

# Impasse Procedures and the Public Employment Relations Commission

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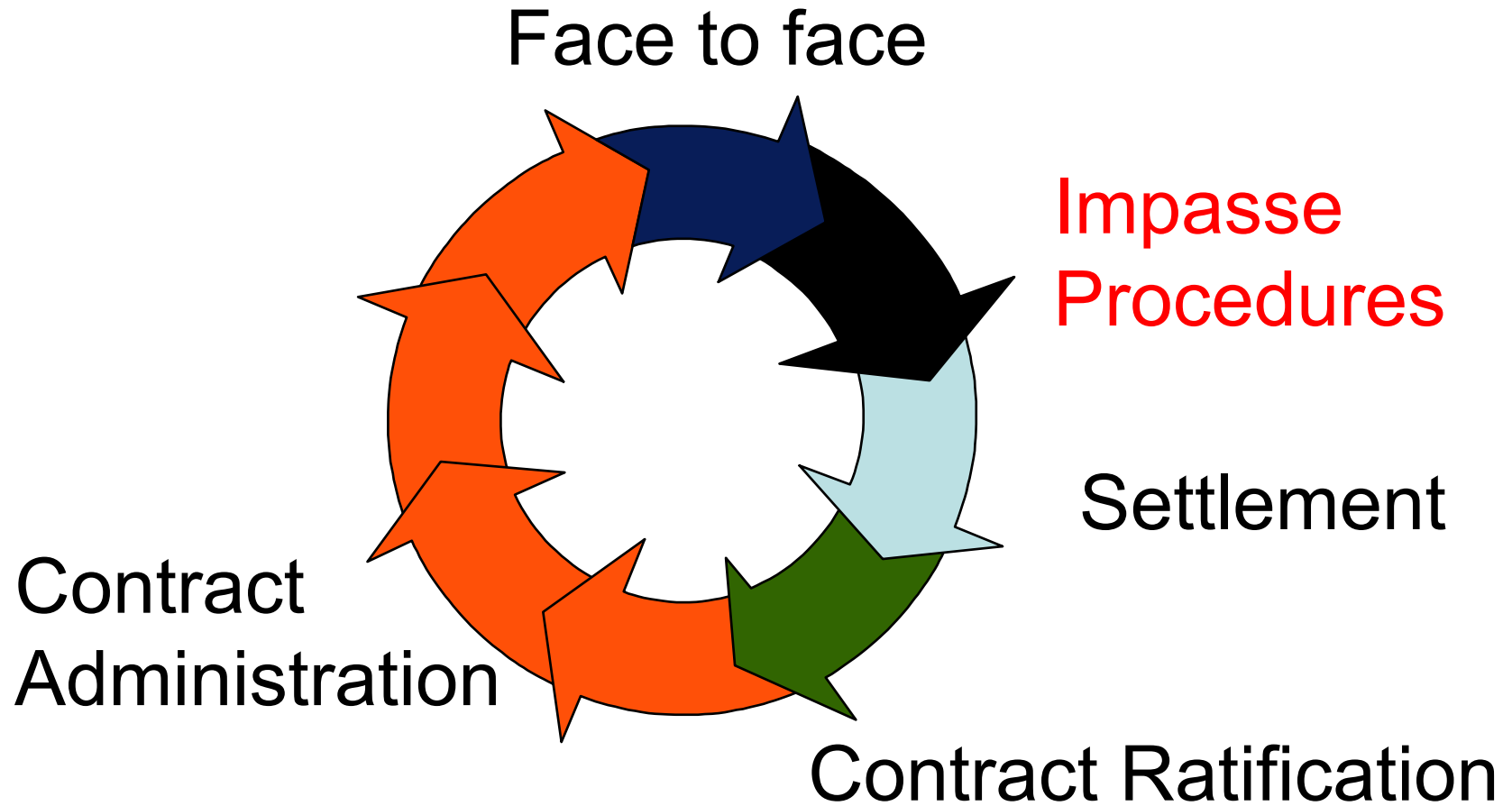
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# Labor Relations Cycle



# Impasse

- “A Situation in which progress is impossible, especially because the people involved cannot agree.”
- Origin comes from the word for standstill or literally where one is unable to pass – like a road.
- *Cambridge Dictionary*



# “P.E.R.C.”

State of New Jersey  
Public  
Employment  
Relations  
Commission



# Public Employment Relations Commission

- Public Employment Relations Commission (state.nj.us)
- <https://www.state.nj.us/perc/>
- 495 West State Street, Trenton, NJ
  
- N.J.S.A. 34:13A-5.4(e) et. seq
- N.J.A.C. 19:12-1.1, et. seq



# Duty to Bargain

- Meet as equals with the union
- Mutually agree to “TERMS and CONDITIONS” of employment
  - *no obligation to concede*
- Set agreement in writing
- Abide by terms of agreement



# Timeline

- Parties to a collective negotiations agreement shall commence negotiations for a successor agreement no later than **120** days prior to the district's "**required budget submission date.**"
- Parties can agree to a different schedule
- Reopener Clause





# Timeline

- The party initiating negotiations shall, no later than **15 days** prior to the commencement date of negotiations or a mutually agreed upon date for commencement notify the other party of its intention to commence negotiations and file the notice of intention with PERC.



