

## CHAPTER 10

### DEFINITIONS, SERVICE, CONSTRUCTION<sup>1</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. DEFINITIONS

###### 19:10-1.1 Definitions

##### SUBCHAPTER 2. SERVICE AND FILING OF PAPERS

###### 19:10-2.1 Time for filing papers; Commission address

###### 19:10-2.2 Form of documents

###### 19:10-2.3 Filing by original, facsimile transmission and e-mail

###### 19:10-2.4 Service of pleading and proof of service

###### 19:10-2.5 Electronic filing program

##### SUBCHAPTER 3. CONSTRUCTION OF RULES

###### 19:10-3.1 Rules to be liberally construed

###### 19:10-3.2 Application of rules

##### SUBCHAPTER 4. DELEGATION OF AUTHORITY

###### 19:10-4.1 Delegation of authority

##### SUBCHAPTER 5. DESCRIPTION OF ORGANIZATION

###### 19:10-5.1 Description of organization

##### SUBCHAPTER 6. RULEMAKING: PERIOD FOR PUBLIC COMMENT; NOTICE TO PUBLIC; HEARINGS; RULEMAKING PETITIONS

###### 19:10-6.1 Rulemaking in general

###### 19:10-6.2 Comments to be in writing; extension of period for public comment

###### 19:10-6.3 Additional notice of rulemaking activity

###### 19:10-6.4 Public hearings

###### 19:10-6.5 Rulemaking petition procedures

##### SUBCHAPTER 1. DEFINITIONS

###### 19:10-1.1 Definitions

The following words and terms, when used in this subtitle, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the New Jersey Employer-Employee Relations Act, as amended, (N.J.S.A. 34:13A-1 et seq.).

"Arbitration panel" means a roster of arbitrators maintained by the commission.

"Arbitrator" means a member of an arbitration panel maintained in accordance with these rules, including the

grievance arbitration panel established by N.J.A.C. 19:12-5, the special panel of disciplinary arbitrators established pursuant to N.J.S.A. 40A:14-210c. and N.J.A.C. 19:12-6.2 and the special panel of interest arbitrators established pursuant to N.J.S.A. 34:13A-16e and N.J.A.C. 19:16-5.6(a).

"Authorization card" means a dated card or separate sheet of paper signed by an employee, normally within six months prior to the filing of a petition that states that the employee wishes to be represented for purposes of collective negotiations by the named employee organization.

"Certification of representative" means the designation by the commission of an employee organization as the exclusive representative of employees in an appropriate unit.

"Certification of results" means the certification by the commission of the results of an election conducted by the commission in which no employee organization received a majority of the valid ballots cast.

"Chairman" means the full-time member of the Public Employment Relations Commission who is its chief executive officer and administrator and is also the chief executive officer and administrator of the Division of Public Employment Relations.

"Commission" means the New Jersey Public Employment Relations Commission.

"Contested transfer proceeding" means a procedure under these rules for determining whether the transfer of an employee between work sites by an "employer" as defined by N.J.S.A. 34:13A-22 was made for disciplinary reasons.

"Craft employee" means any employee who is engaged with helpers or apprentices in a manual pursuit requiring the exercise of craft skills which are normally acquired through a long and substantial period of training or a formal apprenticeship and which in their exercise call for a high degree of judgment and manual dexterity, one or both, and for ability to work with a minimum of supervision. The term shall also include an apprentice or helper who works under the direction of a journeyman craftsman and is in a direct line of succession in that craft.

"Director of Arbitration" means that officer of the commission designated to act on behalf of the commission with respect to arbitration procedures contained in N.J.A.C. 19:12 and 19:16.

"Director of Conciliation" means that officer of the commission designated to act on behalf of the commission with respect to those matters related to negotiations impasses contained in N.J.A.C. 19:12 and 19:16.

"Director of Representation" means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to representation procedures contained in N.J.A.C. 19:11.

"Director of Unfair Practices" means that officer of the commission designated to act on behalf of the commission

with respect to those matters relating to unfair practice proceedings contained in N.J.A.C. 19:14.

"Election agent" means that officer of the commission designated to conduct elections in accordance with the procedures set forth in N.J.A.C. 19:11.

"Fact-finder" means the Commission, any member of the Commission or any officer so designated by the Commission to perform the functions of a fact-finder as set forth in these rules.

"Fact-finding panel" means a roster of fact-finders maintained by the commission.

"Hearing examiner" means an officer of the Commission designated to conduct any unfair practice, scope of negotiations or contested transfer hearings and to issue a recommended report and decision.

"Hearing officer" means an officer of the commission designated to conduct any representation hearing and to issue a report and recommendations.

"Mediation panel" means a roster of mediators maintained by the commission.

"Mediator" means the commission, its members, employees of the commission or any officer so designated by the commission to perform the functions and duties of mediation.

"Officer" means all personnel of the Division of Public Employment Relations or any other individual designated by the commission to act on the commission's behalf. The commission may delegate to such officer all of the powers conferred upon the commission in connection with the discharge of its duty or duties.

"Party" means any person, employee, group of employees, organization or public employer filing a charge, petition, request or application or other document under these rules; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under this act; or any person, organization or public employer whose intervention in a proceeding has been permitted or directed by the commission, or any designated officer.

"Payroll deduction determination proceeding" means the procedure to determine if the majority representative of a negotiations unit of employees has satisfied the conditions required by N.J.S.A. 34:13A-5.5 to have the Commission order that the public employer initiate payroll deductions of a representation fee in lieu of dues from all unit employees who are not members of the majority representative.

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result

accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

"Recognition" means the written acceptance by a public employer of an employee organization as the exclusive representative of employees in an appropriate unit.

"Representation proceeding" means a procedure under these rules for the purpose of determining the exclusive representative of employees, if any, in an appropriate collective negotiations unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations, including a question concerning the composition of a unit designated for the purpose of collective negotiations.

"Scope of negotiations proceeding" means a procedure under these rules for the purpose of determining whether a matter in dispute is within the scope of collective negotiations.

"Showing of interest" means a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; current dues records; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

"Super conciliator" means a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation or fact-finding panel, or any other super conciliator approved by the Director of Conciliation to perform the functions and duties of a super conciliator.

"Unfair practice proceeding" means a procedure under these rules for the purpose of determining whether or not anyone has engaged or is engaging in any unfair practice as set forth in N.J.S.A. 34:13A-5.4(a) and (b).

## **SUBCHAPTER 2. SERVICE AND FILING OF PAPERS**

### **19:10-2.1 Time for filing papers; Commission address**

(a) In computing any period of time prescribed by or allowed by these rules or by order of the commission or officer conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations.

(b) Regarding additional time after service of a Commission document by mail, whenever a party has the right or is required to do some act or take some action within a prescribed period after service of a Commission notice or other paper, and the notice or paper is served by mail, three days shall be added to the prescribed period, provided, however, that three days shall not be added if any extension of such time may have been granted, or if service has been made by facsimile or other electronic means.

(c) Regarding extensions of time, the commission or officer having authority to dispose of the matter, may, for good cause shown, extend any time prescribed in these rules.

(d) When these rules require the filing of any document, it must be received by the Commission or the officer or agent designated to receive such document before 5:00 P.M. on the last day of the time limit, if any, for such filing or extension of time that may have been granted.

(e) Any filings or other correspondence sent to the Commission by mail should be addressed to:  
Public Employment Relations Commission  
PO Box 429  
Trenton, New Jersey 08625-0429

(f) Any filings or other correspondence sent to the Commission by courier or in person should be delivered to:  
Public Employment Relations Commission  
495 West State Street  
Trenton, New Jersey 08618

(g) Any filings or other correspondence sent to the Commission by facsimile shall be transmitted to: (609) 777-0089.

(h) Any filings or other correspondence permitted to be sent to the Commission electronically may be sent to:  
[mail@perc.state.nj.us](mailto:mail@perc.state.nj.us).

### **19:10-2.2 Form of documents**

(a) Documents other than correspondence shall clearly show the title of the proceeding and the docket number, if any.

(b) The original of each document filed shall be signed by an attorney or representative of record for the party, or by the party, or by an officer of the party and shall contain the mailing address, e-mail address, and telephone and facsimile numbers of the person signing it.

(c) Except as otherwise provided in these rules, any documents or papers shall be filed with four copies in addition to the original. All documents filed with the Commission shall be printed, typed or otherwise legibly duplicated on letter size paper (8 1/2 inch by 11 inch); copies will be accepted only if they are clearly legible.

### **19:10-2.3 Filing by original, facsimile transmission and e-mail**

(a) Originals of the following must be timely filed in person or via mail or courier service:

1. Authorization cards and showings of interest in certification and decertification cases;
2. Petitions to Initiate Compulsory Interest Arbitration, Appeals of Interest Arbitration Awards, and Requests for Special Permission to Appeal Interest Arbitration Rulings, accompanied by the filing fee; and
3. Briefs and appendices in Appeals of Interest Arbitration Awards.

(b) Facsimile transmissions and e-mail will be accepted in lieu of originals for all submissions except those listed in (a) above.

(c) When filing by facsimile transmission or e-mail, any requirement under N.J.A.C. 19:11, 19:12, 19:13, 19:14, 19:18 and 19:19 that an original and multiple copies of submissions be filed is waived. However, all original filings and submissions shall be retained by a filing party in its file. Such originals shall be produced upon request.

(d) Except as noted in (a) above, all correspondence and submissions, such as briefs and motions, may be sent to [mail@perc.state.nj.us](mailto:mail@perc.state.nj.us) as an attachment describing the attachment and identifying the proceeding or matter to which it pertains. Answers, certifications and affidavits may be submitted as an e-mail attachment provided that the signature page is scanned and submitted as part of the filing.

### **19:10-2.4 Service of pleading and proof of service**

(a) Service of papers by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, or by private delivery service, or by facsimile transmission.

(b) Service upon an attorney or representative of record for the party shall constitute service upon the party.

### **19:10-2.5 Electronic filing program**

The Chairman of the Commission shall have authority to initiate via an announcement on the Commission's website [www.state.nj.us/perc](http://www.state.nj.us/perc) an electronic filing program affecting the filing of certain documents.

### **19:10-3.1 Rules to be liberally construed**

(a) Except as stated in (c) below, whenever the commission or a designated officer finds that unusual circumstances or good cause exists and that strict compliance with the terms of these rules will work an injustice or unfairness, the commission or such officer shall construe these rules liberally to prevent injustices and to effectuate the purposes of the act (N.J.S.A. 34:13A-1 et seq.).

(b) When an act is required or allowed to be done at or within a specified time, the commission may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the act (N.J.S.A. 34:13A-1 et seq.).

(c) In accordance with N.J.A.C. 1:1-1.3, the burden of proof shall not be relaxed.

### **19:10-3.2 Application of rules**

Any valid action by parties prior to the effective date of the rules will not be held invalid because of a failure to comply with the procedural requirements set forth herein.

### **19:10-4.1 Delegation of authority**

When in these rules an act is required or allowed to be done by a specific officer of the commission, it shall be understood that the specified officer acts as the designated officer of the commission and has all the powers necessary to permit the discharge of the duty or duties delegated. However, the commission at all times retains the authority to designate itself or some other officer of the commission to perform that function in a particular case or as circumstances may require.

### **19:10-5.1 Description of organization**

(a) The Division of Public Employment Relations is the administrative agency established to implement and administer the provisions of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq.) concerning employer-employee relations in public employment (N.J.S.A. 34:13A-5.1). The New Jersey Public Employment Relations Commission is the body established within the division which has been granted the powers and duties by the act (N.J.S.A. 34:13A-5.2). The commission is to consist of seven members to be appointed by the Governor, by and with the advice and consent of the Senate. Of such

members, two shall be representatives of public employers, two shall be representatives of public employee organizations and three shall be representatives of the public. One of the public members is appointed as the full-time chairman and is the chief executive officer of the commission and the division (N.J.S.A. 34:13A-5.2).

(b) The staff of the Commission consists of the personnel of the Division of the Public Employment Relations, all of whom have been designated officers of the Commission (N.J.A.C. 19:10-1.1). The division is divided into four general sections-- arbitration, conciliation, representation and unfair practices, which correspond to the three main areas of responsibility delegated to the Commission by the Act. (See N.J.S.A. 34:13A-6(b); N.J.S.A. 34:13A-6(d); and N.J.S.A. 34:13A-5.4(c), respectively.) The Commission has designated a staff member to be the director of each section and has delegated to that officer the powers conferred on the Commission in connection with the duties delegated in the appropriate chapters of these rules. See N.J.A.C. 19:10-1.1 for the definition of Director of Arbitration; Director of Conciliation; Director of Representation; and Director of Unfair Practices. Any additional areas of statutory responsibility are administered under the direct supervision of the chairman.

(c) The staff of the commission also includes a full-time general counsel and one or more deputies who render legal advice with respect to commission matters, and represent the commission in judicial proceedings pursuant to special counsel appointments under N.J.S.A. 52:17A-13. Additionally, the chairman of the commission is assisted in the performance of his or her duties, particularly in the area of scope of negotiations proceedings, by an individual designated by the commission as the special assistant to the chairman.

(d) The division, including the Commission, is located in Trenton and the public may obtain information with regard to the functions and proceedings of the Commission at the offices of the Commission, on the Commission's Web site [www.state.nj.us/perc](http://www.state.nj.us/perc) or by writing to the New Jersey Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

## **SUBCHAPTER 6. RULEMAKING: PERIOD FOR PUBLIC COMMENT; NOTICE TO PUBLIC; HEARINGS; RULEMAKING PETITIONS**

### **19:10-6.1 Rulemaking in general**

The Commission shall pre-propose, propose, adopt, readopt, and amend rules and shall accept, process and act upon petitions filed by any interested person seeking the adoption, amendment or repeal of rules, in accordance with the Administrative Procedure Act and in conformance with the procedures adopted by the Office of Administrative Law to implement that act as set forth in N.J.A.C. 1:30.

### **19:10-6.2 Comments to be in writing; extension of period for public comment**

(a) Persons or entities seeking to submit comments on rule

proposals shall make their submissions in writing to the Commission or to the individual designated to receive comments in the notice of rule proposal.

(b) The public comment period for any rule proposed by the Commission shall be extended for a period of 30 additional days when a written request for such extension is filed with the Commission within 30 days of publication of the proposal and when sufficient public interest exists. Such interest shall be demonstrated by the filing of requests for an extension by:

1. Ten or more interested persons;
2. Any organization representing the interests of three or more public employers; or
3. An employee organization, or its state or national affiliate, which is:
  - i. The recognized or certified representative of more than 100 New Jersey public employees; or
  - ii. The recognized or certified representative of three or more negotiations units of public employees.

#### **19:10-6.3 Additional notice of rulemaking activity**

(a) The Commission shall provide at least 30 days notice of all proposed rulemaking. Notice shall be provided in the following manner:

1. Publication in the New Jersey Register;
2. Distribution of a notice or statement of the substance of the proposed rulemaking activity to the news media maintaining a press office in the New Jersey State House Complex;
3. Posting a copy of the proposal on the Commission's website at [www.perc.state.nj.us](http://www.perc.state.nj.us);
4. Posting a copy of the proposal in the lobby of the Commission's office at 495 West State Street, Trenton, New Jersey; and
5. Mailing a "Notice to Interested Persons" describing the rule proposal to a distribution list of persons and organizations who regularly use the Commission's services and are likely to have an interest in any rulemaking activity undertaken by the Commission and advising that a copy of the proposal may be viewed on the Commission's website or may be obtained from the Commission by written request.

(b) Notice may also be provided through publication in the New Jersey Law Journal, New Jersey Lawyer, or other appropriate publication.

