

**OFFICE
OF
COLLECTIVE BARGAINING**

**NEW YORK CITY
COLLECTIVE BARGAINING LAW
(New York City Administrative Code, Title 12, Chapter 3)(“NYCCBL”)
(As Amended Through 2002)**

And Related Provisions of

THE NEW YORK CITY CHARTER

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NEW YORK CITY ADMINISTRATIVE CODE
TITLE 12. PERSONNEL AND LABOR
CHAPTER 3. COLLECTIVE BARGAINING

Current through Local Law 30 of 2002 and
Chapter 617 of the Laws of New York for 2002

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§ 12-301. **Short title.** This chapter may be cited as the "New York city collective bargaining law."

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Fomerly § 1173- 1.0 added LL 53/1967 §2

§ 12-302. **Statement of policy.** It is hereby declared to be the policy of the city to favor and encourage the right of municipal employees to organize and be represented, written collective bargaining agreements on matters within the scope of collective bargaining, the use of impartial and independent tribunals to assist in resolving impasses in contract negotiations, and final, impartial arbitration of grievances between municipal agencies and certified employee organizations.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Fomerly § 1173-2.0 added LL 53/1967 § 2

§ 12-303. Definitions. As used in this chapter, unless the context clearly indicates otherwise, and subject to the limitations of section 12-304:

- a.** The term "director" shall mean the director of the office created by section eleven hundred seventy of the charter.
- b.** The term "board of collective bargaining" shall mean the board created by section eleven hundred seventy-one of the charter.
- c.** The term "board of certification" shall mean the board created by section eleven hundred seventy-two of the charter.
- d.** The term "municipal agency" shall mean an administration, department, division, bureau, office, board, or commission, or other agency of the city established under the charter or any other law, the head of which has appointive powers, and whose employees are paid in whole or in part from the city treasury, other than the agencies specified in paragraph two of subdivision g of this section.
- e.** The term "municipal employees" shall mean persons employed by municipal agencies whose salary is paid in whole or in part from the city treasury.
- f.** The term "mayoral agency" shall mean any municipal agency whose head is appointed by the mayor.
- g.** The term "public employer" shall mean (1) any municipal agency; (2) the board of education, the New York city health and hospitals corporation, the New York city off-track betting corporation, the New York city board of elections and the public administrator and the district attorney of any county within the city of New York; (3) any public authority other than a state public authority as defined in subdivision eight of section two hundred one of the civil service law, whose activities are conducted in whole or in substantial part within the city; and (4) any public benefit corporation, or any museum, library, zoological garden or similar cultural institution, which is a public employer or government within the meaning of article fourteen of the civil service law, employing personnel whose salary is paid in whole or in part from the city treasury.
- h.** The term "public employees" shall mean municipal employees and employees of other public employers.

i. The term "municipal employee organization" shall mean any organization or association of municipal employees, a primary purpose of which is to represent them concerning wages, hours, and working conditions.

j. The term "public employee organization" shall mean any municipal employee organization and any other organization or association of public employees, a primary purpose of which is to represent public employees concerning wages, hours, and working conditions.

k. The term "municipal labor committee" shall mean an association known by that name created pursuant to a memorandum dated March thirty-first, nineteen hundred sixty-six, as amended, signed by representatives of the city and certain employee organizations.

l. The term "certified employee organization" shall mean any public employee organization: (1) certified by the board of certification as the exclusive bargaining representative of a bargaining unit determined to be appropriate for such purpose; (2) recognized as such exclusive bargaining representative by a public employer in conformity with the rules set forth in the office of collective bargaining rules of practice and procedure; or (3) recognized by a municipal agency, or certified by the department of labor, as such exclusive bargaining representative prior to the effective date of this chapter, unless such recognition has been or is revoked or such certificate has been or is terminated.

m. The term "matters within the scope of collective bargaining" shall mean matters specified in section 12-307 of this chapter.

n. The term "executive order" shall mean, in the case of a mayoral agency, an executive order, memorandum or directive of the mayor and in the case of any other municipal agency or public employer, a written order, directive or resolution of such agency or employer or the head thereof, which provides for the application of the provisions of this chapter or otherwise implements the provisions of this chapter.

o. The term "grievance" shall mean: (1) A dispute concerning the application or interpretation of the terms of a written collective bargaining agreement or a personnel order of the mayor, or a determination under section two hundred twenty of the labor law affecting terms and conditions of employment; (2) A claimed violation, misinterpretation, or misapplication of the rules or regulations of a municipal agency or other public employer affecting the terms and conditions of employment; (3) A claimed assignment of employees to duties substantially different from those stated in their job classifications; or (4) A claimed improper holding of an open-competitive rather than a promotional examination. Notwithstanding the provisions of this subdivision, the term grievance shall include a dispute defined as a grievance by executive order of the mayor, by a collective bargaining agreement, or as may be otherwise expressly agreed to in writing by a public employee organization and the applicable public employer.

p. The terms "labor member," "city member," and "impartial member" shall refer to those

members of the board of collective bargaining described in section eleven hundred seventy-one of the charter.

q. The terms "designated representative" and "designated employee organization" shall mean a certified employee organization, council or group of certified employee organizations designated for the purposes specified in paragraph two, three or five of subdivision a of section 12-307.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Subd. l amended LL 26/1998 § 1, eff. July 7, 1998.

