*
 4 *arbitrator shall preside over the hearing and shall take testimony.*

5 Any oral or documentary evidence and other data determined
 6 relevant by the arbitrator may be received as evidence. The pro-
 7 ceedings shall be informal. The expenses of the proceedings, in-
 8 cluding a fee to the arbitrator established in advance by the Public
 9 Employment Relations Commission shall be borne *~~in three equal~~
 10 shares by each of~~]~~* *equally by* the parties to the dispute
 11 ~~****[and the State]****~~. The hearing conducted by the arbitra-
 12 tor may be adjourned from time to time but unless otherwise agreed
 13 to by the parties, shall be concluded within ~~****[10]****~~
 14 ~~****20****~~ days of the time of its commencement.]~~****~~

1 ~~****[6.]****~~ ~~****4.****~~ The arbitrator may administer
 2 oaths, require the attendance of witnesses, and the production
 3 of such books, papers, contracts, agreements and documents as
 4 he may deem material to a just determination of the issues in
 5 dispute, and for such purpose may issue subpoenas. If any
 6 person refuses to obey a subpoena, or refuses to be sworn or
 7 to testify, or if any witness, party or attorney is guilty of any
 8 contempt while in attendance at any hearing, the arbitrator may,
 9 or the Attorney General if requested shall, invoke the aid of
 9A the Superior Court within the county in which the hearing is
 10 being held, which court shall issue an appropriate order. Any
 11 failure to obey the order may be punished by the court as contempt.

1 ~~****[7.]****~~ The arbitrator, within 30 days after the conclusion of
 2 the hearing, or such further additional periods to which the parties
 3 may agree, shall make written findings of fact and promulgate
 4 a written opinion and order upon the issues presented to him
 5 and upon the record made before him, and shall mail or otherwise
 6 deliver a true copy thereof to the governing body of the public
 7 employer and to the attorney or other designated representative of
 8 the employees of the public employer. The findings, opinions and
 9 order shall be just and reasonable and based upon the factors
 10 prescribed in sections 8 and 9 of this supplementary act.]~~****~~

1 ~~****[8.]****~~ ~~****5.****~~ ~~****[Where there is no~~
 2 agreement between the parties or where there is an agreement but
 3 the parties have begun negotiations or discussions looking to a
 4 new agreement or amendment of the existing agreement, and wage
 5 rates or other conditions of employment under a proposed new or
 6 amended agreement are in dispute, the arbitrator shall base his
 7 findings, opinions and order upon the following factors, as
 7A applicable:

- 8 a. The lawful authority of the *public* employer.
- 9 b. Stipulations of the parties.
- 10 c. The interests and welfare of the public.

11 d. Comparison of the wages, hours and conditions of employ-
 12 ment of the employees involved in the arbitration proceeding with
 13 the wages, hours and conditions of employment of other employees
 14 performing similar services and with other employees generally:

15 (1) In public employment in comparable communities.

16 (2) In private employment in comparable communities.

17 e. The average consumer prices for goods and services, commonly
 18 known as the cost of living.

19 f. The overall compensation presently received by the employees,
 20 including direct wage compensation, vacations, holidays and other
 21 excused time, insurance and pensions, medical and hospitalization
 22 benefits, and all other benefits received.

23 g. Changes in any of the foregoing factors during pendency of
 24 the arbitration proceedings.

25 h. Such other factors, not confined to the foregoing, which are
 26 normally or traditionally taken into consideration in the deter-
 27 mination of wages, hours and conditions of employment through
 28 voluntary collective bargaining, mediation, fact-finding, arbitration
 29 or otherwise between the parties, in public **[or]* *and** private
 30 employment.

