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## CONTRACT NEGOTIATIONS PROCESS

1. **Introduction:** This is an explanation of the contract negotiations process as it applies to negotiations between the State and NYSCOPBA for the Security Services Unit.
2. **Background:** The so-called “Taylor Law”, formally titled the “Public Employees’ Fair Employment Act” and set forth at Article 14 of the New York State Civil Service Law, was adopted in 1967 in response to frequent and disruptive strikes by municipal employees. The Taylor Law created the Public Employment Relations Board (PERB) and allowed public employees to collectively bargain with their employers in return for giving up the right to strike. Since the inception of the Taylor Law, public strikes have decreased dramatically.

The original Taylor Law did not contain a provision for binding interest arbitration. However, in 1974 the Legislature amended the law to provide for binding arbitration for municipal police and firefighters. The purpose of the amendment was to create a definitive resolution procedure, chaired by a neutral party, for resolving contract disputes involving public safety personnel. In more recent years, binding arbitration has been extended to other public safety employees, now including state correction officers. The binding arbitration bill was begun as a three-year experiment, and its provisions have historically been extended for consecutive two-year periods. Currently, the statutory extension lasts until 2024.

3. **Binding Arbitration Extended to NYSCOPBA:** Pursuant to Chapter 586 of the Laws of 2001, as modified by Chapter 220 of the Laws of 2002, binding arbitration in contract negotiations was extended to those members of the Security Services Unit employed by the Department of Correctional Services and designated as “Peace Officers”. Not all negotiations issues are eligible for binding arbitration. The law provides that issues directly relating to compensation, such as salary, stipends, location pay and insurance, are subject to binding arbitration, whereas non-compensatory issues, such as job security, disciplinary procedures, and deployment or scheduling, are not arbitrable.

Binding arbitration is an alternative form of dispute resolution, replacing fact-finding and the legislative hearing as the mechanism for resolving disputes over compensatory issues. Until the negotiations process reaches the public arbitration panel stage, however, compensatory and non-compensatory issues are addressed in the same way.

## **The Contract Negotiations Process:**

### 3.1 Negotiations

- (a) The parties exchange bargaining proposals for a successor agreement. The proposals include both compensatory and non-compensatory issues.
- (b) Good faith negotiations must take place.

### 3.2 Impasse

- (a) After good faith negotiations have failed to produce an agreement, either party may declare impasse by filing a Declaration of Impasse with the Public Employment Relations Board (PERB), which administers the Taylor Law.
- (b) No specific time limits govern how long negotiations must proceed before a Declaration of Impasse may be filed; PERB's focus is on the inability of the parties to reach agreement despite their good faith efforts to do so.

### 3.3 Mediation

- (a) In response to a Declaration of Impasse, PERB appoints a mediator.
- (b) The mediator meets with the parties and attempts to assist them in reaching an agreement.
- (c) If the mediator is unable to bring about a settlement, either party may invoke the dispute resolution procedures.

### 3.4 Dispute Resolution

- (a) Binding Arbitration (for arbitration-eligible Corrections employees)
  - (1) Upon a petition for binding arbitration filed by the union, PERB refers the dispute to a "Public Arbitration Panel ("Panel").
  - (2) The Panel consists of three members: one appointed by the union, one by the employer and one "public member" appointed jointly by the parties.
  - (3) If the parties cannot agree on the public member, the selection is made from among a special list of arbitrators maintained by PERB. PERB provides the parties with the names of nine arbitrators from that list, and the State and NYSCOPBA take turns striking off names until only one remains. That person is appointed as the public member and serves as chairman of the Panel.

(b) Fact-Finding (for Law Enforcement employees)

- (1) At the request of either party or on its own motion, PERB appoints a fact-finding board of up to three people to review the dispute (one person is typical) to review the dispute and make recommendations for its resolution.
- (2) If the dispute is not resolved at least 80 days before the end of the fiscal year or by another date set by PERB, the fact-finding board transmits its recommendation to the Governor and makes it public. The recommendation is advisory only and is not binding.
- (3) If the dispute continues, PERB may take steps it deems necessary to resolve the matter, including making its own recommendations.
- (4) If the matter is still unresolved, the dispute may be submitted to the Legislature, which must then conduct a public hearing, at which the parties must explain their positions with respect to the fact-finding recommendation.
- (5) The Legislature is empowered to take whatever action it deems to be in the public interest; this may include the unilateral imposition of terms and conditions of employment for a period of up to one fiscal year. However, unless the union waives its Triborough rights by participating in the hearing, the Legislature must continue all the terms of the expired agreement.

3.5 The Binding Arbitration Hearing (for arbitration-eligible Corrections employees)

- (a) The Panel holds hearings on all issues related to the dispute.
- (b) The parties present witnesses and documents in support of their positions. This may include expert witnesses who will address issues such as the fiscal condition of the employer or comparative salary and benefit information and statistics.
- (c) The public member acts as chairperson of the panel and makes all rulings on procedure, evidence, witnesses, etc.
- (d) Witnesses are sworn and a stenographic transcript of the proceeding is made.
- (e) With large unions such as NYSCOPBA, the number of witnesses and the amount of evidence introduced can be substantial; the hearings may extend over a period of several months.

3.6 The Binding Arbitration Award (for arbitration-eligible Corrections employees)

- (a) The Panel is empowered to make a “just and reasonable determination” of the matters in dispute.
- (b) In reaching a determination, the Panel must consider, among other things:
  - (i) A comparison of the salaries and working conditions of the bargaining unit employees with those of other employees performing similar services, and with other employees generally in public and private employment in comparable communities; and
  - (ii) The interests and welfare of the public and the financial ability of the State to pay; and
  - (iii) The unique aspects of the job, including its hazards and physical qualifications, as compared to other trades or professions.
- (c) All issues before the Panel are decided by a majority vote of its three members. The public member cannot dictate a decision on his own. He must get at least one other member to agree; this process often involves intense discussion, argument and give-and-take.
- (d) The Panel does not have jurisdiction over non-compensatory issues unless conferred by the parties.
- (e) The determination of the Panel, which is issued in the form of an “award”, is final and binding on the parties. It is not subject to ratification by the membership.