DERIVATION

Formerly § 1173-3.0 added LL 53/1967 § 2
Subd d amended LL 1/1972 § 3
Subd g amended LL 1/1972 § 4
Subd l amended LL 1/1972 § 5
Subd m amended LL 1/1972 § 6
Subd n amended LL 1/1972 § 7
Subd q added LL 1/1972 § 8
Subd g amended LL 51/1980 § 2

§ 12-304. Application of chapter. This chapter shall be applicable to:

- a.** All municipal agencies and to the public employees and public employees organizations thereof;
- b.** any agency or public employer, and the public employees and public employee organizations thereof, which have been made subject to this chapter by state law;
- c.** any other public employer, and to the public employees and public employee organizations thereof, upon the election by the public employer or the head thereof by executive order of the chief executive officer to make this chapter applicable, subject to approval by the mayor, provided, however, that any such election by the New York city board of education shall not include any teacher as defined in section 13-501 of the administrative code or any employee who works in that capacity or any paraprofessional employees with teaching functions; and
- d.** any public employer, and the public employees and public employee organizations thereof, to whom the provisions of this chapter are made applicable pursuant to paragraph four of subdivision c of section 12-309 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Subd. c amended LL 26/1998 § 2, eff. July 7, 1998.

DERIVATION

Formerly § 1173-4.0 added LL 53/1967 § 2
Amended LL 1/1972 § 9
Subd c amended LL 51/1980 § 3

§12-305. Rights of public employees and certified employee organizations. Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that public employees shall be presumed eligible for the rights set forth in this section, and no employee shall be deprived of these rights unless, as to such employee, a determination of managerial or confidential status has been rendered by the board of certification; and provided further, that nothing in this chapter shall be construed to: (i) deny to any managerial or confidential employee his or her rights under section fifteen of the civil rights law or any other rights; or (ii) prohibit any appropriate official or officials of a public employer as defined in this chapter to hear and consider grievances and complaints of managerial and confidential employees concerning the terms and conditions of their employment and to make recommendations thereon to the chief executive officer of the public employer for such action as such chief executive officer shall deem appropriate. A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Section amended LL 26/1998 § 3, eff. July 7, 1998

DERIVATION

Formerly § 1173-4.1 added LL 1/1972 § 10
Amended LL 71/1972 § 1

§ 12-306. Improper practices; good faith bargaining. a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

- (1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;
- (2) to dominate or interfere with the formation or administration of any public employee organization;
- (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;
- (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees;
- (5) to unilaterally make any change as to any mandatory subject of collective bargaining or as to any term and condition of employment established in the prior contract, during a period of negotiations with a public employee organization as defined in subdivision d of section 12-311 of this chapter.

b. Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so;

(2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer;

(3) to breach its duty of fair representation to public employees under this chapter.

c. Good faith bargaining. The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:

(1) to approach the negotiations with a sincere resolve to reach an agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;

(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

d. Joinder of parties in duty of fair representation cases. The public employer shall be made a party to any charge filed under paragraph three of subdivision b of this section which alleges that the duly certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its agreement with such employee organization.

e. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence. Such petition may be filed by one or more public employees or any public employee organization acting on their behalf, or by a public employer, together with a request to the board for a final determination of the matter and for an appropriate remedial order.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Subd. a par (4) amended LL 26/1998 § 4, eff. July 7, 1998.
Subd. a par (5) added LL 26/1998 § 4, eff. July 7, 1998.
Subd. b par (2) amended LL 26/1998 § 5, eff. July 7, 1998.
Subd. b par (3) added LL 26/1998 § 5, eff. July 7, 1998.
Subds. d, e added LL 26/1998 § 6, eff. July 7, 1998.

DERIVATION

Formerly § 1173-4.2 added LL 1/1972 § 10
Subd d repealed LL 51/1980 § 4

§ 12-307. Scope of collective bargaining; management rights. a. Subject to the provisions of subdivision b of this section and subdivision c of section 12-304 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits), working conditions and provisions for the deduction from the wages or salaries of employees in the appropriate bargaining unit who are not members of the certified or designated employee organization of an agency shop fee to the extent permitted by law, but in no event exceeding sums equal to the periodic dues uniformly required of its members by such certified or designated employee organization and for the payment of the sums so deducted to the certified or designated employee organization, subject to applicable state law, except that:

- (1) with respect to those employees whose wages are determined under section two hundred twenty of the labor law, the duty to bargain in good faith over wages and supplements shall be governed by said section;
- (2) matters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty percent of all such employees, but nothing contained herein shall be construed to deny to a public employer or certified employee organization the right to bargain for a variation or a particular application of any city-wide policy or any term of any agreement executed pursuant to this paragraph where considerations special and unique to a particular department, class of employees, or collective bargaining unit are involved;
- (3) matters which must be uniform for all employees in a particular department shall be negotiated only with a certified employee organization, council or group of certified employees organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty percent of all employees in the department;
- (4) all matters, including but not limited to pensions, overtime and time and leave rules which

affect employees in the uniformed police, fire, sanitation and correction services, or any other police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law who is also defined as a police officer in this code, shall be negotiated with the certified employee organizations representing the employees involved. For purposes of this paragraph only, employees of the uniformed fire service shall also include persons employed by the fire department of the city of New York as fire alarm dispatchers and supervisors of fire alarm dispatchers. For purposes of this paragraph only, employees of the uniformed fire service shall also include persons employed by the fire department of the city of New York as emergency medical technicians and advanced emergency medical technicians, as those terms are defined in section three thousand one of the public health law, and supervisors of emergency medical technicians or advanced emergency medical technicians;