31 ***i. The arbitrator shall not issue any finding, opinion, or order*
 32 *which shall impose any fiscal obligation on any municipality, county,*
 33 *fire district, or the State, or any agency thereof, which shall cause,*
 34 *by itself or in conjunction with decisions of other arbitrators, any*
 35 *such governmental unit to exceed the limits of any law which im-*
 36 *poses spending or budgetary restrictions on any such governmental*
 37 *unit.**]******

38 ***** *[j.]***** The arbitrator shall not issue any finding,*
 39 *opinion or order regarding the issue of whether or not a public em-*
 40 *ployer shall remain as a participant in the New Jersey State Health*
 41 *Benefits Program or any governmental retirement system or pen-*
 42 *sion fund, or statutory retirement or pension plan; nor, in the case*
 43 *of a participating public employer, shall the arbitrator issue any*
 44 *finding, opinion or order regarding any aspect of the rights, duties,*
 45 *obligations in or associated with the New Jersey State Health*
 46 *Benefits Program or any governmental retirement system or pen-*
 47 *sion fund, or statutory retirement or pension plan.******

1 ***** *[9.]***** 6.***** The decision of the arbitrator*
 2 ******[shall be final and binding upon the parties and]***** may*
 3 *be enforced at the instance of either party *****[or of the*
 3A *arbitrator]***** in the Superior Court with venue laid in the*
 4 *county in which the dispute arose. The commencement of a new*
 5 *public employer fiscal year after the initiation of arbitration*

6 procedures under this act, but before the arbitration decision, or
 7 its enforcement, shall not be deemed to render a dispute moot, or
 8 to otherwise impair the jurisdiction or authority of the arbitrator
 9 or his decision. Increases in rates of compensation awarded by
 10 the arbitrator shall ***[**be effective only at the start of the fiscal year
 11 next commencing after the date of the arbitration award. If a new
 12 fiscal year has commenced since the initiation of mediation pro-
 13 cedures under this act, the foregoing limitation shall be inapplicable,
 14 and such awarded increases shall be retroactive to the commence-
 15 ment of such fiscal year any other law to the contrary notwith-
 16 standing**]*** *take effect on the date of implementation prescribed*
 17 *in the *******[contract*]******* *****award******. The parties, by
 18 stipulation, may at any time amend or modify an award of
 19 arbitration.

1 *******[**10. The arbitrator shall have authority to accept evidence
 2 introduced by either party in an effort to determine whether the
 3 dispute could have been resolved had it not been for the failure
 4 of either party to conduct collective negotiations in good faith.
 5 Should the arbitrator determine that either of the parties had
 6 prevented an amicable settlement of the dispute by failing to
 7 negotiate in good faith, the arbitrator shall penalize said party
 8 in the sum of \$100.00 per day, which penalty shall be calculated
 9 commencing from the date the request for mediation was filed
 10 with the Public Employment Relations Commission up to and
 11 including the date the arbitrator renders his opinion and award.
 12 Said penalty shall be paid within 10 days after receiving a copy
 13 of the arbitrator's award and the sums so collected shall be
 14 forwarded to the other party to the dispute to be used as desired
 15 by said party.**]*******

1 *******[**11.**]******* *******[*******10.***** Where an employee orga-
 2 nization recognized or certified pursuant to the act to which this act
 3 is a supplement, willfully violates an order issued by the Superior
 4 Court pursuant to this supplementary act, or willfully encourages
 5 or offers resistance to such order, whether by a strike or otherwise,
 6 the punishment for each day that such violation persists, may be
 7 a fine fixed by the court in an amount not to exceed \$250.00 per day.
 8 Where ***[an]*** *a public** employer, as that term is defined by the
 9 act to which this act is a supplement, willfully violates an order
 10 issued by the Superior Court or willfully encourages or offers
 11 resistance to such order, the punishment for each day that such
 12 violation persists may be a fine, fixed by the court, in an amount
 13 not to exceed \$250.00 per day to be assessed against the *public**
 14 employer.**]*******

1 *****[12.]***** *****[*****11.*****]***** *****7.*****
 2 Orders of the arbitrator shall be reviewable by the Superior Court
 3 in the county in which the dispute arose *****[but only for
 4 reasons that the arbitrator was without or exceeded his jurisdiction,
 5 ***[or]*** *****or***** the order was procured by fraud, collusion
 6 or other similar and unlawful means]***** *****[***, or for
 7 failure to apply the factors specified in section 8 above***]*****.
 8 The pendency of such proceeding for review shall not of itself
 9 stay the order of the arbitrator.