#### **19:10-6.4 Public hearings**

(a) On receipt of a written request within 30 days following publication of the proposed rule in the New Jersey Register, the Commission shall conduct a public hearing on a proposed

rule if:

1. A public hearing is requested by a committee of the Legislature;
2. A public hearing is requested by a governmental agency or subdivision; or
3. Sufficient public interest in a hearing exists. Such interest shall be demonstrated by the filing of requests for a hearing by:
  - i. Ten or more interested persons;
  - ii. Any organization representing the interests of three or more public employers; or
  - iii. An employee organization, or its state or national affiliate, which is:
    - (1) The recognized or certified representative of more than 100 New Jersey public employees; or
    - (2) The recognized or certified representative of three or more negotiations units of public employees.

#### **19:10-6.5 Rulemaking petition procedures**

(a) Any interested person may petition the Commission to make, amend or repeal any rule. The petition must be written and signed by the petitioner.

(b) The petitioner shall state the following information clearly and concisely:

1. The name of the person making the request;
2. That person's interest in the request, including any relevant organizational affiliation;
3. The substance or nature of the rulemaking requested;
4. The proposed text of the rule;
5. The reasons for the request;
6. The statutory authority for the Commission to take the requested action; and
7. Any pertinent law or regulation.

(c) Requests shall be addressed to:  
Chairman  
Public Employment Relations Commission  
PO Box 429  
Trenton, NJ 08625-0429

(d) Within 15 days of receiving the petition, the Commission shall file with the Office of Administrative Law the notice of petition required by N.J.A.C. 1:30-4.1(c).

(e) The petition shall be provided to the Commission at the

next monthly meeting after filing.

(f) Within 60 days of receiving that petition, the Commission shall:

1. Deny the petition, in which case the Commission shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;

2. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or

3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral.

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<sup>i</sup> Title 19, Chapter 10 -- Chapter Notes

**AUTHORITY:**

N.J.S.A. 34:13A-5.4(e), 34:13A-6(b) and 34:13A-11.

**SOURCE AND EFFECTIVE DATE:**

R.2009 d.323, effective September 24, 2009.

See: 41 N.J.R. 2452(a), 41 N.J.R. 3960(a).

**EXPIRATION DATE:**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 10, Definitions, Service, Construction, expires on July 1, 2023.  
See: 48 N.J.R. 1502(b).

## CHAPTER 11

### REPRESENTATION PROCEDURES<sup>1</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. REPRESENTATION PETITIONS

- 19:11-1.1 Petitions
- 19:11-1.2. Contents of petition for certification
- 19:11-1.3 Contents of petition for decertification
- 19:11-1.4 Petition for certification filed by a public employer
- 19:11-1.5 Petition for clarification of unit
- 19:11-1.6 Petition for amendment of certification

##### SUBCHAPTER 2. PROCESSING OF PETITIONS

- 19:11-2.1 Validity of showing of interest
- 19:11-2.2 Investigation of petition
- 19:11-2.3 Withdrawal or dismissal of petition
- 19:11-2.4 Posting of notice of petition
- 19:11-2.5 Public docket
- 19:11-2.6 Investigation of petition; disposition
- 19:11-2.7 Intervention
- 19:11-2.8 Timeliness of petitions

##### SUBCHAPTER 3. RECOGNITION AS EXCLUSIVE REPRESENTATIVE

- 19:11-3.1 Recognition as exclusive representative

##### SUBCHAPTER 4. AGREEMENT FOR CONSENT ELECTION

- 19:11-4.1 Agreement for consent election

##### SUBCHAPTER 5. DIRECTED ELECTIONS

- 19:11-5.1 Directed elections

##### SUBCHAPTER 6. HEARINGS

- 19:11-6.1 Who shall conduct; to be public unless otherwise ordered
- 19:11-6.2 Notice of hearing
- 19:11-6.3 Duties and powers of hearing officer
- 19:11-6.4 Unavailability of hearing officer
- 19:11-6.5 Rights of parties
- 19:11-6.6 Rules of evidence
- 19:11-6.7 Stipulations of facts

- 19:11-6.8 Objection to conduct of hearing

- 19:11-6.9 Motions

- 19:11-6.10 Review of rulings

- 19:11-6.11 Waiver of objections

- 19:11-6.12 Filing of brief and oral argument at hearing

- 19:11-6.13 Continuance or adjournment

- 19:11-6.14 Misconduct

##### SUBCHAPTER 7. HEARING OFFICER'S REPORT; TRANSFER OF CASE TO THE COMMISSION, AND ACTION BY THE COMMISSION

- 19:11-7.1 Submission of the hearing officer's report to the Commission

- 19:11-7.2 Record in the case

- 19:11-7.3 Exceptions; cross-exceptions; briefs; answering briefs

- 19:11-7.4 Action by the Commission; consolidation or severance of proceedings; decision in the absence of exceptions

##### SUBCHAPTER 8. REQUEST FOR COMMISSION REVIEW

- 19:11-8.1 Filing of request

- 19:11-8.2 Grounds for granting a request for review

- 19:11-8.3 Contents of request for review; timely presentment of facts

- 19:11-8.4 Statement in opposition to a request for review; further statements

- 19:11-8.5 Waiver of right to request review

- 19:11-8.6 Stay of decision; filing of briefs with the Commission; Commission consideration

- 19:11-8.7 Decision by the Commission

##### SUBCHAPTER 9. TRANSFER TO THE COMMISSION; RECONSIDERATION

- 19:11-9.1 Transfer to Commission on its own motion

- 19:11-9.2 Oral argument

- 19:11-9.3 Motion for Commission reconsideration

##### SUBCHAPTER 10. ELECTION PROCEDURES

- 19:11-10.1 Eligibility list

- 19:11-10.2 Notices of election; improper use of notices

- 19:11-10.3 Election procedures

- 19:11-10.4 Runoff elections

19:11-10.5 Rerun elections

19:11-10.6 No majority representative

19:11-10.7 Determination of exclusive representative

## SUBCHAPTER 1. REPRESENTATION PETITIONS

### 19:11-1.1 Petitions

(a) Rules concerning who may file are as follows.

1. A petition for certification of public employee representative (RO) may be filed by any public employee or group of public employees, or by any individual or employee organization claiming to be the exclusive representative of public employees.

2. A petition for certification of public employee representative (RE) may be filed by a public employer alleging that one or more public employees, group of public employees, individuals or employee organizations have presented to such employer a claim to be recognized or continue to be recognized as the exclusive representative and the public employer has a good faith doubt concerning the majority status of the representative of its employees.

3. A petition for decertification of public employee representative (RD) may be filed by any public employee or group of public employees or any individual acting on their behalf alleging that the certified or currently recognized employee representative is no longer the majority representative of such employees and that the employees no longer desire to be represented by any employee representative. A public employer may not file a petition for decertification of public employee representative.

4. A petition for clarification of unit (CU) may be filed by the exclusive representative or public employer.

5. A petition for amendment of certification (AC) may be filed by an employee organization.

(b) An original and four copies of all petitions shall be filed with the Director of Representation. All petitions shall be in writing. The Director of Representation shall serve a copy of the petition upon the other parties. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from the Commission's website: <http://www.state.nj.us/perc>.

### 19:11-1.2 Contents of petition for certification

(a) A petition for certification of public employee representative filed by a public employee, a group of public

employees, any individual, or an employee organization shall contain:

1. The name, address, e-mail address, and telephone number of the public employer and the name and title of the person to contact, if known;

2. A description of the collective negotiations unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

3. The name, address and telephone number of the recognized or certified exclusive representative, if any, and the date of such certification or recognition and the expiration date of any applicable collective negotiations agreement, if known to the petitioner;

4. The names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner;

5. Any other relevant facts;

6. The name and affiliation, if any, of the petitioner and its address and telephone number;

7. The name, address, e-mail address, title, and telephone number of the petitioner's representative;

8. This dated and signed certification by the petitioner or its representative: "I declare that I have read the above petition and that the information is true to the best of my knowledge and belief.";

9. A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 percent of the employees in the unit alleged to be appropriate. An alphabetical list of such designations also shall be submitted to the Director of Representation; and

10. A petition for certification of public employee representative shall state whether the petitioner seeks certification:

i. Through a secret ballot election conducted in accordance with N.J.A.C. 19:11-10.1 through 10.7; or

ii. Without an election in accordance with N.J.S.A. 34:13A-5.3, as amended by P.L. 2005, c. 161, on the basis of its having submitted authorization cards signed by a majority of employees in the unit alleged to be appropriate and there being no other employee organization seeking to be the majority representative. The petitioner shall submit the authorization cards upon which it is relying. The name of the employee organization listed on the petition and on the authorization cards must be identical.

### 19:11-1.3 Contents of petition for decertification

(a) A petition for decertification of public employee representative shall contain:

1. A statement that the employee representative certified by the Commission or recognized by the public employer no longer represents a majority of the employees in the collective negotiations unit in which it is currently recognized or certified;



2. The information required by N.J.A.C. 19:11-1.2, Contents of petition for certification, except paragraphs (a)9 and 10;

3. The petition for decertification shall be accompanied by a showing of interest of not less than 30 per cent of the employees in the unit in which an exclusive representative has been recognized or certified. A showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified employee representative or by any other employee representative.

#### **19:11-1.4 Petition for certification filed by a public employer**

(a) A petition for certification of public employee representative filed by a public employer shall state that a claim for representation or continued representation has been made by one or more public employees, groups of public employees, individuals or employee organizations and that the public employer has a good faith doubt concerning the majority status of the representative of its employees.

(b) A petition for certification of representative filed by a public employer shall include all of the information set forth in N.J.A.C. 19:11-1.2, except paragraphs (a)9 and 10..

#### **19:11-1.5 Petition for clarification of unit**

(a) The exclusive representative or the public employer may file a petition for clarification of unit.

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

1. A description of the present negotiations unit and the date of the certification or recognition, if known;

2. A description of the proposed clarification of the unit;

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

i. Changed circumstances;

ii. Creation of a new position or title;

iii. Dispute over a title in a newly certified/recognized negotiations unit;

iv. New operation or facility;

v. Statutory exclusions;

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

vii. Any other reasons why the petition is appropriate; and

4. The information required by paragraphs (a)1, and (a)4 through (a)8 of N.J.A.C. 19:11-1.2.

(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. List 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

2. Identify the positions/titles the petitioner seeks to include in any existing negotiations unit, along with a statement explaining fully the reasons for the proposed inclusion.

i. The reasons for the inclusion of the positions/titles identified in the petition shall include a description of the negotiations unit work the petitioner alleges the employees in the disputed positions/titles perform, and an explanation of why that work is negotiations work.

ii. Along with the petition, the petitioner shall provide a copy of the most recent collective negotiations agreement between the petitioner and the employer and any documents upon which petitioner relies in support of its petition.

(d) Upon the filing of any petition pursuant to (b)3vi above, the Director of Representation shall investigate the petition to determine the facts. The Director shall issue a written request to the employer for relevant information, which shall be supplied to the Director and petitioner within 10 calendar days of receipt of the request.

(e) The petition filed pursuant to (b)3vi above shall be resolved within 60 calendar days after such petition is filed with the Commission.

#### **19:11-1.6 Petition for amendment of certification**

(a) An employee organization may file a petition for amendment of certification issued by the Commission for the purpose of recording a change in the name or in the affiliation of the exclusive representative.

(b) A petition for amendment of certification shall contain:

1. The name of the employer and the name of the certified employee organization involved;
2. The address of the public employer;
3. An identification and description of the existing certification;
4. A statement by the petitioner setting forth the reason for the desired amendment;
5. The name, the affiliation, if any, and the address of the petitioner;
6. Any other relevant facts; and
7. This dated and signed certification by the petitioner or its representative: "I declare that I have read the above petition and that the information is true to the best of my knowledge and belief."

(c) A petition for amendment of certification shall be supported by an affidavit attesting that the membership of the certified employee representative voted in favor of the change in name and affiliation. Such affidavit shall specify that:

1. The membership was given advance and adequate notice of the election, as evidenced by an attached copy of a notice of election and a statement of the date of the notice and the manner in which it was provided to members;
2. The election was conducted by secret ballot, as evidenced by an attached copy of the ballot, and was held within six months of the filing of the petition;
3. A majority voted in favor of the change in name and affiliation, as evidenced by a document setting forth the results; and
4. The organization's officers and the unit structure remain unchanged.

(d) A petition for amendment of certification will be served by the Director of Representation on all organizations that are part of a certified majority representative. Each organization will be given an opportunity to request intervention under N.J.A.C. 19:11-2.7. If intervention is permitted, the petition will be dismissed if any intervening organization objects to processing the petition.

## SUBCHAPTER 2. PROCESSING OF PETITIONS

### 19:11-2.1 Validity of showing of interest

The showing of interest, including authorization cards where a petitioner seeks certification by card check, shall be confidential and shall not be furnished to any of the parties. The Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack. Neither the nature nor the size of the showing of interest shall be divulged. The showing shall be returned to the petitioner once the case is closed.

### 19:11-2.2 Investigation of petition

(a) Upon the filing of any petition, the Director of Representation shall investigate the petition to determine the

facts.

(b) The Director of Representation shall determine whether or not a valid question concerning the representation of employees exists in a prima facie appropriate unit.

### 19:11-2.3 Withdrawal or dismissal of petition

(a) If the Director of Representation determines after an investigation that any petition has not been timely filed; or, in a petition for certification or decertification, that no valid question concerning the representation of employees exists in a prima facie appropriate unit; or, in a petition for clarification of unit, that there is no dispute concerning the composition of the unit of public employees, the Director may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such withdrawal, within a reasonable time may dismiss the petition.

(b) If it appears to the Director of Representation or the assigned hearing officer that the petitioner has no further interest in processing its petition, the Director or the hearing officer may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such a withdrawal, may dismiss the petition within a reasonable time and after appropriate notice.

(c) Within 15 days after the date a petition has been dismissed, a petitioner may file a motion to reopen with the Director of Representation. The petitioner shall file an original and two copies of such motion, together with proof of service of a copy on all other parties. Any party opposing the motion may file an original and two copies of its response within five days of receipt of the motion, together with proof of service of a copy on all other parties. The motion may be granted based on a showing of extraordinary circumstances or to prevent an injustice.

### 19:11-2.4 Posting of notice of petition

(a) After the filing of a representation petition, the Director of Representation will direct that the public employer post a notice to all employees, in places where notices are normally posted affecting the employees in the unit involved in the proceeding, on forms to be furnished by the Director of Representation.

(b) Such notices shall set forth:

1. The name of the petitioner;
2. The description of the unit involved;
3. Where a petitioner seeks certification by election, a statement that the petitioner is seeking an election to become certified as the majority representative for the petitioned-for employees. Where the petitioner seeks certification by authorization cards, a statement that the petitioner is seeking certification as the majority representative without an election on the basis of its claim that a majority of employees in the unit have signed authorization cards and no other employee organization is seeking to be the majority representative; and

4. A statement that all interested parties are to advise the Director of Representation in writing of their interest as soon as possible.

(c) The notice shall remain posted for a period of 10 days from the date of receipt by the public employer. The public employer shall certify to the Director of Representation that the notice has been conspicuously posted for a period of 10 days where notices are normally posted and that the notice has not been covered by other material, altered or defaced.

(d) In addition, the public employer shall furnish the Director of Representation with the names, addresses and telephone numbers of all employee organizations which have within the preceding 12 months claimed to represent any of the employees in the requested unit.

(e) The failure of the Director of Representation to direct the posting of such notices or the failure of the public employer to post notices normally shall not serve to delay or invalidate any subsequent Commission action which occurs pursuant to the filing of a petition.

#### **19:11-2.5 Public docket**

The Director of Representation shall maintain (at the Commission's offices in Trenton) a public docket of all petitions. Such docket shall contain a copy of the petition but shall not include any showing of interest. The petition shall remain in the public docket until the case is closed.