(5) matters involving pensions for employees other than those in the uniformed forces referred to in paragraph four hereof, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as representing bargaining units which include more than fifty percent of all employees included in the pension system involved.

b. It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on terms and conditions of employment, including, but not limited to, questions of workload, staffing and employee safety, are within the scope of collective bargaining.

c. It shall be the policy of the city of New York that, to the extent not inconsistent with law, the city shall make benefits available to the domestic partners of city employees on the same basis as the city makes benefits available to the spouses of city employees.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Subd. a open par amended LL 26/1998 § 7, eff. July 7, 1998
Subd. a par (1) amended LL 26/1998 § 7, eff. July 7, 1998
Subd. a par (4) separately amended LL 18/2001 § 2 and LL 19/2001 § 2, both eff. Apr. 25, 2001.
Subd. a par (4) amended ch. 776/1989 § 1
Subd. b amended LL 26/1998 § 8, eff. July 7, 1998
Subd. c added LL 27/1998 § 16, eff. Sept. 5, 1998

DERIVATION

Formerly § 1173-4.3 added LL 1/1972 § 10
Subd a amended LL 51/1980 § 5

§ 12-308. Judicial review and enforcement of a final order of the board of collective bargaining or the board of certification. a. Any order of the board of collective bargaining or the board of certification shall be (1) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party, and (2) enforceable by the supreme court in a special proceeding, upon petition of the board of collective bargaining, board of certification or any aggrieved party.

b. If a proceeding by the board for enforcement of its order is instituted prior to the expiration of the period within which a party may seek judicial review of such order, the respondent may raise in his or her answer the questions authorized to be raised by section seven thousand eight hundred three of the civil practice law and rules and thereafter the proceedings shall be governed by the provisions of article seventy-eight of the civil practice law and rules that are not inconsistent herewith, except that if an issue specified in question four of section seven thousand eight hundred three of the civil practice law and rules is raised, the proceeding shall be transferred for disposition to the appellate division of the supreme court. Where an issue specified in question four of section seven thousand eight hundred three of the civil practice law and rules is raised, either in a proceeding to enforce or review an order of the board, the appellate division of the supreme court, upon completion of proceedings before it, shall remit a copy of its judgment or order to the court in which the proceeding was commenced, which court shall have the power to compel compliance with such judgment or order.

c. In a proceeding to enforce or review an order of the board, the court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment or decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Section heading amended LL 26/1998 § 9, eff. July 7, 1998.
Subd. a amended LL 26/1998 § 9, eff. July 7, 1998.

DERIVATION

Formerly § 1173-4.4 added LL 1/1972 § 10

§ 12-309. Powers and duties of board of collective bargaining; board of certification; director. a. Board of collective bargaining. The board of collective bargaining, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty:

(1) on the request of a public employer or public employee organization which is a party to a disagreement concerning the interpretation or application of the provisions of this chapter, to consider such disagreement and report its conclusion to the parties and the public;

(2) on the request of a public employer or certified or designated employee organization to make a final determination as to whether a matter is within the scope of collective bargaining;

(3) on the request of a public employer or a certified or designated employee organization which is party to a grievance, to make a final determination as to whether a dispute is a proper subject for grievance and arbitration procedure established pursuant to section 12-312 of this chapter;

(4) to prevent and remedy improper public employer and public employee organization practices, as such practices are listed in section 12-306 of this chapter. For such purposes, the board of collective bargaining is empowered to establish procedures, make final determinations, and issue appropriate remedial orders;

(5) to recommend any needed changes in the provisions of this chapter or of an executive order;

(6) to hold hearings and compel the attendance of witnesses and the production of documents;

(7) to adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties including rules and regulations governing the procedures to be followed by mediation and impasse panels constituted pursuant to subdivision b or c of section 12-311 of this chapter;

(8) where either party to collective bargaining negotiations has rejected in whole or in part the recommendations of an impasse panel, to review such recommendations as provided in paragraph four of subdivision c of section 12-311 of this chapter.

b. Board of certification. The board of certification, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty:

(1) to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations, provided that in any case involving a petition for certification where supervisory or professional employees petition to be represented for purposes of collective bargaining separate and apart from non-supervisory or non-professional employees, or where a petition for certification has been filed requesting a unit of supervisory and non-supervisory or a unit of professional and non-professional employees and the public employer objects thereto, the board of certification shall not include such supervisory or professional employees in a bargaining unit which includes non-supervisory or non-professional employees respectively unless a majority of the supervisory or professional employees voting in an election vote in favor thereof;