1 *****[13.]***** *****[*****12.*****]***** *****8.*****
 2 During the pendency of proceedings before the arbitrator, existing
 3 wages, hours and other conditions of employment shall not be
 4 changed by action of either party without the consent of the other,
 5 any change in or of the public employer or employee representative
 6 notwithstanding; but a party may so consent without prejudice to
 7 his rights or position under this supplementary act.

1 *****[14.]***** *****[*****13.*****]***** *****9.*****
 2 This act shall take effect immediately *****and shall apply to all
 3 negotiations for new agreements, renewals of existing agree-
 4 ments, and reopener provisions of existing agreements that are or
 5 shall become effective during the first full fiscal year of the public
 6 employer after the effective date of this act*****.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO
SENATE, No. 482

—◆—
STATE OF NEW JERSEY
—◆—

DATED: JUNE 24, 1976

Senate Bill No. 482 provides for the compulsory arbitration of labor disputes involving the employees of any "public fire department" or "public police department" of the State, county or park system, municipality, fire district, or any agency thereof. The objectives of this bill are set forth in the sponsor's statement and section 1 of Senate Bill No. 482.

When a labor dispute involving any of the aforesaid employees is not resolved to the satisfaction of the parties concerned within 60 days of the submission of the dispute to mediation and fact-finding pursuant to the New Jersey Employer-Employee Relations Act (P. L. 1941, c. 100; C. 34:13A-1 et seq.), as amended, or within such additional time as may be mutually agreed upon, either of the parties may request the Public Employment Relations Commission to resolve the controversy by means of binding arbitration (section 3). Within 5 days of the submission of such request, the commission shall submit to the parties a list of five arbitrators. If the parties fail to agree upon an arbitrator, the commission shall designate the arbitrator (section 4).

Within 10 days of his appointment, the arbitrator shall give reasonable notice to the parties of the time and place of the hearings over which the arbitrator shall preside and take testimony. The hearing shall be concluded within 10 days of its commencement, unless otherwise agreed to by the parties (section 5). Within 30 days of the conclusion of the hearing, or such additional time as may be mutually agreed upon, the arbitrator shall make written findings of fact and promulgate a written opinion and order upon the issues presented and record made at the hearing. Copies of the findings, written opinion and order of the arbitrator shall be mailed to the governing body of the employer and the attorney or other designated representative of the employees (section 7).

The costs of the hearing proceedings, including the arbitrator's fee which is set by the commission, shall be equally shared by the parties to the dispute and the State (section 5).

The findings, opinions and order of the arbitrator shall be just and reasonable and shall be based upon the several factors set forth in section 8 of the bill. The orders of the arbitrator shall be reviewable by the appropriate Superior Court only on the grounds that the arbitrator exceeded his jurisdiction or the order was procured by unlawful means, but such proceedings shall not stay the arbitrator's order.

The arbitrator may take sworn testimony and require the attendance of witnesses and the production of any materials the arbitrator deems relevant to the proceedings. The arbitrator is granted subpoena powers to compel the appearance of witness or the production of materials, and any such subpoena shall be enforceable in the Superior Court within the county in which the hearing is held (section 6).

The decision of the arbitrator shall be final and binding, and may be enforced, at the instance of either party or the arbitrator, in the Superior Court with venue laid in the county in which the dispute arose (section 9). Civil penalties may be assessed by the Superior Court against any employer or employee organization for the violation of any court order issued pursuant to Senate Bill 482 (section 11). The parties, "by stipulation, may at any time amend or modify an award of arbitration" (section 9).

The intervention of a new fiscal year after the initiation of arbitration proceedings shall not interfere with such proceedings (section 9).

Arbitrator awards shall be effective as of the start of the next fiscal year following the award, unless arbitration procedures were begun after the start of a new fiscal year, in which event the award shall be retroactive to the start of the fiscal year (section 9).