#### **19:11-2.6 Investigation of petition; disposition**

(a) If no agreement for consent election has been reached pursuant to N.J.A.C. 19:11-4.1, the Director of Representation shall conduct a further investigation. The petitioner, the public employer, and any intervenor(s) shall present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in the petition. Such submissions shall be simultaneously served upon the parties.

(b) Where the petitioner is seeking to be certified as the majority representative of an appropriate unit on the basis of authorization cards and no other employee organization is seeking to be the majority representative, the Director of Representation shall determine whether a majority of employees in the unit have signed valid authorization cards. Absent the submission of substantial, reliable evidence that raises a legitimate and substantial doubt, executed authorization cards are presumed valid..

(c) Information disclosed to a staff member in confidence regarding any representation matter shall not be divulged. All files, records, reports, documents or other papers received or prepared by a staff member for purposes of settlement shall be classified as confidential. The staff member shall not produce any confidential records of, or testify in regard to, any settlement discussions conducted by him or her, on behalf of any party in any type of proceeding.

(d) After the investigation of such petition, the Director of Representation shall either:

1. Request the petitioner to withdraw the petition, or in the absence of withdrawal, dismiss the petition, pursuant to N.J.A.C. 19:11-2.3;

2. Issue a decision dismissing the petition, if it appears to the Director of Representation that there is not reasonable cause to believe that a valid question concerning representation exists in an appropriate unit;

3. Issue a decision directing an election in an appropriate unit, if it appears to the Director of Representation that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit and that an election reflecting the free choice of the employees in the appropriate unit will effectuate the policies of the Act (N.J.S.A. 34:13A-1.1 et seq.);

4. Issue a decision clarifying a unit;

5. Issue a decision amending a certification;

6. Certify the petitioner as the majority representative based on its submission of valid authorization cards signed by a majority of the employees in the appropriate unit; or

7. Take other measures the Director of Representation deems appropriate.

(e) Action by the Director of Representation pursuant to (d) above shall be based on an administrative investigation or a hearing conducted pursuant to N.J.A.C. 19:11-6.1 (Hearings).

(f) A hearing shall be conducted:

1. If it appears to the Director of Representation that substantial and material factual issues exist which, in the exercise of reasonable discretion, may more appropriately be resolved after a hearing; or

2. If it appears to the Director of Representation that the particular circumstances of the case are such that, in the exercise of reasonable discretion, the Director determines that a hearing will best serve the interests of administrative convenience and efficiency.

#### **19:11-2.7 Intervention**

(a) Any party seeking to intervene in a representation proceeding must submit a written request to the Director of Representation.

(b) To intervene in a proceeding initiated by a petition for certification, an incumbent employee organization must submit either:

1. Evidence that it is currently certified or recognized in accordance with N.J.A.C. 19:11-3.1 (Recognition as exclusive representative) as the exclusive representative of any of the employees sought by the petition; or

2. A current or recently expired collective negotiations agreement covering any of the petitioned-for employees.

(c) An employee organization other than the incumbent representative seeking to intervene in a proceeding initiated by a petition for certification must submit a showing of interest of not less than 10 percent of the employees in the petitioned-for unit or not less than 30 percent of the employees in the unit it claims to be appropriate if it seeks to represent a unit different

from that sought by the petitioner.

(d) To intervene in a proceeding initiated by a petition for decertification, the incumbent representative must submit evidence as set forth in (b)1 or 2 above, and express in writing its continued interest in representing the unit of employees named in the petition. Whenever the incumbent representative fails to intervene pursuant to this subsection, the Director may, upon adequate notice, determine without an election that the incumbent organization is no longer the majority representative.

(e) To intervene in a proceeding initiated by a petition for clarification of unit, an employee organization must submit either:

1. Evidence that it is the currently certified or recognized representative of any of the employees named in the petition; or
2. A current or recently expired collective negotiations agreement covering any of the employees named in the petition.

(f) To intervene in a proceeding initiated by a petition for amendment of certification, an employee organization must submit evidence that it is an organization that is part of the currently certified representative of the employees named in the petition.

(g) A request by an employee organization to intervene in a representation proceeding may be made at any time before:

1. The opening of a hearing held pursuant to N.J.A.C. 19:11-6.1 (Hearings); or
2. The issuance of a decision by the Director of Representation without a hearing, pursuant to N.J.A.C. 19:11-2.6 (Investigation of petition; disposition); or
3. Approval by the Director of Representation of an agreement for consent election, pursuant to N.J.A.C. 19:11-4.1 (Agreement for consent election).

(h) A motion to intervene during a hearing shall comply with N.J.A.C. 19:11-6.9 (Motions), but shall not be granted unless it is accompanied by a valid showing of interest and upon good cause shown which reasonably prevented the moving party from having filed a timely notice to intervene.

### **19:11-2.8 Timeliness of petitions**

(a) Where there is no recognized or certified exclusive representative of the employees, a petition for certification of public employee representative will be considered timely filed provided there has been no valid election within the preceding 12-month period in the requested negotiations unit or any subdivision of the unit.

(b) Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during the preceding 12 months an employee organization has been certified by the Commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-

3.1 (Recognition as exclusive representative).

(c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

1. In a case involving employees of the State of New Jersey, any agency of the State or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;
2. In a case involving employees of a county or a municipality, any agency of a county or municipality or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;
3. In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement.

(d) For the purpose of determining a timely filing, an agreement for a term in excess of three years will be treated as a three-year agreement and will not bar a petition filed at any time after the end of the third year of the agreement; an agreement for an indefinite term shall be treated as a one-year agreement measured from its effective date and will not bar a petition filed at any time after the end of the first year of the agreement.

## **SUBCHAPTER 3. RECOGNITION AS EXCLUSIVE REPRESENTATIVE**

### **19:11-3.1 Recognition as exclusive representative**

(a) Whenever a public employer has been requested to recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiations unit, the public employer and the employee organization may resolve such matters without the intervention of the Commission.

(b) The Commission will accord certain privileges to such recognition as set forth in N.J.A.C. 19:11-2.7, Intervention and N.J.A.C. 19:11-2.8, Timeliness of petitions, provided the following criteria have been satisfied before the written grant of such recognition by a public employer:

1. The public employer has satisfied itself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate collective negotiations unit;
2. The public employer conspicuously posted a notice, where notices to employees are normally posted, for a period of at least 10 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiations unit;

3. The public employer served written notification on any employee organizations that have claimed, by a written communication within the year preceding the request for recognition, to represent any of the employees in the unit involved, or any organization with which it has dealt within the year preceding the date of the request for recognition. Such notification was made at least 10 days before the grant of recognition and contained the information set forth in (b)2 above;

4. Another employee organization has not within the 10-day period notified the public employer, in writing, of a claim to represent any of the employees in the collective negotiations unit or has not within such period filed a valid petition for certification of public employee representative with the Director of Representation;

5. Such recognition shall be in writing and shall set forth specifically the collective negotiations unit involved.

#### **SUBCHAPTER 4. AGREEMENT FOR CONSENT ELECTION**

##### **19:11-4.1 Agreement for consent election**

(a) Where one or more employee organizations assert a claim to represent employees in an appropriate unit and a petition for certification of public employee representative or a petition for decertification of public employee representative has been filed, the parties may stipulate, subject to the approval of the Director of Representation, that a secret ballot election shall be conducted by the Commission among the employees in an appropriate collective negotiations unit to determine whether they desire to be represented for purposes of collective negotiations by any or none of the employee organizations involved. The parties to such proceeding shall be the public employer, the petitioner and any intervenors who shall have complied with the requirements set forth in N.J.A.C. 19:11-2.7 (Intervention).

(b) The parties shall stipulate as to the composition of the collective negotiations unit, and may agree as to the eligibility period for participation in the election, the dates, hours and places of the election, and the designations on the ballot, subject to the approval of the Director of Representation. In the absence of an agreement among the parties as to the eligibility period for participation in the election, the dates, hours and places of the election, and the designation on the ballot, the Director of Representation shall determine those arrangements.

#### **SUBCHAPTER 5. DIRECTED ELECTIONS**

##### **19:11-5.1 Directed elections**

A secret ballot election directed by the Commission or the Director of Representation, pursuant to N.J.A.C. 19:11-2.6 (Investigation of petition; disposition), shall be conducted in accordance with the order of the Commission or Director of Representation set forth in the decision directing the election. All elections shall be conducted under the supervision of the

Director of Representation. The Director of Representation may provide an opportunity to the parties to agree upon the dates, hours and places of the election, and the designations on the ballot, subject to his or her approval. The Director of Representation may authorize an officer to convene a conference among the parties for such purpose, at any time after the direction of an election. Absent an agreement among the parties, the Director of Representation shall determine the dates, hours and places of the election, and the designations on the ballot.

#### **SUBCHAPTER 6. HEARINGS**

##### **19:11-6.1 Who shall conduct; to be public unless otherwise ordered**

(a) Hearings in representation proceedings shall be conducted by the Director of Representation or a hearing officer designated by the Director of Representation, unless the Commission or any of its members presides. When conducting a hearing the Director of Representation shall have all the duties and powers of a hearing officer pursuant to this subchapter. Such hearings shall be public unless otherwise ordered, for good cause, by the Director of Representation, the Commission or the hearing officer.

(b) An official reporter shall make the only official transcript of such proceedings.

(c) Copies of the official transcript will not be provided by the Commission except as provided by law.

(d) Copies of the transcript may be purchased by arrangement with the official reporter, or examined in the Commission's offices during normal working hours. If a transcript of the proceedings is ordered before a recommended decision has been issued, the ordering party shall, at the time of ordering, notify the hearing officer that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the hearing officer for inclusion in the record.

##### **19:11-6.2 Notice of hearing**

(a) The Director of Representation shall issue a notice of hearing under the circumstances set forth in N.J.A.C. 19:11-2.6(d) (Investigation of petition; disposition).

(b) A notice of hearing shall be served on all interested parties at least 10 days before the hearing and shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the unit claimed to be appropriate;
3. The name of the public employer, petitioner and intervenors, if any;
4. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Hearings under this section of these rules are considered investigatory and not adversarial. Their purpose is to develop

a complete factual record upon which the Director of Representation or the Commission may discharge the duties under N.J.S.A 34:13A-6.

(d) Representation hearings and the procedures following such hearings shall be in accordance with these rules.

### **19:11-6.3 Duties and powers of hearing officer**

(a) The hearing officer shall have the duty to inquire fully into the facts.

(b) Before the case is transferred to the Commission, the hearing officer shall have the authority, subject to these rules and the Act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon petitions to quash subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the ends of justice would be served;
6. Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant;
7. Regulate the course of the hearing and, if appropriate, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of a witness refusing to answer any proper question;
8. Hold conferences for settling or simplifying the issues;
9. Except as otherwise provided by these rules, dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the Commission and motions to amend pleadings, also, in cases where a report and recommendations shall issue pursuant to N.J.A.C. 19:11-7.1 (Submission of the hearing officer's report to the Commission), to recommend dismissal of cases in whole or in part, and to order hearings reopened;
10. Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;
11. Request the parties to state their positions concerning any issue;
12. Take any other necessary action authorized by these rules.

### **19:11-6.4 Unavailability of hearing officer**

(a) If the hearing officer becomes unavailable, the Director of Representation or the Commission may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendations on the record as made, or both. The parties shall be notified of that designation.

(b) If the hearing officer becomes unavailable after the hearing has been conducted and before a report and recommendations has issued, the Commission may transfer the case to itself to issue a decision.

### **19:11-6.5 Rights of parties**

Any party shall have the right to appear at such hearing in person, or by authorized representative, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer. Five copies of documentary evidence shall be submitted unless the hearing officer permits a reduced number of copies.

### **19:11-6.6 Rules of evidence**

(a) The parties shall not be bound by rules of evidence, whether statutory, common law or adopted by the Rules of Court.

(b) All relevant evidence is admissible, except as otherwise provided by this section.

(c) A hearing officer may, in the exercise of discretion, exclude any evidence or offer of proof if its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

(d) The hearing officer shall give effect to the rules of privilege recognized by law.

(e) Notice may be taken of administratively noticeable facts and of facts within the Commission's specialized knowledge. The material noticed shall be referred to in the hearing officer's report and recommendations, and any party may contest the material so noticed by filing timely exceptions pursuant to N.J.A.C. 19:11-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

### **19:11-6.7. Stipulations of facts**

(a) In any proceeding stipulations of facts may be submitted.

(b) Stipulations of fact may be accepted by the Director of Representation or the hearing officer for a decision without a hearing.

(c) The acceptance of stipulations of facts by the Director of Representation or the hearing officer may be deemed a waiver of a right to hearing. The parties may also agree to waive a hearing officer's report and recommendations.

### **19:11-6.8 Objection to conduct of hearing**

(a) Any objection to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds

for such objection and included in the record.

(b) An objection shall not be deemed waived by further participation in the hearing.

(c) During a hearing, the Commission will not review any objection to the rulings of a hearing officer or the conduct of a hearing except by special permission to appeal pursuant to N.J.A.C. 19:14-4.6(b). Review by the Commission shall not stay the conduct of the hearing unless otherwise ordered by the Commission.

#### **19:11-6.9 Motions**

(a) All written motions shall briefly state the order or relief sought and, if appropriate, shall be supported by affidavits.

1. An original and two copies of a motion and any response to a motion made before the designation of a hearing officer shall be filed with the Director of Representation, together with proof of service of a copy on all other parties.

2. An original and two copies of a motion and any response to a motion made after the designation of a hearing officer and before the issuance of hearing officer's report and recommendations shall be filed with the hearing officer, together with proof of service of a copy on all other parties.

3. An original and nine copies of a motion and any response to a motion made after the issuance of hearing officer's report and recommendations shall be filed with the Commission, together with proof of service of a copy on all other parties.

(b) Answering arguments, documents or affidavits, if any, must be served on all parties and shall be filed with the Director of Representation, hearing officer or Commission as set forth in (a)1, 2, or 3 above, within five days of service of the moving papers, unless otherwise ordered, except that a hearing officer may permit a response to a motion made during a hearing to be made in the same manner.

(c) No further arguments, documents or affidavits shall be filed except by leave granted by the Director of Representation, hearing officer or Commission as set forth in (a)1, 2, or 3 above. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

(d) The Commission may rule upon all motions filed after issuance of the hearing officer's report and recommendations or may refer the motion to the hearing officer.

(e) The Commission, Director of Representation, or hearing officer, as applicable, may decide to hear oral argument or take testimony on any motion. The parties shall be notified of the time and place of hearing argument or taking testimony.

(f) All motions, responses, rulings and orders shall be part of the record.

#### **19:11-6.10 Review of rulings**

Interlocutory rulings by a hearing officer or by the Director of Representation shall not be appealed directly to the Commission, except by special permission pursuant to N.J.A.C. 19:14-4.6(b).

#### **19:11-6.11 Waiver of objections**

An objection not duly raised before a hearing officer shall be deemed waived unless the Commission excuses the failure to raise the objection because of extraordinary circumstances.

#### **19:11-6.12 Filing of brief and oral argument at hearing**

(a) Any party shall be entitled, upon request, to a reasonable period before the hearing closes for oral argument, which shall be included in the official transcript of the hearing.

(b) Any party shall be entitled, upon request made before the hearing closes, to file a brief or proposed findings and conclusions, or both, with the hearing officer, who may fix a reasonable time for such filing.

(c) A request for an extension of time for good cause shown shall be made to the hearing officer, together with proof of service of a copy on all other parties.

(d) No request will be considered unless received before the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the hearing officer.

(e) Five copies of any brief or proposed findings and conclusions shall be filed with the hearing officer, together with proof of service of a copy on all other parties.

#### **19:11-6.13 Continuance or adjournment**

At the discretion of the hearing officer, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement at the hearing by the hearing officer, or by other appropriate notice.