(2) to determine the majority representative of the public employees in an appropriate collective bargaining unit by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such employees, to certify the same as the exclusive bargaining representative thereof; to designate representatives; and to determine the length of time during which such certification or designation shall remain in effect and free from challenge or attack;

(3) to decertify as exclusive bargaining representative an employee organization which has been found by secret-ballot election no longer to be the majority representative, or which shall otherwise become ineligible for certification under the provisions of this chapter, and to terminate or vacate designations of representatives;

(4) to determine whether specified public employees are managerial or confidential within the meaning of subdivision seven of section two hundred one of the civil service law and thus are excluded from collective bargaining;

(5) to hold hearings and compel the attendance of witnesses and the production of documents; and

(6) to adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties, including rules relating to the standards for determination of bargaining units.

c. Director. The director in addition to such other powers and duties as he or she has under this chapter and as may be conferred upon such director from time to time by law, shall have the power and duty:

(1) To oversee adherence to the provisions of this chapter and to administer the provisions of section 12-311 of this chapter and the rules and regulations adopted by the board of collective bargaining, subject to the direction of such board;

(2) To administer the provisions of subdivision b of this section and the rules and regulations adopted by the board of certification, subject to the direction of such board;

(3) To maintain communication with public employers and public employee organizations engaged in collective bargaining negotiations, to facilitate such negotiations by furnishing at the request of both parties, such data or information as may aid them therein, and, if such director determines that either party is remiss in its obligations, to communicate this information as he or she deems appropriate;

(4) On the request of the mayor, to make available the mediation, impasse, and arbitration services of the office of collective bargaining to public employers and public employee organizations not otherwise entitled to make use thereof at a cost to them to be determined by the board; and

(5) To direct the operations of the staff of the office of collective bargaining.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Subd. a par 6 amended LL 26/1998 § 10, eff. July 7, 1998.
Subd. b par (4) added LL 26/1998 § 11, eff. July 7, 1998.
Subd. b pars (5), (6) renumbered (formerly pars (4), (5)) LL 26/1998 § 11, eff. July 7, 1998.

DERIVATION

Formerly § 1173-5.0 added LL 53/1967 § 2

Subd a amended LL 1/1972 § 11
Subd b amended LL 1/1972 § 12
Subd a par 8 added LL 2/1972 § 1

§ 12-310. Meetings; quorum; vote required; public hearings prior to adoption of rules. a. Meetings of board of collective bargaining. (1) The board of collective bargaining shall hold special meetings upon the call of the director or the request of any two members. Written notice of all regular and special meetings, including agendas and amendments to agendas shall be given to each board member, including alternate members, not more than ten days nor less than one day prior to any such meeting. A quorum shall consist of one city member, one labor member and one impartial member or of any four members.

(2) The board of collective bargaining, or such members thereof as it may designate, shall conduct meetings between representatives of the city responsible for labor relations and representatives of the municipal labor committee at least twice a year, and at such other times as the director determines. These meetings shall not take up grievances or negotiate changes in wages, hours, or working conditions, but shall deal with problems of general application, including those arising out of the administration of the procedures set forth in this chapter. The director shall also from time to time convene similar meetings between representatives of particular employers and certified employee organizations.

b. Meetings of board of certification. The board of certification shall hold regular and special meetings upon the call of the chairperson or of the other two members, but shall meet at least ten times a year. Two members shall constitute a quorum.

c. Vote required. Except as otherwise specifically provided, all actions, determinations, findings, and recommendations of the board of collective bargaining and the board of certification shall be by majority vote of members present and voting. In the absence of a city or labor member, or in the event of a vacancy, an alternate member of the board of collective bargaining may vote in the place and stead of the member for whom he or she is the alternate, or on account of whom the vacancy exists.

d. Promulgation of rules. Rules and amendments to rules promulgated by the board of collective bargaining or the board of certification shall be in conformity with the requirements of chapter forty-five of the city charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Subd. d amended LL 26/1998 § 12, eff. July 7, 1998.

DERIVATION

Formerly § 1173-6.0 added LL 53/1967 § 2
Subd b amended LL 1/1972 § 13
Subd c amended LL 1/1972 § 14
Amended LL 51/1980 § 6

§ 12-311. Bargaining notice; mediation; impasse panels. a. Bargaining notices. (1) At such time prior to the expiration of a collective bargaining agreement as may be specified therein (or, if no such time is specified, at least ninety but not more than one hundred fifty days prior to expiration of the agreement) a public employer, or a certified or designated employee organization, which desires to negotiate on matters within the scope of bargaining shall send the other party (with a copy to the director) a notice of the desire to negotiate a new collective bargaining agreement on such matters. The parties shall commence negotiations within ten days after receipt of such a bargaining notice, unless such time is extended by agreement of the parties, or by the director or the board of collective bargaining.

(2) At any time after a public employee organization has been newly certified or designated to represent the public employees in a designated bargaining unit, the public employer or the newly certified or designated employee organization, if it desires to negotiate on matters within the scope of collective bargaining, may send the other party (with a copy to the director) a bargaining notice for the terms of a collective bargaining agreement on such matters. The parties shall commence negotiations within ten days after receipt of such a bargaining notice, unless such time is extended by agreement of the parties, or by the director or the board of collective bargaining.

