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COMPULSORY INTEREST ARBITRATION EXTENDED TO DEPUTY SHERIFFS IN NEW YORK

Under New York law, certain public employee groups who are unable to reach agreement with their public employers through collective bargaining or mediation resolve such issues through a process commonly known as compulsory interest arbitration. Provisions regarding this process are contained in Section 209 of the Civil Service Law and in regulations of the Public Employment Relations Board ("PERB"). Until recently, compulsory interest arbitration was generally limited to police and fire department employee groups and certain other public employee groups, such as state police troopers, state corrections officers, and state agency law enforcement personnel. In 2003 and 2004, the statute was amended to include deputy sheriffs as among the employee groups eligible for compulsory interest arbitration. The following information is intended to provide public employers with a general overview of compulsory interest arbitration in New York and more specific guidance as to how that process applies to deputy sheriffs.

Overview of Compulsory Interest Arbitration

The process leading to compulsory interest arbitration begins when one of the parties – either the union or public employer – concludes that an impasse has been reached in negotiations and notifies PERB of the impasse. Generally, PERB will appoint a mediator to assist the parties in resolving the dispute short of arbitration. Should mediation be unsuccessful, either party then petitions PERB for referral of the matter to an interest arbitration panel. The non-petitioning party files a response with PERB within ten working days of receipt of the petition. Required contents for both the petition and response are listed in PERB's regulations.

There are three members of the arbitration panel: one member serves on behalf of the union, one serves on behalf of the public employer, and the third member serves as the neutral or "public" member. Within ten days of receipt of the petition by PERB, each party must appoint its member to the panel. The two parties then jointly select the neutral member. If the parties are unable to agree on the public member, PERB forwards a list to the parties containing the names of nine possible neutral arbitrators. The parties then alternatively strike names from the list until one arbitrator remains. Once the panel has been designated, the conduct of the proceedings is under the exclusive jurisdiction of the panel, and PERB generally plays no role in the process going forward, except where objections are made as to the arbitrability of any of the issues sought to be submitted to the panel for its resolution.

A hearing on the matter will then be held, which may consist of one or several sessions, depending upon the scope and complexity of the issues in dispute. Each party presents oral and written evidence to the panel, makes arguments and examines witnesses. After presentation of the evidence, the panel issues a written award that resolves each of the outstanding issues. The award must be based on certain statutory factors, which chiefly include a comparison of the wages and other terms and conditions of employment of the employee group with similar groups of employees and the public employer's ability to pay.

The duration of the arbitration award is limited to no more than two years from the termination date of any previous collective bargaining agreement or, if no previous agreement exists, then no more than two years from the date of the panel's award. The award is final and binding on the public employer and is not subject to approval by the employer's legislative body. However, the award is subject to judicial review pursuant to Article 75 of the Civil Practice Law and Rules.



Specific Issues with Respect to Deputy Sheriffs

While compulsory interest arbitration has been extended to deputy sheriffs in New York, there are several important variations to the law as it has been applied to this public employee group. First, in order to be covered under the law, the group of deputy sheriffs must be directly engaged in criminal law enforcement activities at least 50% of the time and also must be considered police officers pursuant to the New York Criminal Procedure Law. In other words, only those deputy sheriffs who serve in the capacity of criminal law enforcement officers are eligible for compulsory interest arbitration.

In addition, the statute restricts the types of issues that may be brought in an arbitration involving deputy sheriffs to only those that are directly related to compensation. While police and fire units, for example, could bring any mandatory subject of bargaining to an arbitration panel for resolution, deputy sheriffs' groups are limited to issues directly relating to compensation. The statute provides a non-exclusive list of those items that are directly related to compensation: salary, stipends, location pay, insurance, and medical and hospitalization benefits. Non-compensation issues relating to deputy sheriffs, including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation, are excluded from arbitration. For example, while a firefighters' unit could submit to the arbitration panel a proposal to amend contract language concerning reduction in force or duty schedules, a unit of deputy sheriffs could not resolve these types of issues in arbitration.

The statute also provides that compulsory interest arbitration is only available where the collective bargaining agreement between the deputy sheriffs' group and the public employer has been expired for a period of at least one year. Additionally, the statute mandates that the parties fully utilize all impasse resolution procedures prior to proceeding to arbitration. Therefore, the public employer and deputy sheriffs' unit must first use the mediation process prior to making a request for appointment of a public arbitration panel.

While the various amendments concerning deputy sheriffs have differing effective dates, the changes outlined above took effect as of November 5, 2004. Therefore, compulsory interest arbitration is authorized for deputy sheriffs as of that date, assuming that the parties' collective bargaining agreement has been expired for at least twelve months. For example, parties with a collective bargaining agreement that expired in July 2004 may commence arbitration in July 2005.

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