#### **19:11-6.14 Misconduct**

Misconduct at any hearing before a hearing officer or the Commission shall be grounds for summary exclusion from the hearing. Misconduct of an aggravated character by a representative of a party shall be grounds for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

### **SUBCHAPTER 7. HEARING OFFICER'S REPORT; TRANSFER OF CASE TO THE COMMISSION, AND ACTION BY THE COMMISSION**

#### **19:1-7.1 Submission of the hearing officer's report to the Commission**

After the hearing, the hearing officer shall prepare a report and recommendations which shall include findings of fact, conclusions of law, and a recommendation as to the action to be taken. The hearing officer shall file the original with the Commission and shall serve a copy on the parties. Service shall be complete upon mailing and the case shall then be deemed transferred to the Commission.

### **19:11-7.2 Record in the case**

The record shall consist of the petition, notice of hearing, motions, rulings, orders, any official transcript of the hearing, stipulations, documentary evidence, together with the hearing officer's report and recommendations and any exceptions, cross-exceptions, briefs and answering briefs.

### **19:11-7.3 Exceptions; cross-exceptions; briefs; answering briefs**

(a) Within 10 days of service on it of a report and recommendations or such longer period as the Commission may allow, any party may file with the Commission an original and nine copies of any exceptions to the report and recommendations or to any other part of the record or proceedings (including rulings upon motions or objections), together with an original and nine copies of a brief in support of the exceptions. Any party may, within the same period, file an original and nine copies of a brief in support of the report and recommendations. A request for an extension of time to file exceptions or briefs shall be in writing and shall state the other parties' positions with respect to such request. Filings under this subsection shall be accompanied by proof of service of a copy on all other parties.

(b) Exceptions to a hearing officer's report and recommendations shall:

1. Specify each question of procedure, fact, law or policy to which exception is taken;
2. Identify that part of the report and recommendations to which objection is made;
3. Designate by precise page citation the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities, unless set forth in a supporting brief. If a transcript of the proceedings is ordered for the purposes of filing exceptions to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the Commission.

(c) Any exception which is not specifically urged shall be deemed to have been waived.

(d) Any exception which fails to comply with the foregoing requirements may be disregarded.

(e) Any brief in support of exceptions shall not contain any matter outside the scope of the exceptions and shall contain, in the order indicated:

1. A concise statement of the case containing all that is material to the consideration of the questions presented;
2. A specification of the questions to be argued;
3. The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(f) Within five days of service on it of exceptions, or such longer period as the Commission may allow, a party opposing the exceptions may file an original and nine copies of an answering brief, limited to the questions raised in the exceptions and in the brief in support of exceptions, together with proof of service of a copy on all other parties. Filing, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11-7.3(a).

(g) Within five days of service on it of exceptions, or such longer period as the Commission may allow, any party that has not previously filed exceptions may file an original and nine copies of cross-exceptions to any portion of the hearing officer's report and recommendations, together with a supporting brief, in accordance with N.J.A.C. 19:11-7.3(b), together with proof of service of a copy on all other parties. Filings, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11-7.3(a).

(h) Within five days of service on it of cross-exceptions, or such longer period as the Commission may allow, any other party may file an original and nine copies of an answering brief in accordance with the provisions of N.J.A.C. 19:11-7.3(f), limited to the questions raised in the cross-exceptions, together with proof of service of a copy on all other parties. Filing, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11-7.3(a).

(i) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

(j) Any matter not included in exceptions or cross-exceptions may not be urged before the Commission in any proceeding.

### **19:11-7.4 Action by the Commission; consolidation or severance of proceedings; decision in the absence of exceptions**

(a) The Commission shall adopt, reject or modify the hearing officer's report and recommendations. The Commission may decide the matter upon the record or after oral argument. It may also reopen the record and receive further evidence. A decision, order or direction of the Commission shall set forth findings of fact and conclusions of law. A decision, order or direction of the Commission that disposes of the case in its entirety shall be a final administrative determination.

(b) Whenever necessary to effectuate the purposes of the Act or to avoid unnecessary costs or delay, the Commission or Director of Representation may order any proceeding to be severed from or consolidated with any other proceeding.

(c) If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.



## SUBCHAPTER 8. REQUEST FOR COMMISSION REVIEW

### 19:11-8.1 Filing of request

- (a) Within 10 days of service on it of the Director of Representation's decision, order or direction, any aggrieved party may file a request for review with the Commission.
- (b) An original and nine copies of a request for review shall be filed with the Commission, together with proof of service of a copy on all other parties. The filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the Director of Representation.

### 19:11-8.2 Grounds for granting a request for review

(a) The Chair may grant a request for review. A request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

### 19:11-8.3 Contents of request for review; timely presentment of facts

- (a) A request for review must be a self-contained document enabling the Commission or Chair to rule on the basis of its contents.
- (b) A request must contain a summary of all evidence and rulings bearing on the issues, together with page citations from the official transcript and a summary of argument.
- (c) A request may not raise any issue or allege any facts not timely presented to the Director of Representation or the hearing officer, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.
- (d) A request for review must specify both the grounds supporting review and address the merits of the issues for which relief is sought.

### 19:11-8.4. Statement in opposition to a request for review; further statements

Within seven days of service on it of a request for review, any party may file with the Commission an original and nine

copies of a statement in opposition to the request, together with proof of service of a copy on all other parties. No further submissions shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

### 19:11-8.5 Waiver of right to request review

- (a) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any Commission proceeding, any issue which was or could have been raised in the proceeding.
- (b) A Commission order disposing of a case in its entirety, or a Commission order denying a request for review of a decision, order or certification issued by the Director of Representation disposing of a case in its entirety shall constitute the final administrative determination of the Commission.

### 19:11-8.6 Stay of decision; filing of briefs with the Commission; Commission consideration

- (a) The granting of a request for review shall not stay the Director of Representation's decision unless otherwise ordered by the Commission.
- (b) Where review has been granted, the Commission will consider the entire record in the light of the grounds relied on for review.
- (c) Any request for review may be withdrawn with the permission of the Commission before issuance of a Commission decision.

### 19:11-8.7 Decision by the Commission

The Commission shall proceed upon the record to decide the issues referred to it or to review the decision of the Director of Representation. It shall affirm or reverse the decision of the Director of Representation, in whole or in part, or make such other disposition of the matter as it deems appropriate.

## SUBCHAPTER 9. TRANSFER TO THE COMMISSION; RECONSIDERATION

### 19:11-9.1 Transfer to Commission on its own motion

The Commission may, at any time, on its own motion, transfer a case to itself for appropriate action.

### 19:11-9.2 Oral argument

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and filed simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to N.J.A.C. 19:11-7.3 (Exceptions; cross-exceptions; briefs; answering briefs), together with proof of service of a copy on all other parties. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

### **19:11-9.3. Motion for Commission reconsideration**

After a Commission decision has been issued, a party may move for reconsideration. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. No further submissions shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Commission decision, unless otherwise ordered by the Commission. A motion for reconsideration need not be filed to exhaust administrative remedies.

## **SUBCHAPTER 10. ELECTION PROCEDURES**

### **19:11-10.1 Eligibility list**

(a) In all representation elections conducted pursuant to this subchapter, unless otherwise directed by the Director of Representation, the public employer is required to file simultaneously with the Director of Representation and with the employee organization(s) an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters and their last known mailing addresses and job titles. In addition, the public employer shall file a statement of service with the Director of Representation. In order to be timely filed, the eligibility list must be received by the Director of Representation no later than 10 days before the date of the election. The Director of Representation shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

(b) Failure to comply with the requirements of this section may be grounds for setting aside the election whenever proper objections are filed pursuant to N.J.A.C. 19:11-10.3(h). Additionally, the Director of Representation may, in the exercise of reasonable discretion, issue a subpoena or direction requiring the production of the eligibility list, and in the event of noncompliance, may institute appropriate enforcement proceedings pursuant to court rules.

(c) Actions of the Director of Representation pursuant to this section shall not be reviewable under N.J.A.C. 19:11-8.1 (Request for review).

### **19:11-10.2 Notices of election; improper use of notices**

(a) Notices of election shall be provided by the Director of Representation to the public employer for posting. The employer shall post such notices where notices are normally posted affecting the employees involved in the election. Such notices shall remain posted until the ballots are counted and

shall set forth the details and procedures for an election, the appropriate unit, the eligibility period, and the date(s), hours and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the Commission's official ballot which suggests either directly or indirectly to employees that the Commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

### **19:11-10.3 Election procedures**

(a) All elections shall be by secret ballot and shall be conducted under the supervision and direction of a Commission agent. The secret ballot may be accomplished manually or by the use of a mail ballot or by a mixed manual-mail ballot system, as determined by the Director of Representation.

(b) Whenever two or more employee organizations are included as choices in an election, any employee organization may request the Director of Representation to remove its name from the ballot. The request must be received not later than five days before the date of the election or the mailing of ballots to the eligible voters. Such request shall be subject to the approval of the Director of Representation whose decision shall be final. In a proceeding involving a public employer-filed petition or a petition for decertification, the employee organization that is certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Director of Representation, disclaiming any representation interest among the employees in the unit.

(c) The eligible voters shall be those employees included within the unit described in the agreement for consent election or as determined by the Commission or Director of Representation, who were employed during the payroll period for eligibility, including employees who did not work during that period because they were ill, or on vacation, or temporarily laid off, including those in the military service, and those on leaves of absence. In a manual ballot election, employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are those employees who have retired or quit or were discharged for cause prior to the commencement of the election and who have not been rehired or reinstated before the counting of ballots.

(d) Unless otherwise approved by the Director of Representation or by the election agent, all observers shall be non-supervisory employees of the public employer. Each party shall be allowed an equal number of observers. Observers shall:

1. Act as checkers at the voting place and in the counting of the ballots;
2. Assist in the identification of voters;
3. Challenge the eligibility of voters and ballots; and

4. Otherwise assist the election agent.

(e) An observer or the election agent may challenge the eligibility of any person to participate in the election. Such challenge must be asserted before a person casts a ballot and shall be recorded in writing specifying the name of the challenged person, the name of the challenging party, and the reason for the challenge. All persons whose names do not appear on the eligibility list maintained by the Commission election agent shall automatically be challenged by the election agent. A challenged voter shall be permitted to vote and the ballot shall be sealed in an appropriate challenge ballot envelope after the voter marks the ballot, which sealed envelope shall be dropped in the ballot box. At the conclusion of the balloting, the parties may be provided the opportunity to resolve the challenged ballots, subject to the approval of the election agent.

(f) The election agent shall have responsibility for the conduct of the election, and may establish any procedures the agent deems necessary to facilitate the election process and preserve the integrity of the secret ballot.

(g) The ballots shall be counted at a location designated by the Director of Representation or the election agent before the election. Any person may attend and witness the tally subject to such limitation as the Director of Representation or the election agent may prescribe. After the election, the Director of Representation shall furnish the parties with a tally of ballots.

(h) Within five days after the tally of ballots has been furnished, a party may file with the Director of Representation an original and four copies of objections to the conduct of the election or conduct affecting the results of the election, together with proof of service of a copy on all other parties. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A party filing objections must furnish evidence, such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The objecting party shall bear the burden of proof regarding all matters alleged in the objections and shall produce the specific evidence supporting its claim of irregularity in the election process. Failure to submit such evidence may result in the immediate dismissal of the objections.

(i) If the party filing objections has furnished sufficient evidence to support a prima facie case, the Director of Representation shall conduct an investigation into the objections.

(j) A hearing may be conducted where an administrative investigation into the objections reveals that substantial and material factual issues have been placed in dispute which, in the exercise of the reasonable discretion of the Director of Representation, may more appropriately be resolved after a hearing. After the investigation and any hearing has been completed, an administrative determination will be made either setting aside the election and directing a new one, or dismissing the objections and issuing the appropriate

certification.

(k) If challenged ballots are sufficient in number to affect the results of an election, the Director of Representation shall investigate such challenges. All parties to the election shall present documentary and other evidence, as well as statements of position, relating to the challenged ballots. After the administrative processing of the challenged ballots and any hearing has been completed, the Director of Representation shall make an administrative determination which shall resolve the challenges and contain the appropriate administrative direction.

(l) If no objections are filed within five days after the tally of ballots has been furnished, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held, the Director of Representation shall issue to the parties a certification of results of the election, or a certification of representative, where appropriate.

#### **19:11-10.4 Runoff elections**

(a) An election with three or more choices on the ballot (for example, at least two representatives and "no representative") that results in no choice receiving a majority of the valid ballots cast will be considered an inconclusive election. In such cases, the Director of Representation shall order a runoff election.

1. Objections, timely filed, shall be disposed of before a runoff election is ordered.

2. The ballot for a runoff election shall provide for a choice between the two choices receiving the largest number of votes in the prior election.

3. Employees who were eligible to vote in the prior election and who continue to be included in the voting unit on the date of the runoff election shall be eligible to vote in the runoff election.

4. The runoff election shall be conducted in accordance with N.J.A.C. 19:11-10.3 (Election procedures), as applicable.

(b) Only one runoff election shall be held pursuant to this section, but a rerun election may be ordered pursuant to N.J.A.C. 19:11-10.5.

#### **19:11-10.5 Rerun elections**

(a) An election will be declared a nullity when objections are sustained pursuant to N.J.A.C. 19:11-10.3. A nullity shall also be declared where an election with three or more ballot choices is inconclusive because either all choices received an equal number of votes or two choices received an equal number of votes and a third choice received a higher number of votes that is less than a majority. If an election is declared a nullity, the Director of Representation shall order a rerun election.

1. The ballot for a rerun election shall have the same choices as provided on the ballot in the prior election.

2. Employees who are eligible to vote pursuant to N.J.A.C. 19:11-10.3(c) shall be eligible to vote in the rerun election.

3. The rerun election shall be conducted in accordance with N.J.A.C. 19:11-10.3 (Election procedures) as applicable.

(b) The scheduling of further elections pursuant to this section shall be at the discretion of the Director of Representation.

#### **19:11-10.6 No majority representative**

In a rerun election, if no ballot choice receives a majority of the valid ballots cast, and there are no unresolved challenged ballots, and all eligible voters have cast ballots, then the Director of Representation may certify the results of the election indicating that no exclusive representative has been chosen.

#### **19:11-10.7 Determination of exclusive representative**

The exclusive representative shall be determined by a majority of the valid ballots cast in the election.

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<sup>i</sup> Title 19, Chapter 11 -- Chapter Notes

#### CHAPTER AUTHORITY:

N.J.S.A. 34:13A-5.4.e, 34:13A-6d, 34:13A-11, and 34:13A-5.15.d.

#### SOURCE AND EFFECTIVE DATE:

R.2018 d.088, readoption effective January 25, 2018, amendments effective March 5, 2018  
See: 49 N.J.R. 3100(a), 50 N.J.R. 988(a).

Amended, R.2020 d.023, effective February 18, 2020  
See: 50 N.J.R. 1988(a), 51 N.J.R. 1186(a), 52 N.J.R. 201(a)

#### EXPIRATION DATE:

Chapter 11, Representation Procedures, expires on January 25, 2025.

