

**OTHER AGENCIES****(a)****PUBLIC EMPLOYMENT RELATIONS COMMISSION****Representation Procedures****Negotiations and Impasse Procedures; Mediation, Fact-Finding, Super Conciliation, Grievance Arbitration, Special Disciplinary Arbitration, Mediation, and Binding Arbitration to Resolve Impasses Over Employee Organization Access to Employees****Proposed Amendment: N.J.A.C. 19:11-1.5****Proposed New Rules: N.J.A.C. 19:12-7**

Authorized By: Public Employment Relations Commission,  
Joel M. Weisblatt, Chair.

Authority:

As to N.J.A.C. 19:11: N.J.S.A. 34:13A-5.4e, 34:13A-6d, 34:13A-11, and 34:13A-5.15d; and P.L. 2018, c. 15.

As to N.J.A.C. 19:12: N.J.S.A. 34:13A-5.4.c, 34:13A-6.b, 34:13A-11, and 34:13A-5.13h; and P.L. 2018, c. 15.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-085.

Submit comments by November 16, 2018, to:

Joel M. Weisblatt, Chair  
Public Employment Relations Commission  
PO Box 429  
Trenton, New Jersey 08625-0429

Comments may also be submitted via facsimile to 609-777-0089 or via e-mail to [rulecomments@perc.state.nj.us](mailto:rulecomments@perc.state.nj.us).

The agency proposal follows:

**Summary**

Effective May 18, 2018, P.L. 2018, c. 15, the Workplace Democracy Enhancement Act (WDEA), took effect. The WDEA added N.J.S.A. 34:13A-5.11 through 5.15 to the New Jersey Employer-Employee Relations Act. The WDEA addresses substantive rights and obligations of public employers and employee organizations who represent their employees in these areas:

A. N.J.S.A. 34:13A-5.13, Access to members of negotiations units, which defines and implements "access rights" including:

- Transmission of information from public employer to employee organizations;
- Time periods for meetings with current and recently hired public employees;
- Access to and use of employer premises and facilities;
- Public employers and employee organizations shall engage in collective negotiations to implement language governing employee access into collective negotiations agreements; and
- Commission shall promulgate rules to create a panel of arbitrators and make appointments therefrom to resolve negotiations impasses over language pertaining to employee access.

To implement the provisions of N.J.S.A. 34:13A-5.13, the Commission is proposing new N.J.A.C. 19:12-7.1, 7.2, and 7.3.

B. N.J.S.A. 34:13A-5.14, Certain actions of public employer relative to negotiations unit members prohibited, provides that a public employer shall not:

- encourage negotiations unit members to resign or relinquish membership in an exclusive representative employee organization;
- encourage negotiations unit members to revoke authorization of the deduction of fees to an exclusive representative employee organization; or
- encourage or discourage an employee from joining, forming, or assisting an employee organization.

These acts are unfair practices as set forth in N.J.S.A. 34:13A-5.4, and the Commission has been given the additional authority to order a public employer to make an employee organization whole for losses stemming from such conduct.

As the Commission’s existing unfair practice procedures can be used to process and adjudicate unfair practice charges arising under N.J.S.A. 34:13A-5.14, no new rules are deemed necessary to implement this portion of the WDEA.

C. N.J.S.A. 34:13A-5.15, Inclusion in negotiations unit, provides, with certain specified exceptions:

- that employees of a public employer who are performing work that is performed by employees in a collective negotiations unit represented by an exclusive representative employee organization shall be included in that collective negotiations unit;
- that the Commission promulgate rules to implement the unit work provisions of the WDEA; and
- that unit work disputes be resolved within 60 days after a public employer or the exclusive representative employee organization files such a request with the Commission.

As the Commission has traditionally made rulings modifying collective negotiations units through its Clarification of Unit (CU) procedure, implementation of the unit work provisions of the WDEA can be achieved by modifying N.J.A.C. 19:11-1.5, the current rule on the contents and processing of CU petitions by adding amendments tailored to meet the requirements of N.J.S.A. 34:13A-5.15.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

**Social Impact**

The statement accompanying the bill that became the Workplace Democracy Enhancement Act (WDEA) reads: [T]he “Workplace Democracy Enhancement Act,” is designed to ensure that employee organizations that are the exclusive representatives of public employees in collective negotiations are able to carry out their statutory duties by having access to and being able to communicate with the employees they represent.

The amendments to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., made by the WDEA are to be implemented, where necessary through rulemaking. See N.J.S.A. 34:13A-5.13h and 34:13a-5.15.d. The proposed amendment to N.J.A.C. 19:11-1.5 and proposed new rules at N.J.A.C. 19:12-7 are intended to comply with the purpose of the WDEA in a manner fully consistent with its procedural and substantive requirements.

**Economic Impact**

N.J.S.A. 34:13A-5.13, Access to members of negotiations units, requires by its text or as directed by new terms of collective negotiations agreements, that representatives of employee organizations will meet with employees they represent on employer facilities during work time. Representatives who are also employees will not be performing their normal duties on such occasions. This may require that employers have other employees substitute for those employee representatives. Such substitutes would most likely be compensated. Accordingly, this aspect of the WDEA may result in public employers paying additional employee compensation.

**Federal Standards Statement**

The National Labor Relations Act specifically excludes from its coverage “any State or political subdivision thereof,” 29 U.S.C. § 152(2). Thus, no Federal law or regulation applies to the subject matter of these rules. As there is no comparable Federal rule or standard upon which the Commission can rely to achieve the aim of the New Jersey Employer-Employee Relations Act, the adoption of the amendment and proposed new rules is necessary.

**Jobs Impact**

The Commission does not expect that any job will be directly generated or lost as a consequence of the proposed amendment and new rules.