(3) Nothing herein shall authorize or require collective bargaining between parties to a collective bargaining agreement during the term thereof, except that such parties may engage in collective bargaining during such term on a matter within the scope of collective bargaining where (a) the matter was not specifically covered by the agreement or raised as an issue during the negotiations out of which such agreements arose and (b) there shall have arisen a significant change in circumstances with respect to such matter, which could not reasonably have been anticipated by both parties at the time of the execution of such agreement.

b. Mediation panels. (1) The office of collective bargaining shall maintain a register of mediators who have been approved for listing thereon by the board of collective bargaining.

(2) If the director, upon the request of a party or upon his or her own initiative determines that collective bargaining negotiations between a public employer and a certified or designated employee organization would be aided by mediation, he or she shall appoint a mediation panel from such register to assist the parties in arriving at an agreement. A mediation panel shall not be appointed less than thirty days after the commencement of negotiations, unless requested by both parties. It shall be the duty of the parties to cooperate with the mediation panel to arrive at an agreement.

(3) The mediation panel shall perform its duties under the general direction and guidance of the director, to whom it shall report.

c. Impasse panels. (1) The office of collective bargaining shall maintain a register of impasse panel members who have been approved for listing thereon by a majority of the entire board of collective bargaining, including at least one city member and one labor member.

(2) If the board of collective bargaining, upon recommendation of the director, determines that

collective bargaining negotiations (with or without mediation) between a public employer and a certified or designated employee organization have been exhausted, and that the conditions are appropriate for the creation of an impasse panel, it shall promptly instruct the director to appoint such a panel. The director may also appoint an impasse panel upon request of both parties. In appointing a panel, the director shall submit to the parties a single list of seven persons from the register of impasse panel members, and each party shall inform the director of its preferences. To the extent the preferences disclose agreement, the person or persons agreed upon shall be appointed to the impasse panel; to the extent the preferences are not in agreement, the director shall proceed to designate the members of such panel from the register. Each party may at its own expense designate a consultant to an impasse panel, who shall be available to the panel for assistance.

(3) (a) An impasse panel shall have power to mediate, hold hearings, compel the attendance of witnesses and the production of documents, review data, and take whatever action it considers necessary to resolve the impasse. If an impasse panel is unable to resolve an impasse within a reasonable period of time, as determined by the director, it shall, within such period of time as the director prescribes, render a written report containing findings of fact, conclusions, and recommendations for terms of settlement.

(b) An impasse panel appointed pursuant to paragraph two of this subdivision c shall consider wherever relevant the following standards in making its recommendations for terms of settlement:

(i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

(ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

(iii) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(iv) the interest and welfare of the public;

(v) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

(c) The report of an impasse panel shall be confined to matters within the scope of collective bargaining. Unless the mayor agrees otherwise, an impasse panel shall make no report

concerning the basic salary and increment structure and pay plan rules of the city's career and salary plan. If an impasse panel makes a recommendation on a matter which requires implementation by a body, agency or official which is not a party to the negotiations: (i) it shall address such recommendation solely to such other body, agency or official; (ii) it shall not recommend or direct that the municipal agency or other public employer which is party to the negotiations shall support such recommendation; and (iii) it may recommend whether a collective bargaining agreement should be concluded prior to such implementation. Any alternative recommendations proposed by an impasse panel in the event such implementation does not occur shall not exceed the total cost of the original recommendations.

(d) The report of an impasse panel shall be submitted to the parties to the negotiations, to any other body, agency or official whose action is required to implement the panel's recommendations, and to the director. The director shall, with the advice and guidance of the board of collective bargaining, determine the time at which such report shall be released to the public, which shall not be later than seven days after its submission or, upon agreement of the parties and approval of the director, not later than thirty days after its submission, provided that if the parties conclude a collective bargaining agreement prior to the date on which the report is to be released, the report shall not be released except upon consent of the parties.

(e) Acceptance or rejection. Within ten days after submission of the panel's report and recommendations, or such additional time not exceeding thirty days as the director may permit, each party shall notify the other party and the director, in writing, of its acceptance or rejection of the panel's recommendations. Failure to so notify shall be deemed acceptance of the recommendations. The director may release the acceptance or rejections to the public at such time as the director, in his or her discretion, may deem advisable. Upon acceptance by all parties or ten days after the latest rejection by any party, unless an appeal is earlier filed with the board pursuant to subparagraph (a) of paragraph four of this subdivision, the recommendation shall become final and binding and shall constitute an award within the meaning of article seventy-five of the civil practice law and rules, provided, however, that any provisions of such award the implementation of which requires the enactment of a law shall not become binding until the appropriate legislative body enacts such law.

