

# Public Sector and 2020: Lessons Learned... ...Still Learning

**New Jersey School Boards Association  
Personnel Administrators Association  
April 2021**

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# Negotiations relating to Subcontracting

N.J. Stat. § 34:13A-44, et seq.

P.L. 2020, chap. 79

Effective September 11, 2020

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## Subcontracting and Mandatory Subjects of Negotiations

All aspects or actions relating to or resulting from an employer's decision to subcontract shall be **mandatory subjects of negotiations**

- Including, but not limited to, whether severance pay is provided
- Except for actions expressly required or prohibited under this act

N.J.S.A. 34:13A-45

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## What is "Subcontracting" under this act?

- "Subcontracting" means:
  - Any action, practice or effort by an employer
  - Which results in any services or work performed by any of its employees
  - Being performed or provided by any other person, vendor, corporation, partnership or entity
- "Employer" under the act means any:
  - Local or regional school district
  - Educational services commission or jointure commission
  - County special services school district

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- No employer shall enter into a subcontracting agreement
- Which affects the employment of any employees in a collective bargaining unit represented by a majority representative
- During the term that collective bargaining agreement is in effect.

## Employer Entering into Subcontract Agreement, Terms and Conditions

N.J.S.A. 34:13A-46

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## Employer Entering into Subcontract Agreement-Following the Term of CBA

N.J.S.A. 34:13A-46

- No employer shall enter into a subcontracting agreement for a period *following* the term of the current collective bargaining agreement unless the employer:
  - Provides written notice to the majority representative of employees in each collective bargaining unit which may be affected by the agreement and to NJ PERC not less than 90 days before the employer requests bids or solicits proposals for the subcontracting agreement,

AND ...

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## Employer Entering into Subcontract Agreement- Following the Term of CBA

N.J.S.A. 34:13A-46

- In addition to the requisite notice, no employer shall enter into a subcontracting agreement **unless** the employer also:
- Has offered the majority representative of the employees in each collective bargaining unit affected by the agreement:
  - The opportunity to meet and consult with the employer to discuss the decision to subcontract, and
  - The opportunity to engage in negotiations over the impact of the subcontracting.

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## Duty to Negotiate If No Successor Contract Exists:

- The employer's duty to negotiate with the majority representative of the employees in each collective bargaining unit shall not preclude the employer's right to subcontract should no successor contract exist.

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## Rights of Displaced Employee

- Each employee replaced or displaced as the result of a subcontracting agreement
  - Shall retain all previously acquired seniority during that period, and
  - Shall have recall rights whenever the subcontracting terminates.

N.J.S.A. 34:13A-47

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## Violation, Unfair Practice, Remedies

N.J.S.A. 34:13A-48

- An employer who violates any provision of this act shall be deemed to have committed an unfair practice, and
- Any employee or majority representative organization affected by the violation may file an unfair practice charge with NJ PERC.
- If the employee or organization prevails on the charge, the employee is entitled to a remedy including, but not limited to:
  - Reinstatement,
  - Back pay, back benefits, back emoluments,
  - Tenure and seniority credit,
  - Attorney's fees, and any other relief the commission deems appropriate.

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# Revisions to School Employee Health Benefits Law

“Chapter 44”

P.L. 2020, chap. 44  
Effective July 1, 2020

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## Modifications to Provisions of the School Employees Health Benefits Plan

- For SEHBP participating employers, Chapter 44 eliminated all plan options other than Direct 10 and Direct 15, creating 2 new plans:
  - New Jersey Employers Health Plan (“EHP”) and
  - Garden State Plan (“GSP”)
- New schemes were created for employee contributions towards premiums for employees who opt or are mandated into the two new plans.

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## Modifications to Provisions of the School Employees Health Benefits Plan *(cont.)*

- Non-SEHBP participants:
  - Must offer plans equivalent to the EHP and GSP
  - May continue to offer existing plan options.

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## Negotiations Issues and "Chapter 44"



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## Effect of New Provisions on Existing Collective Negotiations Agreements

“With regard to employers that have collective negotiation agreements in effect on the effective date of this act ... that include health care benefits coverage available to employees when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, **the employer and the majority representative shall engage in collective negotiations over the financial impact of the difference.**”

P.L. 2020, chap. 44. Effective July 1, 2020

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### Requirement for Collective Negotiations over Financial Impact of Difference in Cost

- This provision is included in a section of the law that requires all districts to report annually the savings realized from the new plan designs and changes in contributions.
  - Acknowledgement that these changes may not benefit all employers.
  - Only applies to districts with contracts in effect on July 1, 2020.
  - Only governs the period between July 1, 2020 and the expiration of that agreement
  - After the contract expires, the terms of Chapter 44 would apply.

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- Net cost equals premiums less contributions.
- If net cost to the District for the current contract's medical and prescription insurance is less than the cost of the EHP, the Board and Association would be obligated to bargain over the impact of the Chapter 44 created changes.
- There is nothing in either the statute or regulations that define how to make this calculation.
- District should compare its total net medical and prescription costs to the cost to the District if all employees choose the EHP, with no offset for employee contributions.


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## How to Calculate Changes in Cost

## Good Faith Negotiations Required

- As with any negotiations, the parties are required to meet in good faith with a sincere intent to reach an agreement.
- There is no provision in Chapter 44 addressing what happens if an impasse arises in the impact negotiations.
- It is likely parties would need to seek mediation services from the Public Employment Relations Commission (PERC).