The arbitrator shall also hear evidence, and assess penalties on any of the parties upon a determination that a dispute remained unresolved because of the failure of either party to collectively bargain in good faith (section 10).

The conditions of employment shall not be unilaterally altered by any party during the pendency of arbitration proceedings, nor shall consenting to such changes prejudice a party's rights or position under Senate Bill No. 482 (section 13).

The Senate committee amendments are both of a technical and substantive nature. The technical amendments are directed toward greater internal consistency and compatibility between the provisions of this bill and those of the New Jersey Employer-Employee Relations Act. The substantive changes include:

(1) A statutory limitation on the authority of the arbitrator so that only those issues defined as negotiable by law or the Public Employment Relations Commission shall be subject to binding arbitration;

(2) Elimination of the requirement that the State assume part of the costs of arbitration; and

(3) A requirement that arbitrator's decision shall take effect on the implementation date specified in the contract.

SENATE, No. 482

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Senators MARESSA, McGAHN, ORECHIO, HORN, FAY,
AMMOND, RUSSO, LIPMAN, MUSTO, ZANE, HIRKALA and
FELDMAN

AN ACT providing for compulsory arbitration of labor disputes in public fire and police departments; prescribing a procedure therefor, and the enforcement thereof, and supplementing the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100, C. 34:13A-1 et seq.), as said short title was amended by P. L. 1968, c. 303.

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

1 1. It is the public policy of this State that in public fire and
2 police departments, where the right of employees to strike is by
3 law prohibited, it is requisite to the high morale of such employees
4 and the efficient operation of such departments to afford an alter-
5 nate, expeditious, effective and binding procedure for the resolution
6 of disputes, and to that end the provisions of this act, providing for
7 compulsory arbitration, shall be liberally construed.

1 2. "Public fire department" means any department of a municipi-
2 pality, county, fire district or the State or any agency thereof
3 having employees engaged in fire fighting.

4 "Public police department" means any police department or
5 organization of a municipality, county or park, or the State, or any
6 agency thereof having employees engaged in performing police
7 services.

1 3. When a public fire or police department employees' dispute
2 has not been resolved to the agreement of both parties within
3 60 days of the submission of the dispute to mediation and fact-
4 finding, pursuant to the rules and regulations of the New Jersey
5 Public Employment Relations Commission, or within such further
6 additional periods to which the parties may agree, either party

7 may initiate binding arbitration proceedings by prompt request
8 therefor, in writing, to the other, a copy of which shall be sent to
9 the Public Employment Relations Commission.

1 4. Within 5 days after receiving the request for binding arbitra-
2 tion, the Public Employment Relations Commission shall submit a
3 panel of five arbitrators to the parties to the dispute and within
4 5 days after receiving said panel, the parties shall provide the
5 Public Employment Relations Commission with the names of three
6 of the arbitrators appearing on the panel in order of preference.
7 If the parties fail to agree on an arbitrator by the above method,
8 the Public Employment Relations Commission shall designate an
9 arbitrator to preside at a hearing.

1 5. Upon his appointment, the arbitrator shall call a hearing to
2 begin within 10 days and give reasonable notice to the parties of
3 the time and place of the hearing. The arbitrator shall preside over
4 the hearing and shall take testimony. Any oral or documentary
5 evidence and other data determined relevant by the arbitrator may
6 be received as evidence. The proceedings shall be informal. The
7 expenses of the proceedings, including a fee to the arbitrator
8 established in advance by the Public Employment Relations Com-
9 mission shall be borne in three equal shares by each of the parties
10 to the dispute and the State. The hearing conducted by the arbi-
11 trator may be adjourned from time to time but unless otherwise
12 agreed to by the parties, shall be concluded within 10 days of the
13 time of its commencement.

1 6. The arbitrator may administer oaths, require the attendance
2 of witnesses, and the production of such books, papers, contracts,
3 agreements and documents as he may deem material to a just
4 determination of the issues in dispute, and for such purpose may
5 issue subpoenas. If any person refuses to obey a subpoena, or refuses
6 to be sworn or to testify, or if any witness, party or attorney is
7 guilty of any contempt while in attendance at any hearing, the
8 arbitrator may, or the Attorney General if requested shall, invoke
9 the aid of the Superior Court within the county in which the hearing
10 is being held, which court shall issue an appropriate order. Any
11 failure to obey the order may be punished by the court as contempt.