(4) Review of impasse panel recommendations:

(a) A party who rejects in whole or in part the recommendation of an impasse panel as provided in subparagraph (e) of paragraph three of this subdivision may appeal to the board of collective bargaining for review of the recommendations of the impasse panel by filing a notice of appeal with said board within ten days of such rejection. The notice of appeal shall also be served upon the other parties within said time. Upon failure to appeal within the time provided herein, the recommendations shall be final and binding upon the party failing to so appeal, as provided in subparagraph (e) of paragraph three of this subdivision, except that the board, upon its own initiative, may review recommendations which have been rejected. Panel recommendations which, pursuant to the provisions of this subparagraph, become final and binding on both parties shall constitute an award within the meaning of article seventy-five of the civil practice law and rules, provided, however, that any provision of such award the implementation of which requires

the enactment of a law shall not become binding until the appropriate legislative body enacts such law.

(b) The notice of appeal shall specify the grounds upon which the appeal is taken, the alleged errors of the panel, and the modifications requested. The board shall afford the parties a reasonable opportunity to argue orally before it or to submit briefs, or may permit both argument and briefs. Review of the recommendations shall be based upon the record and evidence made and produced before the impasse panel and the standards set forth in subparagraph (b) of paragraph three of this subdivision and shall include consideration of issues, if any, of conformity of the recommendations with any law or regulation properly governing the conduct of collective bargaining between the city of New York and its employees, provided, however, that when an appeal is taken to the board on any of the grounds of prejudice set forth in subparagraph (i), (ii) or (iii) of paragraph one of subdivision (b) of section seventy-five hundred eleven of the civil practice law and rules, review shall also be based upon the record made in any hearing which the board may direct on such issues, provided, however, that the board orders such hearing within thirty days of the filing of the notice of appeal.

(c) Upon such review, the board may affirm or modify the panel recommendations in whole or in part. A modification of the recommendations shall be by the vote of a majority of the board. The board may also set aside the recommendations of an impasse panel in whole or in part if it finds that the rights of a party have been prejudiced on any of the grounds set forth in subparagraph (i), (ii) or (iii) of paragraph one of subdivision b of section seventy-five hundred eleven of the civil practice law and rules. An order setting aside a recommendation of such grounds shall be based on a written decision and shall be made upon a vote of a majority of the board. A member of the board who has acted as a member of an impasse panel shall not be disqualified from subsequently participating in a decision or determination of the board in the same dispute.

(d) The recommendations of the impasse panel shall be deemed to have been adopted by the board if the board fails to issue a final determination within thirty days of filing of the notice of appeal, or within forty days of a notification of rejection to the director of the board where the board, upon its own initiative, reviews the panel's recommendations, provided, however, that when a hearing is ordered pursuant to subparagraph (b) of this paragraph four relating to allegations of prejudice, the impasse panel's recommendations shall be deemed to have been adopted by the board only if the board fails to issue a determination thereon within thirty days after the close of such hearing, and provided further, that the director may extend the thirty day or forty day periods mentioned in this subparagraph for an additional period not to exceed thirty days.

(e) Notwithstanding the provisions of this paragraph four, and except for purposes of judicial review, any provision of a determination of the board of collective bargaining the implementation of which requires the enactment of a law shall not become binding until the appropriate legislative body enacts such law.

(f) A final determination of the board pursuant either to subparagraph (c) or (d) of this paragraph

four shall be binding upon the parties. Such a final determination shall constitute an award within the meaning of article seventy-five of the civil practice law and rules.

d. Preservation of status quo. During the period of negotiations between a public employer and a public employee organization concerning a collective bargaining agreement, and, if an impasse panel is appointed during the period commencing on the date on which such panel is appointed and ending sixty days thereafter or thirty days after the panel submits its report, whichever is sooner, provided, however, that upon motion of the panel, and for good cause shown, the board of collective bargaining may allow a maximum of two sixty-day extensions of time for the completion of impasse panel proceedings, provided further, that additional extensions of time for the completion of impasse panel proceedings may be granted by the panel upon the joint request of the parties, and during the pendency of any appeal to the board of collective bargaining pursuant to subdivision c of this section, the public employee organization party to the negotiations, and the public employees it represents, shall not induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism, nor shall such public employee organization induce any mass resignations, and the public employer shall refrain from unilateral changes in wages, hours, or working conditions. This subdivision shall not be construed to limit the rights of public employers other than their right to make such unilateral changes, or the rights and duties of public employees and employee organizations under state law. For the purpose of this subdivision the term "period of negotiations" shall mean the period commencing on the date on which a bargaining notice is filed and ending on the date on which a collective bargaining agreement is concluded or an impasse panel is appointed.

e. Number of members on panels; vote required. (1) Mediation and impasse panels shall consist of such odd number of persons (one or more) as may be agreed upon by the parties to the negotiations, or, in the absence of such agreement, as shall be deemed appropriate by the director.

(2) All actions, determinations, findings and recommendations of an impasse panel shall be by majority vote.

f. Anything in this chapter notwithstanding, public employers and certified or designated employee organizations hereby are empowered to enter into written agreements setting forth procedures to be invoked in the event of an impasse in collective bargaining negotiations, and such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration, provided that (1) if the agreement between the parties fails to provide procedures which result in a final determination of all issues, then all unresolved issues between the parties shall be subject to the provisions of subdivision c of this section or so much thereof as may be applicable under the circumstances, and

(2) questions, issues or disputes as to arbitrability or the scope of collective bargaining shall be determined by the board of collective bargaining only.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Subd. c par (2) amended LL 26/1998 § 13, eff. July 7, 1998.