## CHAPTER 12

### NEGOTIATIONS AND IMPASSE PROCEDURES, MEDIATION, FACT-FINDING, SUPER CONCILIATION, GRIEVANCE ARBITRATION, SPECIAL DISCIPLINARY ARBITRATION, AND BINDING ARBITRATION TO REVIEW IMPASSES OVER EMPLOYEE ORGANIZATION ACCESS TO EMPLOYEES, AND NOTICE OF SUBCONTRACTING<sup>1</sup>

#### SUBCHAPTER 1. PURPOSE OF PROCEDURES

##### § 19:12-1.1 Purpose of procedures

N.J.S.A. 34:13A-5.4.e provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasse prior to required budget submission dates. Further, N.J.S.A. 34:13A-6.b provides that whenever negotiations between the public employer and exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission is empowered upon the request of either party to provide mediation to effect a voluntary resolution of the impasse, and in the event of a failure to resolve the impasse by mediation, to recommend or invoke fact-finding with recommendation for settlement. Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations, utilizing the public employer's required budget submission date as a definitive reference point to afford the parties a full opportunity for negotiations and resolution of impasses that are reached prior to the required budget submission date and for utilization of impasse procedures for parties who reach impasse during alternative time periods. N.J.A.C. 19:12-2.1 through 4.3 do not apply to negotiations between a public fire or police department as defined by N.J.S.A. 34:13A-15 and an exclusive representative. See N.J.A.C. 19:16. Forms needed to initiate any of the procedures set forth in this chapter may be downloaded from the Commission's website at: [www.state.nj.us/perc](http://www.state.nj.us/perc).

#### SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

##### § 19:12-2.1 Commencement of negotiations

(a) The parties to a collective negotiations agreement shall commence negotiations for a successor agreement, or in the case of an agreed reopener provision shall commence negotiations pursuant to such reopener provision, no later than 120 days prior to the public employer's required budget submission date. The term "required budget submission date" shall refer to the first budget implementing the successor agreement or the agreement pursuant to the reopener provision, as the case may be. In circumstances where the Commission has not determined the public employer's required budget submission date, the public employer shall notify the employee representative in writing of the required budget submission date no later than 150 days prior to such date. The foregoing provisions shall not preclude the parties from agreeing to the automatic renewal of the collective negotiations agreement

unless either party shall have notified the other party of its intention to terminate or modify the agreement, nor shall it preclude the parties from establishing by mutual agreement an alternative date for the commencement of negotiations.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this section or any alternate commencement date agreed to by the parties, notify the other party in writing of its intention to commence negotiations on such date and shall simultaneously file with the Commission a copy of such notification. A form for filing such notice may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/counciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) Nothing in this section shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

#### SUBCHAPTER 3. MEDIATION

##### § 19:12-3.1 Initiation of mediation

(a) In the event that a public employer and a certified or recognized employee representative have failed to achieve an agreement through direct negotiation, either the public employer, the employee representative, or the parties jointly, may notify the Director of Conciliation, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed and shall be signed and dated and shall contain the following information.

1. The name and address of the public employer who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2. The name and address of the employee representative who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;
3. A description of the collective negotiations unit, including the approximate number of employees in the unit;
4. The dates and duration of negotiations sessions;
5. The termination date of the current agreement, if any;
6. The public employer's required budget submission date;
7. Whether the request is a joint request; and
8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

(b) A form for filing a request for the appointment of a mediator may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c) Upon receipt of the notification and request, the Director of Conciliation shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach agreement through direct negotiation, and that an impasse exists in negotiations concerning the terms and conditions of the employment of the affected employees.

#### **§ 19:12-3.2 Appointment of mediator**

The mediator appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation panel, or any other mediator, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Director of Conciliation shall have the express reserved authority to appoint a mediator without regard to the parties' joint request if such is deemed to best effectuate the purposes of the act. If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this subchapter shall not be reviewable.

#### **§ 19:12-3.3 Mediator's function**

The function of a mediator shall be to assist all parties to come to a voluntary agreement. A mediator may hold separate or joint conferences as he or she deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties. In the absence of an agreement between the parties, the mediator, at any time after appointment, may recommend to the Director of Conciliation that fact-finding procedures should be invoked.

#### **§ 19:12-3.4 Mediator's confidentiality**

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding, under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

#### **§ 19:12-3.5 Mediator's report**

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation which shall, in general, be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;
3. A statement of the issues which have been resolved through mediation;
4. A statement of the issues which are still unresolved, if any;
5. A recommendation as to whether or not the Director of Conciliation should invoke fact-finding with recommendations for settlement.

(b) The confidential report(s) submitted by the mediator may be utilized by the Director of Conciliation in considering whether or not fact-finding with recommendations for settlement should be invoked. Such reports shall not be considered in any other proceedings before the Commission or be made available or disclosed to any party or any other tribunal.

### **SUBCHAPTER 4. FACT-FINDING AND SUPER CONCILIATION**

#### **§ 19:12-4.1 Initiation of fact-finding**

(a) Upon a mediator's report of a failure to resolve the impasse by mediation, the Director of Conciliation may invoke fact-finding with recommendations for settlement and appoint a fact-finder. The public employer, the employee representative, or the parties jointly, may request the Director of Conciliation, in writing, to invoke fact-finding. An original and four copies of such request shall be filed, and shall be signed and dated and shall contain the following information.

1. The name and address of the public employer who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2. The name and address of the exclusive representative who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;
3. The name of the mediator;
4. The number and duration of mediation sessions;
5. The date of the last mediation effort;
6. The unresolved issues to be submitted to a fact-finder; and
7. Whether the request is a joint request.

(b) A form for filing a request for invocation of fact-finding may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c) In the absence of a joint request seeking the invocation of fact-finding, the non-filing party may submit a statement or response within seven days of receipt of the request for fact-finding, setting forth the following:

1. Any additional unresolved issues to be submitted to the fact-finder;

2. A statement as to whether it refuses to submit any of the issues listed on the request to invoke fact-finding on the ground that they are not within the required scope of negotiations; and

3. Any other relevant information with respect to the nature of the impasse.

(d) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the invocation of fact-finding as submitted by the requesting party.

#### **§ 19:12-4.2 Appointment of fact-finder**

(a) Upon the invocation of fact-finding pursuant to this subsection, the Director of Conciliation shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which it objects, indicate its preference regarding the remaining names, and communicate the foregoing to the Director of Conciliation no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not responded within the time specified, all names submitted shall be deemed acceptable. The Director of Conciliation shall appoint a fact-finder giving recognition to the parties' preferences. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding the foregoing provisions, the Director of Conciliation shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties, whenever he or she deems it necessary to effectuate the purposes of the act.

(b) The fact-finder appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's fact-finding panel, or any other fact-finder, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement and/or making findings of fact and recommending the terms of settlement. If an appointed fact-finder cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable.

#### **§ 19:12-4.3 Fact-finder's function**

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or other representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties agree to have them public, or take other steps deemed appropriate in order to discharge his or her function.

(b) For the purposes of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, issue subpoenas duces tecum and require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before the fact-finder.

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) If the impasse is not resolved, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible.

(e) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties and the Director of Conciliation.

(f) All individually incurred costs shall be borne by the party incurring them. The cost of the services of the fact-finder, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, and any other necessary expenses of the fact-finding proceeding, shall be borne by the Commission unless mandated otherwise by subsequent legislation.

(g) The parties shall meet within five days after receipt of the fact-finder's findings of fact and recommended terms of settlement, to exchange statements of position and try to reach an agreement. In the event of a continuing impasse, the Commission or the Director of Conciliation may take whatever steps are deemed expedient to effect a voluntary settlement of the impasse, including the appointment of a super conciliator, where appropriate.

#### **§ 19:12-4.4 Appointment of a super conciliator**

(a) In proceedings conducted pursuant to the School Employees Contract Resolution and Equity Act, P.L. 2003, c.126 (N.J.S.A. 34:13A-31 et seq.), if the employer and the majority representative do not reach a voluntary negotiated agreement within 20 days after the issuance of the fact-finder's report, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation, in writing, to invoke super conciliation. An original and four copies of such request shall be filed, and shall be signed and dated and shall contain the following information:

1. The name and address of the public employer who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the exclusive representative who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative; and

3. Whether the request is a joint request.

(b) Forms for filing a petition to request a super conciliator may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c) The parties may jointly request the appointment of a particular super conciliator, subject to the approval of the Director of Conciliation. Absent an approved joint request, the Director shall designate a super conciliator.

(d) The super conciliator appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation or fact-finding panel, or any other super conciliator approved by the Director of Conciliation, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement. If an appointed super conciliator cannot proceed pursuant to the appointment, another super conciliator shall be appointed. The appointment of a super conciliator pursuant to this subchapter is not reviewable.

(e) The super conciliator shall have the authority to exercise the powers granted by P.L. 2003, c.126 to institute non-binding procedures deemed appropriate to resolve the parties' negotiations impasse.

(f) The super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by him or her or to testify with regard to mediation conducted under the Act. Nothing

contained in this section shall exempt an individual from disclosing information relating to the commission of a crime.

### **SUBCHAPTER 5. GRIEVANCE ARBITRATION**

#### **§ 19:12-5.1 Function of the Commission**

The Commission deems it in the interests of the public to maintain an arbitration panel whose members are available to assist in the arbitration of unresolved labor relations grievances. Arbitration of such disputes is governed by N.J.S.A. 2A:24-1 et seq., not N.J.S.A. 2A:23B-1 et seq., the statute applicable to arbitration of non-labor disputes. The availability of the Commission's arbitration service is intended to comply with the requirement of N.J.S.A. 2A:24-5 that the method for naming or appointing an arbitrator provided in the parties' agreement shall be followed. Accordingly, the release of a panel of arbitrators is predicated solely upon a prima facie showing of the parties' intention to utilize the Commission's arbitration service. Parties are referred to the judicial proceedings available under N.J.S.A. 2A:24-3 and N.J.S.A. 2A:24-5 in the event of a dispute regarding arbitrability or the method for naming or appointing an arbitrator. The Commission is not a necessary party to judicial proceedings relating to the arbitration under N.J.S.A. 2A:24-3 or N.J.S.A. 2A:24-5, but shall, upon the written request of a party, furnish to such party at the party's expense, photostatic copies of any papers in the Commission's possession that may be required in any such judicial proceedings.

#### **§ 19:12-5.2 Request for submission of panel**

Arbitration pursuant to this subchapter is initiated by written request to the Director of Arbitration. A form for filing a request for submission of a panel of arbitrators may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429. Such request for a submission of a panel of arbitrators shall be filed by email to: [grievance@perc.state.nj.us](mailto:grievance@perc.state.nj.us). Alternatively, one original and four copies of such request, signed and dated by the requesting party or parties, may be filed. The request shall set forth the names and addresses of the parties; the names, titles, and telephone numbers of the parties' representatives to contact; the names, addresses, and telephone numbers of any attorneys/consultants representing the parties; whether the request is a joint request and a statement identifying the grievance to be arbitrated. The request shall be accompanied by a copy of the arbitration provisions of the parties' agreement.

#### **§ 19:12-5.3 Appointment of an arbitrator**

Upon receipt of a written request pursuant to N.J.A.C. 19:12-5.2, Request for submission of panel, the Director of Arbitration shall submit simultaneously to each party a copy of such request and an identical list of names of at least five persons chosen from the Arbitration Panel. Each party shall have 10 days in which to cross off any names to which it objects, number the remaining names in order of preference, and return the list to the Director of



Arbitration. Such responses shall be submitted by email to: grievance@perc.state.nj.us. If a party does not return the list within the time specified, all arbitrators named shall be deemed acceptable. The Director of Arbitration shall appoint an arbitrator giving recognition to the parties' preferences. If the parties' preferences do not result in agreement upon any of the persons named, the Director of Arbitration shall submit a second list and the procedures set forth above shall be repeated, except that each party shall number at least three names in order of preference. If the arbitrator appointed pursuant to this section declines or is unable to serve, the Director of Arbitration shall have the power to appoint an arbitrator not previously rejected by any party, without submission of any additional list. If the parties have agreed upon a method of appointment different from that set forth above, such method shall be followed. Action of the Director of Arbitration pursuant to this section shall not be reviewable by the Commission.

#### **§ 19:12-5.4 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes**

The arbitrator shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

#### **§ 19:12-5.5 Time and place of hearing**

The arbitrator shall communicate with the parties to arrange for a mutually satisfactory date, time and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time and place for a hearing. The arbitrator shall submit a notice containing arrangements for a hearing within a reasonable time period before hearing.

#### **§ 19:12-5.6 Adjournments**

The arbitrator shall have the authority to grant adjournments for good cause shown, upon either party's application or the arbitrator's own motion.

#### **§ 19:12-5.7 Arbitration in the absence of a party**

After duly scheduling the hearing, the arbitrator shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing.

#### **§ 19:12-5.8 Filing of briefs**

The parties at their option or at the request of the arbitrator, may file pre-hearing or post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs. They shall be submitted to the arbitrator along with submission of proof of service on all parties. In the event that post-hearing briefs are to be submitted, the hearing shall be deemed closed upon receipt of post-hearing briefs by the arbitrator or upon the expiration of the time period allowed for the submission of the post-hearing briefs.

#### **§ 19:12-5.9 Award**

(a) The arbitrator shall issue an award as soon as possible after the close of hearing, but not more than 45 days thereafter or such other time for date of award that the arbitrator shall fix upon written notice to the parties.

(b) The award shall be in writing and shall be submitted to the parties simultaneously.

(c) If the parties agree, the arbitrator may submit the award without a written opinion.

#### **§ 19:12-5.10 Subpoena power**

The arbitrator shall have subpoena power in accordance with N.J.S.A. 2A:24-1 et seq.

#### **§ 19:12-5.11 Cost of arbitration**

The cost of such arbitration shall be borne by the parties in accordance with their agreement, and not by the Commission. The arbitrator shall charge pursuant to a per diem fee schedule set forth on a resume sent to the parties when a panel of arbitrators is submitted. The arbitrator shall not change any fee noted on the resume without giving 30 days' written notice to the Commission.

### **SUBCHAPTER 6. BINDING ARBITRATION TO REVIEW DISCIPLINARY TERMINATIONS, NOT INVOLVING ALLEGED CRIMINAL CONDUCT, OF NON-CIVIL SERVICE LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS**

#### **§ 19:12-6.1 Purpose of procedures**

(a) These procedures are intended to implement the provisions of P.L. 2009, c. 16, effective June 1, 2009, which allow eligible law enforcement officers and firefighters employed by a law enforcement agency or department that is not subject to the provisions of Title 11A of the New Jersey Statutes, who are terminated based on a complaint or charges issued for disciplinary reasons not involving any alleged violation of criminal law, to have the option of having their terminations reviewed by means of binding arbitration. Review through binding arbitration is an alternative to review through a proceeding in the Superior Court of New Jersey pursuant to N.J.S.A. 40A:14-22, pertaining to firefighters, and N.J.S.A. 40A:14-150, pertaining to law enforcement personnel.

(b) Arbitration pursuant to these procedures is available only in cases where termination is imposed based on a complaint or charges. These procedures are not applicable to review of terminations relating to a pending criminal investigation, inquiry, complaint or charge, whether implemented before or after criminal charges have been filed or when the disciplinary complaint or charge alleges conduct that would also constitute a violation of the criminal laws of the State or any other jurisdiction.

## § 19:12-6.2 Special Disciplinary Arbitration Panel

(a) The Commission shall maintain a Special Disciplinary Arbitration Panel to hear cases involving the disciplinary terminations of law enforcement officers and firefighters from a law enforcement agency or department that is not subject to the provisions of Title 11A of the New Jersey Statutes. Members of this panel must have experience and expertise as neutrals making decisions in employee discipline cases. Following a screening process as set forth in this section, they shall be appointed for three-year terms.

(b) To be eligible for appointment to the Special Disciplinary Arbitration Panel, an arbitrator applying for panel membership must:

1. Be a member of, or simultaneously apply for membership on, the Commission's panel of grievance arbitrators, N.J.A.C. 19:12-5.1; and

2. In the three years before applying for panel membership, not have served as an advocate for private or public sector labor or management.