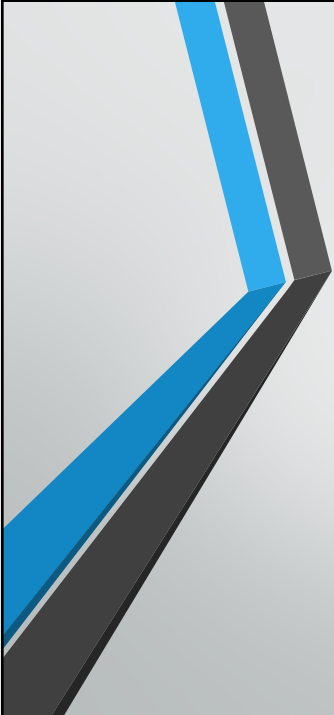
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# Arbitration relating to Non-Teaching Staff

N.J. Stat. § 34:13A-29  
Amended by P.L. 2020, chap. 66 § 1  
Effective August 13, 2020

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## Grievance Procedures and Binding Arbitration

(a) The grievance procedures that employers covered by this act are required to negotiate shall be deemed to require binding arbitration with respect to disputes concerning imposition of reprimands and discipline.

N.J.S.A. 34:13A-29

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## Non-Teaching Staff Provisions

N.J.S.A. 34:13A-29(c), (d)

- An employee is who not a teaching staff member shall have the right to submit to binding arbitration any dispute regarding whether there is just cause for a disciplinary action, including:
  - Reprimands
  - Withholding of increments
  - Termination or non-renewal of employment contract
  - Expiration or lapse of employment contract or term
  - Lack of continuation of employment

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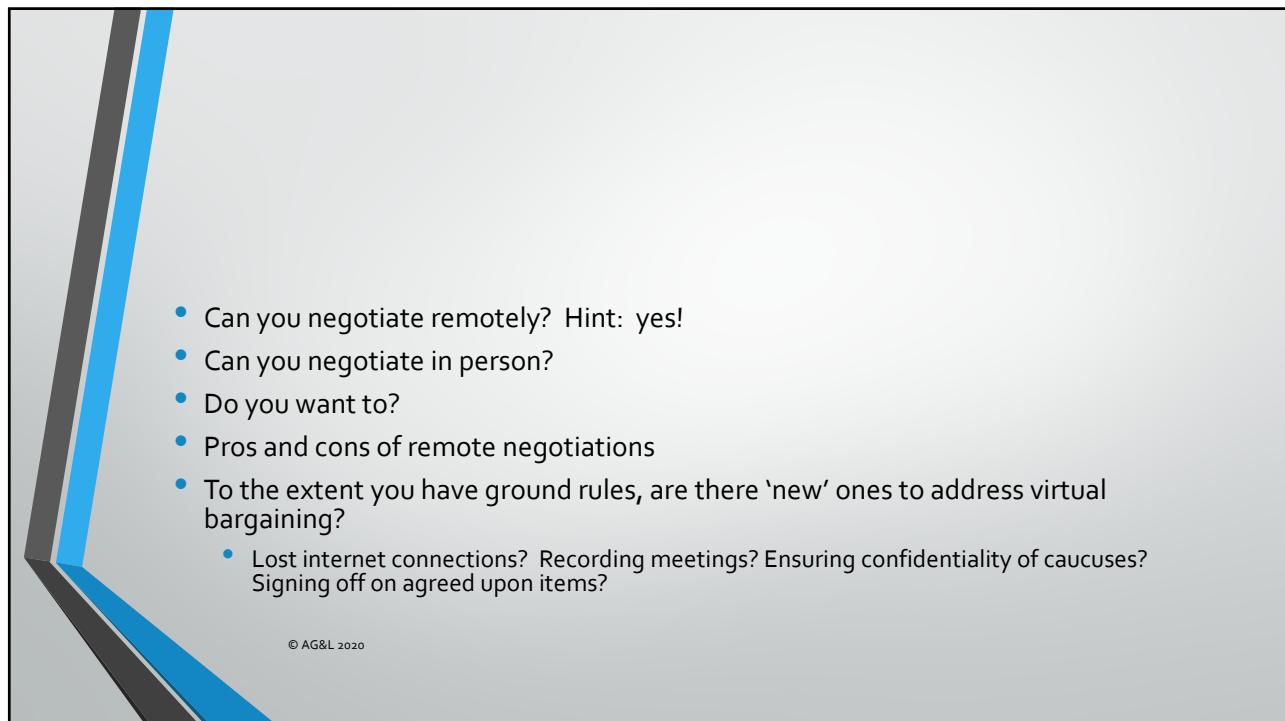
## Non-Teaching Staff Provisions

*(cont.)*

N.J.S.A. 34:13A-29(c), (d)

- The right to submit to binding arbitration exists irrespective of any contractual or negotiated provision or lack thereof.
- In arbitration, the burden of proof shall be on the employer.
- This amendment does not affect the right of any teaching staff member or majority representative to submit to binding arbitration any disputes relating to a teaching staff member

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## NEW TOPICS

- Reimbursing staff for internet access
- Rewarding them for their hard work
- Athletics and Extracurricular Activities
- Copyright issues for remote instructional tools
- Accounting for sick and personal time?
- Do you get prep or lunch time?
- Negotiating the remote workday
- Additional professional development/extending the work year
- Health and safety concerns – physical and mental
- Dress codes in a pandemic

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## And Now...The Usual Reminders

- ***DOCUMENT, DOCUMENT, DOCUMENT!***
  - Teacher Aides: Non-renewals and performance issues for the arbitrator's eyes
  - Medical documentation for accommodations
  - Remote teaching as an accommodation or an alternate work arrangement – beware the pitfalls
  - Emails as evidence

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# Any Questions?

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