DERIVATION

Formerly § 1173-7.0 added LL 53/1967 § 2
Amended LL 1/1972 § 15
Subd c par 3 subpar e added LL 2/1972 § 2
Subd c par 4 added LL 2/1972 § 3
Subd f added LL 2/1972 § 4
Subd c par 2 amended LL 51/1980 § 7
Subd c par 3 subpar e amended LL 51/1980 § 8
Subd c par 4 subpars a, b amended LL 51/1980 § 9
Subd d amended LL 51/1980 § 10
Subd e amended LL 51/1980 § 11

§ 12-312. Grievance procedure and impartial arbitration. a. The board of collective bargaining shall maintain a register of arbitrators who have been approved for listing thereon by a majority of the entire board of collective bargaining including at least one city member and one labor member. The board of collective bargaining shall establish procedures for impartial arbitration which may be incorporated into executive orders and collective bargaining agreements between public employers and public employee organizations.

b. Executive orders, and collective bargaining agreements between public employers and public employee organizations, may contain provisions for grievance procedures, in steps terminating with impartial arbitration of unresolved grievances. Such provisions may provide that the arbitrator's award shall be final and binding and enforceable in any appropriate tribunal in accordance with the applicable law governing arbitration, except that awards as to grievances concerning assignment of employees to duties substantially different from those stated in their job classifications, or the use of open-competitive rather than promotional examinations, shall be final and binding and enforceable only to the extent permitted by law.

c. Arbitrators appointed under arbitration provisions relating to municipal agencies shall be persons on the register of the board of collective bargaining. The costs of such arbitration shall be determined and allocated pursuant to section eleven hundred seventy-four of the charter. The board of collective bargaining, in its discretion, may publish arbitration awards.

d. As a condition to the right of a municipal employee organization to invoke impartial arbitration under such provisions, the grievant or grievants and such organization shall be required to file with the director a written waiver of the right, if any, of said grievant or grievants and said organization to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

e. Public employees and public employee organizations shall not induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism nor shall public employee organizations induce any mass resignations during the term of a collective bargaining agreement. A provision to that effect shall be inserted in all written collective bargaining agreements between public employers and public employee organizations. This subdivision shall not be construed to limit the rights of public employers or the duties of public employees and employee organizations under state law.

f. It is hereby declared to be the policy of the city that written collective bargaining agreements with certified or designated employee organizations should contain provisions for grievance procedures and impartial binding arbitration, which may be invoked by a public employer or by a certified or designated employee organization.

g. An employee may present his or her own grievance either personally or through an appropriate representative, provided that:

(1) a grievance relating to a matter referred to in paragraph two, three or five of subdivision a of section 12-307 of this chapter may be presented and processed only by the employee or by the appropriate designated representative or its designee, but only the appropriate designated representative or its designee shall have the right to invoke and utilize the arbitration procedure provided by executive order or in the collective agreement to which the designated representative is a party; and provided further that

(2) any other grievance of an employee in a unit for which an employee organization is the certified collective bargaining representative may be presented and processed only by, the employee or by the certified employee organization, but only the certified employee organization shall have the right to invoke and utilize the arbitration procedure provided by executive order or in the collective agreement to which the certified representative is a party.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1173-8.0 added LL 53/1967 § 2
Subd a amended LL 1/1972 § 16
Subd c amended LL 1/1972 § 17
Subd f amended LL 1/1972 § 18
Subd g added LL 1/1972 § 19

§ 12-313. Membership and rules of municipal labor committee. Membership in the municipal labor committee shall be open to any certified employee organization as defined in this chapter and which is otherwise eligible for membership under the rules of such committee. The board of collective bargaining may, upon the request of any certified employee organization, abrogate any rule of such committee relating to voting or eligibility for membership which it determines to be arbitrary or discriminatory, provided that prior to any such abrogation such committee shall be given an opportunity on at least ten days' notice to be heard thereon.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1173-9.0 added LL 53/1967 § 2
Amended LL 1/1972 § 20
Amended LL 51/1980 § 12

§ 12-314. Special provisions relating to initial certification. a. Any employee organization

which (1) discriminates with regard to the terms and conditions of membership because of race, color, creed, religion, disability, gender, sexual orientation, age, or national origin, or (2) is engaged in or advocates the violent overthrow of the government of the United States or of any state or any political subdivision thereof shall be ineligible for certification as an exclusive bargaining representative. For purposes of this section, the finding of a court or an administrative tribunal of competent jurisdiction that an employee organization has engaged in discrimination upon one of the above bases in a particular case shall not be dispositive of the question of that employee organization's eligibility for certification unless it is also found that the employee organization has engaged in a pattern or practice of such discrimination generally.

b. No organization seeking or claiming to represent members of the police force of the police department shall be certified if such organization (i) admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than members of the police force of the police department, or (ii) advocates the right to strike.

c. Certificates or designations issued by the department of labor prior to the effective date of this chapter and in effect on such date shall remain in effect until terminated by the board of certification pursuant to its rules. Nothing contained in this subdivision shall limit the power of the board of certification to determine bargaining units differing from those determined by the department of labor.

