



State of Delaware  
Public Employment Relations Board  
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## **Binding Interest Arbitration Hearing Procedures**

### **Hearings:**

- The purpose of a binding interest arbitration hearing shall be to define the area or areas of dispute, to determine the facts relating to the dispute, and to create a record on which a decision can be rendered on unresolved contract issues.
- The principles of relevancy and materiality are paramount, although the technical rules of evidence do not apply to proceedings before the PERB.
- All hearings are open to the public unless otherwise ordered by the PERB.
- All hearings are recorded by the PERB on a four track taping system, and transcribed as required.
  - a copy of the hearing transcript is available at the requesting party's expense
  - any objections to the transcript must be filed within five (5) days of its issuance and must specify the objection, its basis and the remedy requested.
  - the transcript is part of the official record for purposes of review upon appeal and is considered prima facie accurate whenever offered into evidence.
- Hearings are conducted by a PERB Hearing Officer who has been designated to serve as the Binding Interest Arbitrator and who has full authority to control the conduct at the hearing
  - The Arbitrator has authority to admit or exclude evidence, question witnesses, rule upon motions and objections, and determine the order in which evidence will be presented
  - The Arbitrator is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure.
  - The Arbitrator may exclude plainly irrelevant evidence and unduly repetitive evidence, rebuttal and cross-examination.
- All witnesses testify under oath and are sworn by the Arbitrator.

## **SUBPOENAS**

- Parties involved in a hearing may request that the Arbitrator issue subpoenas not later than **seven (7) days prior to the hearing**.
- The Arbitrator may subpoena witnesses and issue subpoenas requiring the production and examination of books, papers or other documents he/she deems relevant to the issue before the PERB.
- The Arbitrator may decline to honor a request for a subpoena for any of the following reasons:
  - The evidence sought does not relate to the matter to be heard
  - The subpoena request does not describe with sufficient particularity the documents whose production is requested
  - The subpoena seeks to compel the appearance of a witness who would offer testimony which would merely be repetitive of other witnesses who will be produced.

## **Depositions:**

- Can be taken if a witness resides outside the State or through illness or other cause is unable to testify before the Board
- Application to take a deposition must be in writing or made orally at a hearing. The application should include:
  - Why the deposition should be taken
  - The name and address of the witness
  - Time and place proposed for the taking of the deposition
  - The application must be served on all parties.
- The deposition must be taken before any court reporter authorized to administer oaths by the laws of the State or the United States or the place where the examination is held.
  - The court reporter must note any objections during the deposition.
  - The witness must subscribe to his/her testimony in the presence of the court reporter, who shall attach his/her certificate stating:
    - The witness was duly sworn or affirmed
    - The deposition is a true record of the testimony given and exhibits presented.

- If the deposition is not signed by the witness because he/she is ill, dead, cannot be found, refuses to sign it, or waives the right to sign it, that fact must be included in the certificate of the court reporter. The deposition may then be used as if fully signed.
- The court reporter must deliver an original and one copy of the transcript of the deposition to the PERB.
- Cost of the deposition is the responsibility of the requesting party.
- During the deposition, objections to the form of the questions or evidence are waived unless specifically made during the examination of the witness.
- The Arbitrator shall rule upon the admissibility of the deposition or any part of it if offered into evidence or otherwise used during the hearing.

### **Contemptuous Conduct:**

- Contemptuous conduct is grounds for exclusion from a hearing
- Refusal of a witness to answer any questions ruled proper is grounds for striking all testimony previously given by that witness on related matters.
- Aggravated misconduct by an attorney or representative of a party is grounds, after due notice and a hearing before the PERB, for suspension from further practice before the PERB.

### **BRIEFS/ORAL ARGUMENT**

- Prior to issuance of a decision, the Arbitrator may require the parties to submit briefs or oral argument. The parties may also request the right to submit briefs and/or orally argue at the close of the hearing.
- The Arbitrator shall establish appropriate guidelines for briefs, including the schedule and length.

### **DECISION OF THE BINDING INTEREST ARBITRATOR**

- The Binding Interest Arbitrator shall issue a **decision within thirty (30) days** after the close of the record.
- In reaching a decision, the Binding Interest Arbitrator shall make written findings of facts and a decision for the resolution of the dispute; provided, however, that the decision shall be limited to a determination of which of the parties' last, best and final offer shall be accepted

in its entirety.

- In arriving at a determination, the Binding Interest Arbitrator shall specify the basis for the arbitrator's findings, taking into consideration, in addition to any other relevant factors, the following:
  - 1) The interests and welfare of the public.
  - 2) Comparison of wages, salaries, benefits, hours and conditions of employment of the employees involved in the binding interest arbitration proceedings with the wages, salaries, benefits, hours and conditions of employment of other employees performing the same or similar services requiring similar skills under similar working conditions in the same community, and in comparable communities and with other employees generally in the same community and in comparable communities.
  - 3) The overall compensation presently received by the employees inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
  - 4) Stipulations of the parties.
  - 5) The lawful authority of the public employer.
  - 6) The financial ability of the public employer, based on existing revenues, to meet the costs of the proposed settlements; provided that any enhancement to such financial ability derived from savings experienced by such public employer as a result of a strike shall not be considered by the Binding Interest Arbitrator.
  - 7) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, binding interest arbitration, or otherwise between parties, in the public service or in private employment.
- In reaching a decision, the Binding Interest Arbitrator shall give due weight to each relevant factor. All of the factors shall be presumed to be relevant. If any factor is found not to be relevant, the Binding Interest Arbitrator shall detail in his/her findings the specific reason the factor is not judged relevant in arriving at the decision. With the exception of factor (6) above, no single factor shall be dispositive.
- A copy of the decision will be served on all parties.

## **REVIEW OF THE ARBITRATOR'S DECISION**

- The Binding Interest Arbitrator's decision is subject to review by the full PERB at the request of any party or upon the Board's own motion.
- A request for review must be filed within **five (5) days** of the date upon which the decision was served upon the parties.
- The full Board may decide to hold a hearing in connection with a Request for Review. If the PERB does conduct a hearing, it will be in accordance with the hearing procedures described above.
- The full PERB shall render a decision within thirty (30) days from the date of the close of the official appeal record, or the receipt of briefs, or the receipt of the official transcript of any hearing held, or from the date of its receipt of the appeal, whichever is appropriate.

### **Appeals of Decisions of the Full PERB**

- Decisions on Review of a Binding Interest Arbitration by the full PERB may be appealed to Chancery Court.
- An appeal to Chancery Court must be filed within **fifteen (15) days** of the date upon which the decision was rendered.
- An appeal to Chancery Court **does not** act as an automatic stay on an order of the PERB.