(c) An applicant's qualifications shall be determined by an overall assessment of the following considerations:

1. Demonstrated experience and ability to decide cases involving the discipline of employees in a fair and objective manner. Experience shall be evaluated by a review of the cases where an applicant served as a grievance arbitrator, or in an analogous capacity, and the quality of the applicant's work product in those cases; and

2. The equivalent of three years of grievance arbitration experience. An applicant shall submit at least 10 awards or decisions written by the applicant, which shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector discipline cases and awards or decisions in other jurisdictions in cases involving the discipline of members of the uniformed and public safety services.

(d) Every applicant shall complete an application form prepared by the Director of Arbitration. That form is designed to solicit information concerning the foregoing requirements and considerations. The form also allows an applicant the opportunity to submit any other information he or she deems relevant. The Director shall review all applications and make a recommendation to the Commission regarding each one within 60 days. The Commission shall notify an applicant in writing of any action taken upon an application.

(e) Members of the Special Disciplinary Arbitration Panel shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

(f) This subsection concerns suspension, removal or discipline of members of the Special Disciplinary Arbitration Panel.

1. This subsection provides a procedure to be followed by the Commission in deciding whether to suspend, remove, or otherwise discipline an arbitrator during his or her three-year term.

2. If it appears that suspension, removal, or discipline may be warranted, the Director of Arbitration shall provide a written statement to the arbitrator specifying the reasons for the action being considered. The arbitrator shall have an opportunity to submit a prompt written response to the Director. The arbitrator shall also be given an opportunity to meet with the Director to discuss the matter.

3. If a suspension or removal is being contemplated, if the arbitrator requests a hearing, and if it appears to the Director that substantial and material facts are in dispute, the Director may designate a hearing officer to conduct a hearing and make findings of fact.

4. The Director may temporarily suspend an arbitrator from the panel pending any hearing.

5. After receiving the arbitrator's response, meeting with the arbitrator, and considering the facts found at any hearing, the Director may reprimand, suspend, or remove an arbitrator or may decide that no action is warranted. The Director shall send a written decision to the arbitrator.

6. Within 14 days of receiving the Director's decision, an arbitrator may file a written appeal with the Commission, specifying the grounds for disagreeing with the Director's decision.

7. A temporary suspension may continue pending that appeal.

8. The Commission or its designee may sustain, modify, or reverse the Director's action and shall provide the arbitrator with a written statement explaining the basis for that decision.

## § 19:12-6.3 Who may file; when to file

(a) Eligible law enforcement officers or firefighters employed by a law enforcement agency or department that is not subject to the provisions of Title 11A of the New Jersey Statutes, who are terminated based on a complaint or charges issued for disciplinary reasons not involving any alleged violation of criminal law, may appeal their terminations by filing a request for the appointment of a member of the Special Disciplinary Arbitration Panel. An appeal may be filed only by the terminated employee or the employee's authorized representative.

(b) An appeal of the termination of a non-civil service law enforcement officer or firefighter shall be filed within 20 days after the employee has been personally served with a notice of termination.

(c) Any assertion by the employer that the law enforcement officer or firefighter is not eligible for Special Disciplinary Arbitration at (a) or (b) above must be made by a motion to dismiss, pursuant to N.J.A.C. 19:12-6.5.

**§ 19:12-6.4 Contents of appeal to review the termination of a law enforcement officer or firefighter through binding arbitration**

(a) An appeal of a disciplinary termination of an eligible non-civil service firefighter or law enforcement officer shall be initiated by filing a written request with the Director of Arbitration for the appointment of an arbitrator from the Commission's Special Disciplinary Arbitration Panel.

(b) An original and four copies of such request, signed and dated by the non-civil service firefighter or law enforcement officer or his or her authorized representative, shall be filed. The request shall set forth the name and address of the terminated employee; the name and address of his or her employing agency or department; the names, titles and telephone numbers of the parties' representatives to contact; and the names, addresses and telephone numbers of any attorneys representing the parties.

(c) A form for filing a request for the appointment of a Special Disciplinary Arbitrator may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(d) Upon receipt of a request for appointment of a Special Disciplinary Arbitrator, the Director shall forthwith submit:

1. A copy of the appeal to the employing agency or department, or its authorized representative; and
2. Simultaneously, to each party or their authorized representatives, the names of the members of the Special Disciplinary Arbitration Panel shall be posted on the Commission's website: [www.state.nj.us/perc](http://www.state.nj.us/perc).

**§ 19:12-6.5 Motions to dismiss a request for appointment from the Special Disciplinary Arbitration Panel**

(a) A motion to dismiss a request for appointment from the Special Disciplinary Arbitration Panel shall be made to the Director of Arbitration within five days of the filing. The motion shall be accompanied by a brief explaining the reason(s) for disqualification from the special disciplinary arbitration process, which shall include affidavits and documentary evidence.

(b) Within five days of service on it of the motion to dismiss, the responding party shall serve and file its answering brief, documents, and affidavits.

(c) The motion to dismiss shall be decided on the papers filed. No further arguments, documents, or affidavits shall be served, except by leave or request of the Director of Arbitration. The Director of Arbitration shall issue a decision in writing, which shall be a final agency decision.

(d) If the Director determines, in his or her sole discretion, that a factual dispute exists which prevents him or her

from deciding the motion, the Director may transfer the motion for further proceedings.

**§ 19:12-6.6 Appointment of disciplinary arbitrator**

(a) If within 10 days of receiving the list of disciplinary arbitrators, the parties have not notified the Director of Arbitration in writing of the name of an arbitrator that they have mutually selected, the assignment of the arbitrator for the purposes of this section shall be the responsibility of the Director, independent of and without any participation by any party. The Director shall select the arbitrator for assignment by lot.

(b) Should an arbitrator selected by mutual agreement be unable to serve, the parties shall be afforded one opportunity to select a replacement. If the parties are unable to mutually agree upon the selection of a replacement within 10 days after a mutually selected arbitrator has advised the parties and the Director of the arbitrator's unavailability to serve in the appeal, the Director shall select the replacement in the manner provided at (c) below.

(c) In any proceeding where an assigned arbitrator is unable to serve and the parties are unable to mutually agree upon a replacement, the Director shall assign a replacement arbitrator. The assignment shall be the responsibility of the Director, independent of and without any participation by any party. The Director shall select the replacement arbitrator for assignment by lot.

(d) Any arbitrator, whether mutually selected by the parties or appointed by the Director by lot, who is unable or unwilling to serve, shall so notify the parties and the Director within three days of receiving the notice of appointment.

**§ 19:12-6.7 Powers and duties of disciplinary arbitrator**

(a) The arbitrator may administer oaths and require the attendance of witnesses and the production of such documents as the arbitrator may deem material to a just determination of the appeal, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of contempt while in attendance of any hearing, the arbitrator may, or the Attorney General if requested shall, invoke the aid of the Superior Court within the county in which the hearing is being held, and that court shall issue an appropriate order. A failure to obey the order may be punished by the court as contempt.

(b) The arbitrator shall have the power to resolve any discovery issues. In all cases and no later than 10 days prior to the date of the hearing:

1. The employing agency or department shall provide the law enforcement officer or firefighter with a copy of the contents of his or her personnel file;
2. Both parties shall provide to one another copies of all documents that the parties plan to introduce into evidence at the hearing; and

3. Both parties shall provide to one another a list of the witnesses the parties plan to have testify at the hearing.

(c) The arbitrator shall communicate with the parties to arrange for a mutually satisfactory date, time and place for a hearing, which shall be conducted within 60 days after the arbitrator is appointed. In the absence of an agreement, the arbitrator shall have the authority to set the date, time and place for a hearing. The arbitrator shall send a notice containing arrangements for a hearing within a reasonable time period before hearing.

(d) Hearings shall be de novo proceedings and shall not be limited to review of any prior proceedings or hearings held in order to impose discipline in accordance with N.J.S.A. 40A:14-19, pertaining to firefighters, and N.J.S.A. 40A:14-147, pertaining to law enforcement personnel.

(e) Pre-hearing motions shall not be filed unless permitted by the arbitrator. All motions made during the hearing may be made orally to the arbitrator, unless the arbitrator requests that the motion be in writing. The arbitrator may issue an oral or written ruling on a motion or may issue a written ruling as part of the arbitrator's decision on the appeal.

(f) Except for extraordinary circumstances establishing good cause, no adjournments shall be granted. Any adjournments shall be for a total of no more than 14 days.

#### **§ 19:12-6.8 Arbitrator's decision: timing; service; implementation**

(a) The arbitrator shall render an opinion and final determination within 90 days of his or her appointment, whether that appointment is by mutual agreement of the parties or by the Director by lot.

(b) Copies of the arbitrator's final determination shall be served on the parties and the Director. The determination shall be binding and shall be implemented immediately.

(c) If the final determination sustains the officer's or the firefighter's appeal, the officer or firefighter shall be reinstated immediately with full pay, be restored all rights and benefits, including those accruable during the period of appeal, and shall, within 30 days, be paid any salary moneys withheld by the officer's employing agency or the firefighter's department.

#### **§ 19:12-6.9 Cost of arbitration; arbitrator's fee**

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

(b) Arbitrators shall be compensated in accordance with the following fee schedule:

1. For arbitrators assigned by lot, the fee shall be \$ 1,000 per day; and

2. For arbitrators mutually selected by the parties, the fee shall be the per diem rate set by the arbitrator for conducting grievance arbitrations and on file with the Director of Arbitration on the date of the mutual selection.

## **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 arbitrator's fees and expenses shall be borne equally between the parties.

(f) The arbitrator shall be guided by the objectives and principles set forth in the “Code of Professional Responsibility for Arbitrators of Labor-Management Disputes” of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Services.

(g) Information disclosed by a party to an arbitrator while functioning in a mediatory capacity shall not be divulged by the arbitrator voluntarily or by compulsion. All files, records, reports, documents, or other papers received or prepared by an arbitrator while serving in a mediatory capacity shall be classified as confidential. The arbitrator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the arbitrator, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(h) The conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator.

(i) The arbitrator, after appointment, shall communicate with the parties to arrange for a date, time, and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time, and place for a hearing. The arbitrator shall submit a written notice containing arrangements for a hearing within a reasonable time period before the hearing.

(j) The arbitrator shall have the authority to grant adjournments for good cause shown, upon either party’s application or the arbitrator’s own motion.

(k) The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.

(l) The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas and shall entertain any motions to quash such subpoenas. Any hearings conducted shall not be public unless all parties agree to have them in public.

(m) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

### **§ 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), or his or her designee.

Extension requests shall be in writing and filed before the 35th day. The Director, or his or her designee, 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 may 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;
6. Existing provisions bearing on the exclusive representative's access to employees, whether set by past practice, contract, statute, or case law; and
7. Any other factors the arbitrator identifies as relevant.

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

## **SUBCHAPTER 8. NOTICE OF SUBCONTRACTING**

### **§ 19:12-8.1 Purpose of procedures**

(a) The procedures of this subchapter are intended to implement the provisions of P.L. 2020, c. 79, effective September 11, 2020, concerning employer notice of subcontracting and the opportunity of the majority representative to discuss the decision to subcontract and engage in impact negotiations.

(b) Pursuant to N.J.S.A. 34:13A-46, an employer, as defined at N.J.S.A. 34:13A-44, may not enter into a subcontracting agreement for a period following the term of the current collective negotiations/bargaining agreement unless the employer:

1. Provides written notice to the majority representative of employees in each collective bargaining unit that may be affected by the subcontracting agreement and to the New Jersey Public Employment Relations Commission, not less than 90 days before the employer requests bids, or solicits contractual proposals for the subcontracting agreement; and
2. Has offered the majority representative of the employees in each collective bargaining unit that may be affected by the subcontracting 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.

## § 19:12-8.2 Notice to the Commission of subcontracting

(a) At least 90 days prior to the employer requesting bids or soliciting contract proposals for the subcontracting agreement, the employer shall provide written notice to the Director of Conciliation. An original and four copies of such notice shall be filed, and shall be signed and dated and shall contain the following information:

1. Name, address, and contact information for the employer;
2. Name, address, and contact information for the majority representative(s) of any employees who may be affected by the subcontracting agreement;
3. Title(s) of employees who may be affected;
4. Number of employees who may be affected;
5. Expiration date of the current collective negotiations/bargaining agreement;
6. Date(s) the employer provided notice of planned subcontracting to the affected majority representative(s);
7. Date(s) the employer will request bids or solicit contracts for subcontracting;
8. Date(s) the employer has met or will meet with the affected majority representative(s) to discuss the planned subcontracting; and

9. Date(s) the employer has negotiated or will negotiate with the affected majority representative(s) over the impact of the planned subcontracting.

(b) Forms for filing a notice to the Commission of subcontracting may be downloaded from the Commission's website at: <http://www.state.nj.us/perc/conciliation/forms/> or will be supplied, upon request, addressed to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

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<sup>i</sup> Title 19, Chapter 12 -- Chapter Notes  
CHAPTER AUTHORITY:

N.J.S.A. 34:13A-5.4.e, 34:13A-6.b, 34:13A-11, 34:13A-39, 34:13A-5.13.h, 34:13A-46, and 40A:14-211.b.

SOURCE AND EFFECTIVE DATE:

R.2021 d.069, readoption effective June 7, 2021, amendments and new rules effective July 6, 2021

See: 53 N.J.R. 234(a), 53 N.J.R. 1167(a)

EXPIRATION DATE:

Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding, Super Conciliation, Grievance Arbitration, Special Disciplinary Arbitration, and Binding Arbitration to Resolve Impasses Over Employee Organization Access to Employees and Notice of Subcontracting expires on June 7, 2028.

## CHAPTER 12A

### SUPER CONCILIATION--HEALTH BENEFITS PLAN DESIGN AND PENSION COMMITTEES<sup>i</sup>

#### CHAPTER TABLE OF CONTENTS

#### SUBCHAPTER 1. SUPER CONCILIATION--HEALTH BENEFITS PLAN DESIGN AND PENSION COMMITTEES

19:12A-1.1 Purpose of procedures

19:12A-1.2 Health Benefits Plan Design and Pension Committees Super Conciliation Panel

19:12A-1.3 Appointment of a super conciliator

19:12A-1.4 Powers and duties of super conciliator

19:12A-1.5 Cost of super conciliation/super conciliator's fee

#### SUBCHAPTER 1. SUPER CONCILIATION--HEALTH BENEFITS PLAN DESIGN AND PENSION COMMITTEES

##### 19:12A-1.1 Purpose of procedures

These procedures implement P.L. 2011, c. 78, sections 33 and 55 (N.J.S.A. 43:3C-17 and 52:14-17.27b, respectively), effective June 28, 2011. These laws provide for super conciliation to assist in the resolution of disputes among members of committees created by P.L. 2011, c. 78 that are charged with reviewing and modifying public employee health benefits and pension plans. The Commission will create and administer a Health Benefits Plan Design and Pension Committees Super Conciliation Panel. A super conciliator will be appointed to resolve any impasses resulting from a committee's failure to render a decision on a matter before the committee because it has not received a vote of the majority of the committee members after 60 days have passed following the initial consideration of the matter. Super conciliation, pursuant to these procedures, is limited to investigatory proceedings involving disputes emanating from committees established pursuant to P.L. 2011, c. 78.

##### 19:12A-1.2 Health Benefits Plan Design and Pension Committees Super Conciliation Panel

(a) The Commission shall maintain a Health Benefits Plan Design and Pension Committees Super Conciliation Panel to resolve disputes emanating from health benefits plan design and pension committees. Members of this Panel must have experience and expertise in dispute resolution. Following a screening process as set forth in this section, they shall be appointed for three-year terms.