**Agriculture Industry Impact**

The Commission does not expect that the agriculture industry will be affected as a consequence of the proposed amendment and proposed new rules.

**Regulatory Flexibility Statement**

The proposed amendment and new rules impose no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Commission’s actions involve employer-employee relations in public employment.

**Housing Affordability Impact Analysis**

The proposed amendment and new rules will have no impact on the affordability of housing because the rulemaking is designed to resolve questions concerning the structure of collective negotiations units as affected by unit work disputes and the proposed new rules are designed to resolve disputes over the terms of employee organization workplace access to the public employees they represent. There is also no anticipated effect on the average cost of housing.

**Smart Growth Development Impact Analysis**

The proposed amendment and proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rulemaking is designed to resolve questions concerning the structure of collective negotiations units as affected by unit work disputes and the proposed new rules are designed to resolve disputes over the terms of employee organization workplace access to the public employees they represent.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The proposed amendment and proposed new rules will not have an impact on pre-trial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 11  
REPRESENTATION PROCEDURES

SUBCHAPTER 1. REPRESENTATION PETITIONS

19:11-1.5 Petition for clarification of unit

(a) (No change.)

(b) A petition for clarification of unit shall contain:

1.-2. (No change.)

3. A statement by petitioner listing and explaining fully the reasons for the proposed clarification. The reasons may include:

i.-v. (No change.)

**vi. A dispute concerning the addition to a certified or recognized unit for collective negotiations of employees who perform negotiations unit work; and**

[vi.] **vii.** (No change in text.)

4. (No change.)

**(c) A petition for clarification of unit filed pursuant to (b)3vi above shall:**

**1. Not seek the addition of any employees of the same public employer who are included in an existing unit for collective negotiations;**

**2. Be accompanied by a certification, or certifications, based on personal knowledge, supported by exhibits, such as official job descriptions, that:**

**i. Describes the job duties of the petitioned for title(s);**

**ii. Lists the job duties of and specifically identifies job title(s) in the petitioner’s collective negotiations unit that have the same or substantially similar duties to those of the petitioned-for titles;**

**iii. Attests that the public employer has not asserted that the disputed title(s) is confidential or a managerial executive; and**

iv. Lists the name(s) of all employee organizations that might have an interest in the proceeding; and

3. Be resolved within 60 days after such petition is filed with the Commission.

#### CHAPTER 12

#### NEGOTIATIONS AND IMPASSE PROCEDURES; MEDIATION, FACT-FINDING, SUPER-CONCILIATION, AND GRIEVANCE ARBITRATION

#### SUBCHAPTER 7. IMPASSES OVER EMPLOYEE ORGANIZATION ACCESS TO EMPLOYEES

##### 19:12-7.1 Purpose of procedures

N.J.S.A. 34:13A-5.13, Access to members of negotiations units, mandates that public employers shall provide to exclusive representative employee organizations access to members of the negotiations units. These procedures are designed to implement N.J.S.A. 34:13A-5.13, including 34:13A-5.13g and h, which provide that impasses in collective negotiations between a public employer and an employee organization that has been designated as the exclusive representative of employees in a collective negotiations unit, over access to employees in a collective negotiations unit as described in N.J.S.A. 34:13A-5.13a through f, shall be resolved by a Commission-appointed arbitrator with authority to issue a binding decision or to resolve the impasse through voluntary mediation.

##### 19:12-7.2 Resolution of collective negotiations impasses over access to employees

(a) If the parties are unable to reach agreement within 30 calendar days from the commencement of negotiations in accordance with N.J.S.A. 34:13A-5.13g regarding access to, and communications with, negotiations unit members, the exclusive employee organization, or the public employer may file a petition with the Public Employment Relations Commission to resolve the negotiations dispute.

1. Forms for filing a request for the appointment of an arbitrator to resolve a negotiations impasse regarding access to, and communications with, negotiations unit members will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429. The form is also available on the Commission's website: [www.state.nj.us/perc](http://www.state.nj.us/perc).

(b) The Commission shall create an arbitration panel drawn from experienced members of its grievance arbitration panel who indicate a willingness to resolve negotiations impasses through voluntary mediation or the issuance of a binding award concerning disputes about proposed contract language pertaining to access to, and communications with, negotiations unit members as set forth in N.J.S.A. 34:13A-5.13a through f.

(c) The Director of Conciliation and Arbitration shall assign arbitrators to cases, who:

1. May resolve the dispute through voluntary mediation; or

2. Shall issue a binding award resolving the parties' negotiations disputes consistent with N.J.S.A. 34:13A-5.13a through f.

(d) The arbitrator shall charge a fee pursuant to a per diem fee schedule as set forth in the arbitrator's Commission grievance arbitration panel resume.

(e) The cost of arbitration shall be borne equally by the parties.

##### 19:12-7.3 Award

(a) The arbitrator shall issue an award as soon as possible after the close of the record, but not more than 45 days thereafter.

(b) An arbitrator may not extend the timeline for issuing a written award without approval from the Director of Conciliation and Arbitration (Director). Extension requests shall be in writing and filed before the 35th day. The Director shall respond to extension requests within five days of receipt.

(c) The award shall be in writing and shall be submitted to the parties simultaneously, and electronically to the Public Employment Relations Commission.

(d) Where relevant, the arbitrator shall take into account the following factors:

1. The interests and welfare of the public;

2. Any stipulations of the parties;

3. The lawful authority of the employer;

4. The financial impact on the employer;

5. Comparability; and

6. Existing provisions bearing on the exclusive representative's access to employees, whether set by past practice, contract, statute, or case law.

(e) The award or a voluntary settlement must provide that language on the subjects covered by N.J.S.A. 34:13A-5.15a through f be incorporated into the parties' collective negotiations agreement.