# Impasse procedures

- **Mediation – Least Formal**
- **Fact-Finding – Pretty formal**
- **Super Conciliation – Very formal**



# Impasse

- Mediation – Not Binding
- The Mediator tries to persuade the parties to settle – not necessarily about the fairness or equity of the contract itself....but to reach a “mutually acceptable point of agreement”



# Impasse

- Fact-Finding and Super Conciliation -
- Not binding
- The parties try to persuade the neutral to see their side.



# Mediation

**“Failure to Settle” – NOT a FAILURE**

- **Either party may initiate or parties may initiate together**
- **PERC – Director of Conciliation**
- **Request the appointment of a mediator**



# Mediation

- *Request must include:*
  - Names and addresses of the representatives of both sides
  - Description of the Unit including the number of employees in the unit
  - Dates and duration of negotiations sessions – *why is this important??*



# Mediation

- Termination date of current agreement
- Public Employer's required budget submission date
- Whether the request is joint or unilateral?
- Detailed summary of the facts that give rise to the request including all areas of dispute.



# Mediation

- Mediator will be appointed if Director of Conciliation “determines after investigation that mediation is not being resorted to prematurely, that the parties are unable to reach an agreement and that an impasse exists in negotiations concerning terms and conditions of employment.”





# Mediation

- Who is your mediator?
  - Member of PERC
  - Officer or Employee of PERC
  - Member of PERC's mediation panel
  - Or any other mediator
  
- Parties may agree upon a certain mediator
- Director of Conciliation has ultimate authority to appoint



# Mediation

## Function of a Mediator

- To assist the parties to come to a voluntary agreement.
- Hold separate or joint conferences
- Voluntary, Amicable and Expeditious Agreement
- May at any time recommend fact-finding if process is not working.



# Mediation

- Process is confidential
- No information about the process can be divulged either voluntarily or by compulsion
- Confidential between the mediator and either party
- What happens in mediation stays in mediation



# Mediation

- Mediation Report
  - Mediator may submit one or more confidential reports
  - Shall not be considered in any other proceeding for substantive findings
  - Report may be used by Director of Conciliation to determine if Fact Finding is appropriate



# Mediation

- Mediation Report
  - Statement of Dates and Duration of meetings and participants
  - Brief description of unresolved issues which existed at the beginning\
  - Statement of the issues which have been resolved during mediation
  - Statement of Issues still unresolved
  - A recommendation as to whether fact finding should be invoked



# Fact-Finding

- Maybe invoked by the Director of Conciliation upon recommendation of the Mediator's Report
- By Joint Request of the Parties - must include the same information included in the request for mediator but add details of mediation.
- By one party with other party having the ability to submit a position statement



# Fact-Finding

- If ordered, Director of Conciliation will submit 3 names of fact-finders to the parties
- Each party can eliminate not more than one name; indicate a preference for the other two
- Respond within 3 days of submission of the list.



# Fact-finding

- Parties may jointly request a fact-finder and that fact-finder may be the same person as the mediator....
- Why would you want or not want the Mediator to also be your fact-finder????





# Fact-Finding

- Meet with the parties
- Make inquiries
- Make investigations
- Hold Hearings – confidential unless parties agree to hold them in public
- Fact-Finder has subpoena power and can compel testimony
- All matters are confidential until.....



# Fact-Finder Report

- Findings of Fact
- Recommendations for settlement
- Non-Binding
- Party's will meet within 5 days to exchange position statements and make one last try at settlement.
- Report is made public within 10 days after presented to the parties



# Super Conciliation

- Came into effect in 2003
- Rare but used
- Director of Conciliation can choose the S.C. unless the parties agree to a particular individual
- Also conducts investigations, takes testimony, subpoena power and issues a report made public 10 days after issuance to the parties.....



# Super Conciliation

- N.J.S.A. 34:13A-35. Investigatory proceedings. The super conciliator shall promptly schedule investigatory proceedings. The purpose of the proceedings shall be to:
  - a. Investigate and acquire all relevant information regarding the dispute between the parties;



# Super Conciliation

- b. Discuss with the parties their differences, and utilize means and mechanisms, including but not limited to requiring 24-hour per day negotiations, until a voluntary settlement is reached, and provide recommendations to resolve the parties' differences;
- Yes this is real!!



# Super Conciliation

- N.J.S.A. 34:13A-35.
- c. Modify or amend the fact finder's report for reconsideration by the parties in a further effort to achieve a voluntary settlement by the parties; and
- Institute any other non-binding recommendations



# Super Conciliation

Recommendation Report  
issued publicly 10 days  
after submission to the  
parties



# What All Board Members Need to Know

- Negotiations involve conflict
- Bargaining is adversarial (*not confrontational - but different points of view*)
- Negotiations can take a long time
- The Board must maintain a unified front and confidentiality





# What All Board Members Need to Know

- The Board can bargain hard to meet its needs
- It is not “bad faith” bargaining to say “NO”
- Settlement only occurs when the parties voluntarily and mutually agree
- No agency or person can force the Board into any settlement it does not voluntarily wish to agree upon.



# Virtual PERC

- They are prepared to hold all proceedings virtually
- Take testimony
- Break Out Rooms
- Correspond by email
- Maintain confidentiality



# GENERAL ADVICE

- **Board and the Committee must communicate and be on the same page.**
- **Do not try to rush the process**



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# Questions