(b) To be eligible for appointment to the Health Benefits Plan Design and Pension Committees Super Conciliation Panel, an applicant for panel membership shall:

1. Have experience and expertise in health insurance and pension matters;

2. Serve in a neutral/mediatory capacity for a minimum of three years;

3. In the three years before applying for panel membership, not have served as an advocate for private or public sector labor or management;

4. Have an impeccable reputation for professional competence, ethics and integrity and have complied with all applicable codes of conduct; and

5. Demonstrate:

i. The ability to write a well-reasoned decision, consistent with the parameters of assignments;

ii. Knowledge of government finance and fiscal principles; and

iii. Substantial experience in dispute resolution.

(c) Every applicant shall complete an application form prepared by the Director of Conciliation and Arbitration. An applicant shall submit at least three writing samples that are well-reasoned and cogent. An applicant will also have the opportunity to submit any other relevant information.

(d) The Director of Conciliation and Arbitration shall review all applications and make a recommendation to the Commission regarding each one. The Commission shall notify an applicant in writing of any action taken upon an application.

(e) Members of the Health Benefits Plan Design and Pension Committees Super Conciliation Panel shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service and any other applicable code of conduct.

(f) A super conciliator who fails to carry out assignments in accordance with the requirements of an appointment may be subject to discipline including suspension or removal from the Health Benefits Plan Design and Pension Committees Super Conciliation Panel.

##### 19:12A-1.3 Appointment of a super conciliator

(a) The Executive Secretary of a committee established pursuant to P.L. 2011, c. 78 may file a petition seeking the appointment of a super conciliator pursuant to N.J.S.A. 52:14-17.27b, applicable to health benefits plan design committees, or N.J.S.A. 43:3C-17, applicable to pension committees where:

1. The committee fails to render a decision on a matter before it because it has not received a vote of the majority of the committee members; and
2. Sixty days have passed following the initial consideration of the matter by the committee.

(b) The petition to invoke super conciliation is available on the Commission's web site at [www.state.nj.us/perc](http://www.state.nj.us/perc) or may be supplied upon request.

(c) A petition for super conciliation shall be filed with the Director of Conciliation and Arbitration, Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429. The petition and any supporting documents may be filed by electronic mail sent to [mail@perc.state.nj.us](mailto:mail@perc.state.nj.us) or by facsimile to (609) 777-0089, provided that a petition containing original signatures is filed with the Commission within five days after electronic filing.

(d) The petition shall include the following information:

1. The name of the committee;
2. The name and contact information (address, phone, fax and e-mail) of the committee's Executive Secretary;
3. The names of all committee members;
4. A clear description of the unresolved issue(s) which shall include:
  - i. The initial date each matter was first considered;
  - ii. Copies of resolutions or motions pertinent to each matter in dispute;
  - iii. The record of the vote on each matter in dispute; and
  - iv. Copies of the minutes of meetings at which the matters were considered;
5. If tentative agreements have been reached, copies of such agreements shall be attached; and
6. The committee's Executive Secretary shall sign and date the petition and shall make the following certification:

I certify that this request for the appointment of a super conciliator is being submitted pursuant to N.J.S.A. 52:14-17.27b, or N.J.S.A. 43:3C-17, as applicable, because a majority vote of committee members has not been received following 60 days of the initial consideration of the matter(s) listed above.

(e) Upon receipt of a petition to invoke super conciliation, a super conciliator shall be randomly selected from the Health Benefits Plan Design and Pension Committees Super

Conciliation Panel.

(f) Super conciliators shall be considered officers of the Commission while assisting a committee to effect a voluntary settlement and while writing a final report.

(g) If a super conciliator is unable to serve, electronic or written notice shall be provided to the Director of Conciliation and Arbitration within three days of receipt of the notice of appointment.

(h) If an appointed super conciliator cannot carry out the assignment, another super conciliator shall be appointed by random selection. The committee's Executive Secretary will be advised of the withdrawal of the appointed super conciliator and will be notified when a replacement super conciliator has been appointed.

(i) The appointment of a super conciliator is not reviewable.

#### **19:12A-1.4 Powers and duties of super conciliator**

(a) Super conciliators appointed from the Health Benefits Plan Design and Pension Committees Super Conciliation Panel shall have the authority to exercise the powers granted by N.J.S.A. 52:14-17.27b, applicable to health benefits plan design committees, and N.J.S.A. 43:3C-17, applicable to pension committees, to institute non-binding procedures deemed appropriate to resolve committee disputes.

(b) The super conciliator shall contact the committee's Executive Secretary to arrange for a mutually satisfactory date, time and place for an investigatory proceeding. In the absence of an agreement, the super conciliator shall have the authority to set the date, time and place for the meeting. The super conciliator shall send a notice to the Executive Secretary containing arrangements for a proceeding within a reasonable time period before the meeting.

(c) The purpose of the proceedings conducted by a super conciliator shall be to:

1. Investigate and acquire all relevant information regarding a committee's failure to render a decision;
2. Discuss with the members of the committee their differences, and utilize means and mechanisms, including, but not limited to, requiring 24-hour per day negotiations, until a voluntary settlement is reached, and provide recommendations to resolve the members' differences; and
3. Institute any other non-binding procedures deemed appropriate by the super conciliator.

(d) If the super conciliator is unable to resolve the dispute, the super conciliator shall issue a final report, which shall be promptly provided to the committee's Executive Secretary and the Director of Conciliation and Arbitration, and made



available by the committee's Executive Secretary to the public within 10 days after it is received by the Executive Secretary.

(e) For the purposes of such investigatory proceedings, the super conciliator shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, issue subpoenas duces tecum and require the production and examination of any other books or documents, including records that are stored or exist in electronic form, relating to any matter under investigation by or in issue before the super conciliator.

(f) The super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by the super conciliator or to testify with regard to mediation or other proceedings conducted under N.J.S.A. 52:14-17.27b, applicable to health

benefits plan design committees, and N.J.S.A. 43:3C-17, applicable to pension committees. Nothing contained in this section shall exempt an individual from disclosing information relating to the commission of a crime.

**19:12A-1.5 Cost of super conciliation/super conciliator's fee**

(a) The cost of super conciliation shall be borne by the Department of the Treasury, Division of Pensions and Benefits and not by the Commission.

(b) The super conciliator shall be paid \$ 1,000 for each eight-hour session.

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<sup>i</sup> Title 19, Chapter 12A -- Chapter Notes

**CHAPTER AUTHORITY:**

N.J.S.A. 43:3C-17 and 52:14-17.27b.

**SOURCE AND EFFECTIVE DATE:**

R.2012 d.047, effective February 21, 2012.

See: 43 N.J.R. 2573(a), 44 N.J.R. 510(a).

**EXPIRATION DATE:**

Chapter 12A, Super Conciliation--Health Benefits Plan Design and Pension Committees, expires on February 21, 2019.

## CHAPTER 13

### SCOPE OF NEGOTIATIONS PROCEEDINGS<sup>1</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. NATURE OF PROCEEDINGS; LIMITS OF JURISDICTION

19:13-1.1 Nature of proceedings; limits of jurisdiction

##### SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:13-2.1 Who may file

19:13-2.2 Contents of petition for scope of negotiations determination

##### SUBCHAPTER 3. PROCEDURE

19:13-3.1 "Petitioner" or "respondent"

19:13-3.2 Suspension of case processing during interest arbitration proceedings

19:13-3.3 Intervention

19:13-3.4 Informal conference

19:13-3.5 Amendment; withdrawal; dismissal

19:13-3.6 Notice of filing; additional submissions; case processing; briefs; non-conforming filings

19:13-3.7 Request for evidentiary hearing

19:13-3.8 Evidentiary hearings

19:13-3.9 Oral argument

19:13-3.10 Final determination

19:13-3.11 Interim relief

19:13-3.12 Motion for reconsideration

##### SUBCHAPTER 1. NATURE OF PROCEEDINGS; LIMITS OF JURISDICTION

###### 19:13-1.1 Nature of proceedings; limits of jurisdiction

(a) N.J.S.A. 34:13A-5.4(d) provides that the Commission shall at all times have the power and duty, upon the request of any public employer or exclusive representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The procedure set forth in this chapter is intended to avoid protracted administrative litigation with respect to disputes that normally will involve solely questions of law and policy. Accordingly, scope of negotiations proceedings will normally be expeditiously resolved on the basis of the parties' submissions.

(b) Where the dispute concerns the legal arbitrability of a grievance sought to be submitted to binding arbitration pursuant to a collectively negotiated grievance/arbitration

procedure, the Commission will not determine:

1. Whether the grievance is covered by the arbitration clause of an agreement;
2. Whether the facts are as alleged by the grievant;
3. Whether a contract provides a defense for the employer's alleged action;
4. Whether there is a valid arbitration clause in an agreement; or
5. Any other similar question.

##### SUBCHAPTER 2. INITIATION OF PROCEEDINGS

###### 19:13-2.1 Who may file

Any public employer or recognized or certified public employee exclusive representative, either individually or jointly, may initiate scope of negotiation proceedings by filing with the Commission an original and nine copies of a petition for scope of negotiations determination, together with proof of service of a copy of such petition upon the other party to the collective negotiations relationship. A copy of each such petition filed shall be retained in a public docket until the case is closed.

###### 19:13-2.2 Contents of petition for scope of negotiations determination

(a) A petition for scope of negotiations determination shall be in writing. The party representative filing the petition shall make this signed and dated certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief." Such petition shall contain the following:

1. The full name, address and telephone number of the public employer that is a party to the collective negotiations relationship;
2. The full name, address and telephone number of the recognized or certified public employee exclusive representative that is a party to the collective negotiations relationship;
3. A clear and concise explanation of the matter or matters in dispute, which shall include a statement of the pertinent facts, and, in cases involving the withholding of an increment of a teaching staff member, shall be accompanied by a copy of the statement of reasons issued to the teaching staff member at the time the increment was withheld;
4. A statement that the dispute has arisen:
  - i. During the course of collective negotiations, and that one

party seeks to negotiate with respect to a matter that the other party contends is not a required subject for collective negotiations;

ii. With respect to the negotiability and legal arbitrability of a matter sought to be submitted to binding arbitration pursuant to a collectively negotiated grievance procedure;

iii. With respect to the legal arbitrability of a dispute as to whether the withholding of an increment of a teaching staff member is disciplinary or predominately relates to the evaluation of a teaching staff member's teaching performance; or

iv. Other than in (a)4i, ii, and iii above, with an explanation of any special circumstances warranting the exercise of the Commission's scope of negotiations jurisdiction; and

5. A list of any other actions which the petitioner knows about that involve the same or a related dispute, before the Commission or any other administrative agency, arbitrator or court.

(b) A blank form for filing a petition for scope of negotiations determination may be downloaded from the Commission's website at [www.state.nj.us/perc](http://www.state.nj.us/perc) and is also available upon request made to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) The filing of a petition for scope of negotiations determination shall not stay the conduct of a grievance arbitration hearing, unless otherwise ordered by the Commission or its named designee.

### **SUBCHAPTER 3. PROCEDURE**

#### **19:13-3.1 "Petitioner" or "respondent"**

As used in this subchapter, the term "petitioner" shall refer to the party initiating the proceeding or, in the case of a joint petition, the party contending that the disputed matter is within the scope of collective negotiations; the term "respondent" shall refer to the other party to the proceeding.

#### **19:13-3.2 Suspension of case processing during interest arbitration proceedings**

(a) When a petition to initiate compulsory interest arbitration pursuant to N.J.S.A. 34:13A-16 et seq. and N.J.A.C. 19:16 has been filed, the Commission will suspend the processing of any scope of negotiations petition involving issue(s) in dispute in the interest arbitration proceeding.

(b) This procedure will apply to:

1. Scope of negotiations petitions filed prior to the filing of a petition to initiate compulsory interest arbitration that have not yet been decided by the Commission;

2. Scope of negotiations petitions filed concurrently with the filing of an interest arbitration petition; and

3. Scope of negotiations petitions filed by the non-petitioning party within the five day time limit set by N.J.S.A. 34:13A-16.d(2) to file a response to a petition to initiate compulsory interest arbitration.

(c) The Commission will resume processing of a scope of negotiations petition:

1. As part of an appeal from an interest arbitration award, provided that the award includes issue(s) that were asserted to be non-negotiable in the scope of negotiations petition; or

2. Where the parties have entered into a voluntary settlement establishing the terms of a successor collective negotiations agreement and have agreed, in writing, to seek a decision on issue(s) that were asserted to be non-negotiable in the scope of negotiations petition.

(d) Unless the conditions described in (c)1 and 2 are present, after the issuance of an interest arbitration award or a voluntary settlement establishing the terms of a successor collective negotiations agreement the Commission will not, absent special circumstances as contemplated by N.J.A.C. 19:13-2.2(a)4iv, determine the negotiability of any issue raised in any scope of negotiations petition filed in accordance with (b) above.

#### **19:13-3.3 Intervention**

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the Commission or its named designee, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The Commission or its named designee may permit intervention to such extent and upon such terms as may be deemed just.

#### **19:13-3.4 Informal conference**

An officer of the commission may hold a conference for the purpose of clarifying the issues in dispute, exploring the possibility of voluntary resolution and settlement of the dispute, or for the taking of stipulations of fact.

#### **19:13-3.5 Amendment; withdrawal; dismissal**

(a) The Commission Chair or such other person designated by the Commission may permit the petitioner to amend its petition for scope of negotiations determination at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition for scope of negotiations determination shall conform to the provisions of these rules relating to the original petition for scope of negotiations determination.

(b) A petition for scope of negotiations determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal of the petition for scope of negotiations determination at any time prior to the issuance of the Commission's decision. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) In the absence of a notice of withdrawal, the Commission Chair or such other person designated by the Commission may request the petitioner to file such notice. Where it appears to the Commission Chair or such other person designated by the Commission that the petitioner has no further interest in processing its petition, that individual may, upon appropriate notice, deem the petition to have been withdrawn. Unless otherwise stated, a withdrawal and dismissal under this subsection is without prejudice.

#### **19:13-3.6 Notice of filing; additional submissions; case processing; briefs; non-conforming filings**

(a) No briefs or other legal argument shall be filed until the petitioner has received from the Commission a notice of filing. The notice may include a request for additional information.

(b) The petitioner shall file a brief in support of its petition within 14 days of receipt of the notice of filing setting a briefing schedule, unless the Chair, or such other person designated by the Commission, postpones the filing of briefs and advises the parties how the case will be processed. An original and nine copies of the brief shall be filed together with proof of service of a copy of such brief upon the respondent.

(c) Within 14 days after the service of the petitioner's brief, the respondent shall file with the Chair or such other person designated by the Commission an original and nine copies of its brief, together with proof of service of a copy of such brief upon the petitioner.

(d) The petitioner may file with the Chair or such other person designated by the Commission an original and nine copies of a reply brief within seven days after the service of the respondent's brief, together with proof of service of a copy of such reply brief upon the respondent. No other briefs shall be served or filed without leave of the Chair or such other person designated by the Commission.

(e) The Chair or such other person designated by the Commission may grant written requests for extensions of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

(f) All briefs filed with the Commission shall:

1. Recite all pertinent facts supported by certification(s) based upon personal knowledge.

2. Cite all pertinent statutes, rules and cases and, where the brief exceeds 20 pages in length, include a Table of Authorities;

3. Apply all relevant negotiability tests and precedents to the particular facts of the dispute; and

4. Contain an appendix with all pertinent documents not previously filed.

(g) Briefs not substantially complying with the requirements of (f) above may be rejected.

#### **19:13-3.7 Request for evidentiary hearing**

(a) Any party desiring an evidentiary hearing shall file with the Chair or such other person designated by the Commission an original and two copies of a written request therefor, together with proof of service of a copy of such request upon the other party. Such request shall be filed no later than five days from the receipt of respondent's initial brief. Failure to file a timely request for evidentiary hearing shall constitute a waiver of any right to such hearing. Any such request shall set forth in detail the substantial and material disputed factual issues that the requesting party contends necessitate an evidentiary hearing. Factual allegations not raised shall be deemed to be not in dispute.