1 7. The arbitrator, within 30 days after the conclusion of the
2 hearing, or such further additional periods to which the parties
3 may agree, shall make written findings of fact and promulgate
4 a written opinion and order upon the issues presented to him
5 and upon the record made before him, and shall mail or otherwise
6 deliver a true copy thereof to the governing body of the public

7 employer and to the attorney or other designated representative of
8 the employees of the public employer. The findings, opinions and
9 order shall be just and reasonable and based upon the factors
10 prescribed in sections 8 and 9 of this supplementary act.

1 8. Where there is no agreement between the parties or where
2 there is an agreement but the parties have begun negotiations or
3 discussions looking to a new agreement or amendment of the
4 existing agreement, and wage rates or other conditions of employ-
5 ment under a proposed new or amended agreement are in dispute,
6 the arbitrator shall base his findings, opinions and order upon
7 the following factors, as applicable:

- 8 a. The lawful authority of the employer.
- 9 b. Stipulations of the parties.
- 10 c. The interests and welfare of the public.
- 11 d. Comparison of the wages, hours and conditions of employ-
12 ment of the employees involved in the arbitration proceeding with
13 the wages, hours and conditions of employment of other employees
14 performing similar services and with other employees generally:
 - 15 (1) In public employment in comparable communities.
 - 16 (2) In private employment in comparable communities.
- 17 e. The average consumer prices for goods and services, commonly
18 known as the cost of living.
- 19 f. The overall compensation presently received by the employees,
20 including direct wage compensation, vacations, holidays and other
21 excused time, insurance and pensions, medical and hospitalization
22 benefits, and all other benefits received.
- 23 g. Changes in any of the foregoing factors during pendency of
24 the arbitration proceedings.
- 25 h. Such other factors, not confined to the foregoing, which are
26 normally or traditionally taken into consideration in the deter-
27 mination of wages, hours and conditions of employment through
28 voluntary collective bargaining, mediation, fact-finding, arbitration
29 or otherwise between the parties, in public or private employment.

1 9. The decision of the arbitrator shall be final and binding upon
2 the parties and may be enforced at the instance of either party
3 or of the arbitrator in the Superior Court with venue laid in the
4 county in which the dispute arose. The commencement of a new
5 public employer fiscal year after the initiation of arbitration
6 procedures under this act, but before the arbitration decision, or
7 its enforcement, shall not be deemed to render a dispute moot, or
8 to otherwise impair the jurisdiction or authority of the arbitrator
9 or his decision. Increases in rates of compensation awarded by

10 the arbitrator shall be effective only at the start of the fiscal year
11 next commencing after the date of the arbitration award. If a new
12 fiscal year has commenced since the initiation of mediation pro-
13 cedures under this act, the foregoing limitation shall be inapplicable,
14 and such awarded increases shall be retroactive to the commence-
15 ment of such fiscal year any other law to the contrary notwith-
16 standing. The parties, by stipulation, may at any time amend or
17 modify an award of arbitration.

1 10. The arbitrator shall have authority to accept evidence
2 introduced by either party in an effort to determine whether the
3 dispute could have been resolved had it not been for the failure
4 of either party to conduct collective negotiations in good faith.
5 Should the arbitrator determine that either of the parties had
6 prevented an amicable settlement of the dispute by failing to
7 negotiate in good faith, the arbitrator shall penalize said party
8 in the sum of \$100.00 per day, which penalty shall be calculated
9 commencing from the date the request for mediation was filed
10 with the Public Employment Relations Commission up to and
11 including the date the arbitrator renders his opinion and award.
12 Said penalty shall be paid within 10 days after receiving a copy
13 of the arbitrator's award and the sums so collected shall be
14 forwarded to the other party to the dispute to be used as desired
15 by said party.