HISTORICAL NOTE

Section added chap 907/1985 § 1
Section heading amended LL 26/1998 § 14, eff. July 7, 1998.
Subd. a amended LL 26/1998 § 14, eff. July 7, 1998.

DERIVATION

Formerly § 1173-10.0 added LL 53/1967 § 2
Subd c amended LL 1/1972 § 21
Subd d repealed LL 1/1972 § 22
Subd e repealed LL 51/1980 § 13

§ 12-315. Delegation of powers. The director, with the approval of at least five other members of the board of collective bargaining, may delegate to independent and impartial private institutions those functions of the office of collective bargaining relating to (a) the maintenance of registers of mediators, arbitrators, and members of impasse panels, (b) the submission of the names of persons on the impasse panel and arbitration registers for selection by parties to negotiations or to a grievance, and (c) the conduct of representation and decertification elections.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1173-11.0 added LL 53/1967 § 2

§ 12-316. Emergency suspension of salary and wages. a. It is hereby found and declared that a fiscal emergency exists for the city of New York by reason of the following: As a result of the severe economic and social dislocations of recent years, there has been a great increase in the

need and demand for public services at a time when financing such services has become increasingly difficult. Due to a general decline in investor acceptance of local government securities and almost unprecedented high interest rates, the city of New York, despite the financial soundness of its obligations, recently has faced increased difficulty in selling a sufficient amount of its securities to enable it to refund its outstanding obligations or to meet its cash requirements. For the immediate future, this increased difficulty has caused concern that it may be unable to provide, without interruption, many services essential to its inhabitants while also meeting obligations to the holders of its outstanding securities as they come due. It is in the public interest and it is the policy of the city of New York to provide, without interruption, services essential to its inhabitants while meeting its obligations to the holders of its outstanding securities. The state of New York, in an attempt to assist the city of New York and other municipalities faced by a similar or analogous problem has enacted chapter one hundred sixty-eight and one hundred sixty-nine of the laws of nineteen hundred seventy-five, which among other provisions create a municipal assistance corporation for the city of New York, empowering it to issue bonds and notes and to use the proceeds from their sale primarily to provide the city of New York with amounts to pay the short-term obligations of the city as they mature. Despite statutory provisions which, in effect, secure the bonds and notes issued by the municipal assistance corporation for the city of New York with all the proceeds of the state stock transfer tax and of the state municipal assistance sales and compensating use taxes to the extent needed for that purpose, despite the agreement of the city of New York to make and observe such changes in its record keeping, accounting, budgeting and financial management practices as the municipal assistance corporation for the city of New York requires pursuant to such legislation and despite numerous economy measures taken by the city of New York, including a substantial reduction in the number of its employees, the municipal assistance corporation for the city of New York has been experiencing difficulty in selling the bonds it has issued and has expressed grave concern with regard to its ability to sell bonds which it plans to issue in the near future. The city of New York, as a result, is faced by a fiscal emergency which could seriously impair its ability to carry on orderly and uninterrupted operations and functions of government. Imposing certain additional nuisance taxes which the state in the past had given it power to impose is not a feasible solution since to do so may further impair the city's credit standing because the burden of present taxes has contributed to flight from the city of middle-class taxpaying residents and of a number of business firms. In view of this situation, it is necessary for the city to exercise its sovereign police power to suspend salary increases in the manner provided in subdivision b of this section.

b. The mayor shall have the power to direct by executive order that all or any part of increases in salary or wages of public employees which have taken effect since June thirtieth, nineteen hundred seventy-five or which will take effect after that date pursuant to collective bargaining agreements or other analogous contracts requiring such salary increases as of July first, nineteen hundred seventy-five or as of any date thereafter shall be suspended. All or any part of increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan and step-ups or increments which have taken effect since June thirtieth, nineteen hundred seventy-five or which will take effect after that date pursuant to collective bargaining agreements or other analogous contracts requiring such increased payment, as of July first, nineteen hundred seventy-five or as of any date thereafter may, in the same manner, be suspended. For the

purposes of computing the pension base of retirement allowances, the suspended salary or wage increases and the suspended other payment shall not be considered as part of compensation or final compensation or of annual salary earned or earnable. The suspensions provided herein shall be effective for the first pay period ending on or subsequent to September first, nineteen hundred seventy-five and shall continue until one year thereafter.

c. This section shall not be applicable to public employees covered by a collective bargaining agreement or a public employee not covered by a collective bargaining agreement where the collective bargaining representative or such unrepresented employee, by an instrument in writing, has agreed to a deferment of salary or wage increase which has been certified by the mayor as being an acceptable and appropriate contribution toward alleviating the city's fiscal crisis. The mayor may, if he or she finds that the fiscal crisis has been alleviated or for any other appropriate reason, direct by executive order that the suspensions of salary or wage increases or suspension of other increased payments shall, in whole or in part, be terminated.

d. Notwithstanding the provisions of section 12-304 of this chapter, this section shall be applicable to all public employees, including public employees of any public employer as defined in this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1173-12.0 added LL 43/1975 § 1

Subd c amended LL 44/1975 § 1

Subd e relettered LL 44/1975 § 2 (formerly Subd d)

Subd d added LL 44/1975 § 2