1 11. Where an employee organization recognized or certified
2 pursuant to the act to which this act is a supplement, willfully
3 violates an order issued by the Superior Court pursuant to this
4 supplementary act, or willfully encourages or offers resistance to
5 such order, whether by a strike or otherwise, the punishment for
6 each day that such violation persists, may be a fine fixed by the
7 court in an amount not to exceed \$250.00 per day. Where an
8 employer, as that term is defined by the act to which this act is a
9 supplement, willfully violates an order issued by the Superior
10 Court or willfully encourages or offers resistance to such order, the
11 punishment for each day that such violation persists may be a
12 fine, fixed by the court, in an amount not to exceed \$250.00 per
13 day to be assessed against the employer.

1 12. Orders of the arbitrator shall be reviewable by the Superior
2 Court in the county in which the dispute arose but only for
3 reasons that the arbitrator was without or exceeded his jurisdiction,
4 or the order was procured by fraud, collusion or other similar and
5 unlawful means. The pendency of such proceeding for review
6 shall not of itself stay the order of the arbitrator.

- 1 13. During the pendency of proceedings before the arbitrator,
2 existing wages, hours and other conditions of employment shall
3 not be changed by action of either party without the consent of
4 the other, any change in or of the public employer or employee
5 representative notwithstanding; but a party may so consent without
6 prejudice to his rights or position under this supplementary act.
- 1 14. This act shall take effect immediately.

STATEMENT

In the best interests of the citizens of this State, it is essential that the State establish a means of resolving conflict between public employers and their employees affecting the welfare of its citizens. Compulsory arbitration is the only final resolve to these conflicts that would eliminate any and all slow downs, job actions or outright strikes by employees providing these vital services.

ASSEMBLY LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 482

[FOURTH OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1976

The committee, in releasing this bill, adopted amendments to clarify its language; to delineate the principal job titles within the scope of "public police department"; to ensure that arbitration will not begin before the factfinding procedure has been completed and the Public Employment Relations Commission has determined that arbitration is really required to bring about a settlement (designed to encourage the use of arbitration only as a last resort); and to extend the time limits for both the onset of the arbitration hearing and its duration (a recognition of the scheduling difficulties of the area's leading arbitrators). The committee also approved amendments suggested by the Governor's Counsel's Office and Office of Employee Relations to eliminate the powers granted to an arbitrator to monetarily penalize either or both of the parties where he has determined that a failure to negotiate in good faith has taken place; to limit the benefits of the bill to those firefighters not in mixed negotiating units; and to preclude awards by arbitrators concerning public pensions and the State Health Benefits Program.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

MAY 10, 1977

ANNE BURNS

Governor Brendan Byrne today signed into law S-482 sponsored by Senator Joseph A. Maressa (D-Burlington) which provides for compulsory arbitration of labor disputes in public fire and police departments. The bill applies to situations where employees do not have the right to strike.

The bill provides for mediation whenever negotiations between a public fire or police department and an exclusive representative reach an impasse. The Public Employment Relations Commission (PERC) through the Division of Public Employment Relations will assign a mediator and bear the costs.

If the impasse is not resolved by mediation, the Division of Public Employment, at the request of either party, must begin a fact finding investigation with recommendations for settling all issues and disputes unless a voluntary settlement is reached before the fact finding report is issued.

If mediation and fact finding do not resolve the impasse, the parties must notify PERC 60 days before the public employer's budget is to be submitted as to whether they have agreed upon a terminal procedure for resolving the dispute.

Terminal procedures include conventional arbitration of all unsettled items, arbitration between last offers, arbitration between final offers regarding each issue in dispute, and arbitration regarding the fact finding recommendation.

PERC will provide for the selection of an arbitrator or arbitrators from its special panel. The parties involved will be responsible for the costs of arbitration. A fee schedule for these costs is approved by PERC.

The bill takes effect immediately and applies to all negotiations for new agreements, renewals of existing agreements, and reopener provisions of existing agreements that are or shall become effective during the first full fiscal year of the public employer after the effective date of the bill.