(b) Upon a timely filing of such request, the other party shall within seven days from the service of the request file with the Chair or such other person designated by the Commission an original and two copies of a written response to the request, together with proof of service of a copy of the response upon the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed not to be in dispute.

(c) The request for an evidentiary hearing and response, together with the petition for scope of negotiations determination, shall constitute the pleadings for the evidentiary hearing.

#### **19:13-3.8 Evidentiary hearings**

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to N.J.A.C. 19:13-3.7, it appears to the Commission Chair or such other person designated by the Commission that there exist substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. Evidentiary hearings pursuant to this subchapter shall be conducted by a hearing examiner so designated by the Chair or such other person designated by the Commission.

(b) Any such evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and N.J.A.C. 19:14-4 through 8 on unfair practice proceedings, insofar as applicable.

(c) After completion of the evidentiary hearing, or upon the consent of the parties prior to the conclusion of the evidentiary hearing, the hearing examiner shall prepare a report and recommended decision, which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made by the Commission. The hearing examiner shall file the original with the Commission, and shall serve a copy on the parties. Service shall be complete upon mailing and the case shall be deemed transferred to the Commission. The record in the case shall consist of the petition for scope of negotiations determination, the parties' briefs, the request for evidentiary hearing and any statement filed in response thereto, the notice of hearing, the official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's report and recommended decision and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3, Exceptions; cross-exceptions; briefs; answering briefs.

### **19:13-3.9 Oral argument**

(a) Proceedings under this chapter shall be submitted for the Commission's consideration without argument, unless argument is requested by one of the parties within seven days after service of the respondent's brief or is ordered by the Chair or such other person designated by the Commission, and said request is granted by the Commission.

(b) An original and nine copies of a request for oral argument shall be filed separately from any briefs or other prior submissions, together with proof of service of a copy of such request upon the other party.

(c) The Chair or such other person designated by the Commission shall notify the parties of the assigned argument date, if permission to argue orally is granted.

(d) The petitioner shall open and conclude argument. The Commission may terminate the argument at any time it deems the issues adequately argued.

### **19:13-3.10 Final determination**

Based upon the parties' submissions and oral argument, if any, or where an evidentiary hearing has been conducted, based upon the record in the case as set forth in subsection (b) of N.J.A.C. 19:13-3.8, Evidentiary hearings, the Commission shall issue and cause to be served upon the parties its findings of fact and conclusions of law, including its determination as to whether the disputed matter is a required, permissive, or illegal subject for collective negotiations and, where appropriate, an order reasonably designed to effectuate the purposes of the act.

### **19:13-3.11 Interim relief**

Upon the filing of a petition for scope of negotiations determination or during the pendency of a scope of negotiations proceeding, the petitioner may apply to the Commission Chair or such other person designated by the Commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the scope of negotiations proceeding. The request for specified interim relief shall be governed by the provisions of N.J.A.C. 19:14-9 on unfair practice proceedings, insofar as applicable.

### **19:13-3.12 Motion for reconsideration**

(a) A motion for reconsideration may be filed within 15 days after service of the Commission decision, together with proof of service of the motion on all other parties. Reconsideration will only be granted based on a demonstration of extraordinary circumstances and exceptional importance. The movant shall specify and bear the burden of establishing the grounds warranting reconsideration.

(b) Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. No further submissions shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

(c) The filing and pendency of a motion for reconsideration shall not stay any interim or final order unless otherwise ordered by the Commission. A motion for reconsideration is not required to exhaust administrative remedies.

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<sup>i</sup> Title 19, Chapter 13 -- Chapter Notes

#### **CHAPTER AUTHORITY:**

N.J.S.A. 34:13A-5.4d, 34:13A-11 and 34:13A-27.

#### **SOURCE AND EFFECTIVE DATE:**

R.2011 d.238, effective August 11, 2011.

See: 43 N.J.R. 1189(a), 43 N.J.R. 2370(a).

#### **EXPIRATION DATE:**

Chapter 13, Scope of Negotiations Proceedings, expires on August 11, 2018.

## CHAPTER 14

### UNFAIR PRACTICE PROCEEDINGS<sup>1</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. CHARGE

- 19:14-1.1 Who may file
- 19:14-1.2 Where to file
- 19:14-1.3 Form; contents
- 19:14-1.4. Number of copies; service
- 19:14-1.5. Amendment; withdrawal; dismissal
- 19:14-1.6 Processing of charge

##### SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING

- 19:14-2.1. Contents; service
- 19:14-2.2 Amendment; dismissal
- 19:14-2.3 Refusal to issue; appeal

##### SUBCHAPTER 3. ANSWER

- 19:14-3.1 Time for filing; contents; form
- 19:14-3.2. Where to file; number of copies; service
- 19:14-3.3 Amendment

##### SUBCHAPTER 4. MOTIONS

- Checked § 19:14-4.1. Motions
- 19:14-4.2 Where to file
- 19:14-4.3 Contents; number of copies; service
- 19:14-4.4. Answering affidavits; further submissions by leave; oral argument or testimony
- 19:14-4.5 Rulings
- 19:14-4.6 Motions and rulings part of the record; appeal on special permission
- 19:14-4.7 Motion to dismiss complaint; appeal
- 19:14-4.8. Motions for summary judgment

##### SUBCHAPTER 5. INTERVENTION

- 19:14-5.1 Intervention

##### SUBCHAPTER 6. HEARINGS

- 19:14-6.1 Who shall conduct; to be public unless otherwise ordered
- 19:14-6.2 Prehearing conference
- 19:14-6.3 Duties and powers of hearing examiner

- 19:14-6.4 Unavailability of hearing examiner

- 19:14-6.5 Rights of parties

- 19:14-6.6 Rules of evidence not controlling

- 19:14-6.7 Stipulations of fact

- 19:14-6.8 Prosecution by charging party; burden of proof

- 19:14-6.9 Objection to conduct of hearing; waiver of objections

- 19:14-6.10 Oral argument at hearing; briefs; proposed findings

- 19:14-6.11 Continuance or adjournment

- 19:14-6.12 Misconduct at hearing

- 19:14-6.13 Settlement or adjustment of issues

##### SUBCHAPTER 7. HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION AND TRANSFER OF CASE TO THE COMMISSION

- 19:14-7.1 Hearing examiner's report and recommended decision and transfer of case to the Commission

- 19:14-7.2 Record in the case

- 19:14-7.3 Exceptions; cross-exceptions; briefs; answering briefs

##### SUBCHAPTER 8. PROCEDURE BEFORE THE COMMISSION

- 19:14-8.1 Action by the Commission; decision in the absence of exceptions

- 19:14-8.2 Oral argument

- 19:14-8.3 Hearings before the Commission

- 19:14-8.4. Motions for reconsideration

##### SUBCHAPTER 9. INTERIM RELIEF

- 19:14-9.1 Applicability of subchapter; nature of proceedings

- 19:14-9.2 When to file; form and contents; insufficient pleadings; processing of interim relief applications

- 19:14-9.3 Briefs

- 19:14-9.4 Hearing or telephone conference on return date

- 19:14-9.5 Decision; enforcement

##### SUBCHAPTER 10. COMPLIANCE AND ENFORCEMENT

- 19:14-10.1 Applicability

- 19:14-10.2 Procedures for compliance and enforcement

- 19:14-10.3 Request for compliance and enforcement

## **SUBCHAPTER 1. CHARGE**

### **19:14-1.1 Who may file**

A charge that any public employer or public employee organization has engaged or is engaging in any unfair practice listed in subsections (a) and (b) of N.J.S.A. 34:13A-5.4 may be filed by any public employer, public employee, public employee organization, or their representatives.

### **19:14-1.2 Where to file**

Such charge shall be filed with the Commission. Upon receipt, such charge shall be date stamped, and assigned a docket number indicating that the charging party is a public employer (CE), one or more individual public employees (CI), or a public employee organization (CO). A copy of each charge shall be retained in a public docket until the case is closed.

### **19:14-1.3 Form; contents**

(a) Such charge shall be in writing. The party or representative filing the charge shall make this dated and signed certification: "I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief." Such charge shall contain the following:

1. The full name, address and telephone number of the public employer, public employee or public employee organization making the charge (the charging party);
2. The full name, address and telephone number of the public employer or public employee organization against whom the charge is made (the respondent); and
3. A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

(b) Forms for filing such charges will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from: <http://www.state.nj.us/perc>

### **19:14-1.4. Number of copies; service**

The charging party shall file an original and four copies of such charge, together with proof of service of a copy on all other parties. The Director of Unfair Practices will send a copy to the respondent, but the charging party will remain responsible for formal service of the charge.

### **19:14-1.5. Amendment; withdrawal; dismissal**

(a) Before a complaint issues, the Director of Unfair Practices may permit the charging party to amend a charge

upon such terms as may be deemed just. After a complaint issues, any proposed amendment shall be filed with the hearing examiner.

1. Filing, service, and proof of service of an amended charge shall conform to the provisions of these rules relating to the original charge.

(b) An unfair practice charge and any complaint shall be dismissed and the case closed if the charging party files a notice of withdrawal before the respondent serves an answer or a motion for summary judgment. Unless otherwise stated in the notice of withdrawal, a withdrawal and dismissal under this subsection is without prejudice.

(c) Except as provided by (b) above, a charge may be withdrawn by the charging party, and any complaint dismissed and the case closed, only with the consent of the hearing examiner, or if a hearing examiner's report and recommended decision has issued, with the consent of the Chairman. Unless otherwise provided by the Chairman or the hearing examiner, a withdrawal and dismissal under this subsection is without prejudice.

(d) The Director of Unfair Practices or the assigned hearing examiner may request the charging party to withdraw its charge. Where it appears to the Director of Unfair Practices or the assigned hearing examiner that the charging party has no further interest in processing its charge, the Director or hearing examiner may request the charging party to withdraw the charge or, in the absence of a withdrawal, may dismiss the charge within a reasonable time and after appropriate notice. The Director may exercise such authority before the issuance of a complaint and the hearing examiner may exercise such authority after the issuance of a complaint. Unless otherwise stated, a withdrawal and dismissal under this subsection is without prejudice.

(e) Within 15 days after the date a charge has been dismissed under this section, a charging party may file a written motion to reopen with the Director of Unfair Practices. The charging party shall file an original and two copies of such motion, together with proof of service of a copy on all other parties. Any party opposing the motion shall file an original and two copies of its response within five days of receipt of the motion, together with proof of service of a copy on all other parties. The motion may be granted on a showing of extraordinary circumstances or to prevent an injustice.

### **19:14-1.6 Processing of charge**

(a) The Director of Unfair Practices will normally assign a charge to a staff member for processing. All parties will be notified of such assignment and will be requested to submit to the staff member:

1. An executed copy of any current or recently expired collective negotiations agreement between the parties; and
2. A written statement of position including an explanation as to why the allegations contained in the charge, if true, would or would not constitute unfair practices on the part of the respondent.

(b) The assigned staff member may request the parties to submit briefs setting forth detailed arguments concerning all relevant legal issues.

(c) The assigned staff member may hold an exploratory conference to clarify the issues, explore the possibility of settlement, or take stipulations of fact. The party or parties or an authorized representative shall attend such conference.

(d) Information disclosed to a staff member in confidence regarding any unfair practice matter shall not be divulged. All files, records, reports, documents or other papers received or prepared by a staff member for purposes of settlement shall be classified as confidential. The staff member shall not produce any confidential records of, or testify in regard to, any settlement discussions conducted by him or her, on behalf of any party in any type of proceeding.

## **SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING**

### **19:14-2.1. Contents; service**

(a) After a charge has been processed, if it appears to the Director of Unfair Practices that the allegations of the charge, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the Director shall issue and serve a formal complaint including a notice of hearing before a hearing examiner at a stated time and place. The complaint with notice of hearing shall contain:

1. The allegations of the charge and a statement of the subsection(s) of the Act alleged to have been violated;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held; and
3. A statement of the time and place of any pre-hearing conference. The hearing examiner, upon proper cause shown, may postpone any hearing or pre-hearing conference. If the hearing examiner is unavailable to make that determination in a timely manner, the Director may exercise such authority.

### **19:14-2.2 Amendment; dismissal**

(a) Any complaint may be amended by the hearing examiner to conform to the allegations set forth in any amended charge filed pursuant to N.J.A.C. 19:14-1.5(a).

(b) Any amended complaint may be dismissed pursuant to subsections (b), (c) and (d), or reopened pursuant to subsection (e) of N.J.A.C. 19:14-1.5 (Amendment; withdrawal; dismissal).

### **19:14-2.3 Refusal to issue; appeal**

(a) If, after a charge has been processed, the Director of Unfair Practices refuses, in whole or in part, to issue a complaint, the

parties shall be notified in writing of the grounds for such action.

(b) Where no complaint is issued, the charging party may appeal that action by filing an original and nine copies of an appeal with the Commission, together with proof of service of a copy on all other parties, within 10 days from the service of the notice of such refusal to issue. An appeal must be a self-contained document enabling the Commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be presented. Within five days of being served with an appeal, any party opposing the appeal may file an original and nine copies of its response, together with proof of service of a copy on all other parties. The Commission may sustain the refusal to issue a complaint, stating the grounds of its affirmance, or may direct that further action be taken. The Commission's determination shall be served on all parties.

(c) A decision by the Director of Unfair Practices to issue a complaint or to refuse to issue a complaint on a portion of an unfair practice charge may not be appealed pre-hearing except by special permission to appeal pursuant to N.J.A.C. 19:14-4.6.

## **SUBCHAPTER 3. ANSWER**

### **19:14-3.1 Time for filing; contents; form**

Within 10 days of service on it of the complaint, the respondent shall file an answer. The hearing examiner, upon proper cause shown, may extend the time for filing an answer. The answer shall specifically admit, deny or explain each of the allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a specific denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained shall be deemed to be admitted to be true and shall be so found by the hearing examiner and the Commission, unless good cause to the contrary is shown. The answer shall include a detailed statement of any affirmative defenses. The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: "I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief."

### **19:14-3.2. Where to file; number of copies; service**

An original and four copies of the answer shall be filed with the hearing examiner, together with proof of service of a copy on all other parties.

### **19:14-3.3 Amendment**

The respondent may amend its answer at any time before the hearing. During or after the hearing the hearing examiner or



the Commission may permit the respondent to amend its answer at any time upon such terms as may be deemed just. Filing, service, and proof of service of an amended answer shall conform to the provisions of these rules relating to the original answer.

## **SUBCHAPTER 4. MOTIONS**

### **19:14-4.1. Motions**

The motion practice set forth in this subchapter applies after a complaint issues. Before then, relief which might be sought through motions should be sought through N.J.A.C. 19:14-1.5(e).

### **19:14-4.2 Where to file**

(a) Except as provided in N.J.A.C. 19:14-4.8 (Motions for summary judgment) or otherwise stated by these rules, all motions and any response to a motion:

1. Made before a case is transferred to the Commission, shall be made in writing to the hearing examiner, or stated orally on the record at the hearing;
2. Made after a case is transferred to the Commission, shall be filed in writing with the Commission.

### **19:14-4.3 Contents; number of copies; service**

All written motions, referred to in N.J.A.C. 19:14-4.2, shall briefly state the order or relief sought and, if appropriate, shall be supported by affidavits. The moving party shall file an original and two copies of its motion papers, if made to the hearing examiner or Director of Unfair Practices, and an original and nine copies if made to the Commission, together with proof of service of a copy on all other parties.

### **14-4.4. Answering affidavits; further submissions by leave; oral argument or testimony**

(a) Answering arguments, documents or affidavits, if any, shall be served and filed within five days of service of the motion papers. Filing, service, and proof of service of answering arguments, documents or affidavits shall conform to the provisions of these rules relating to the motion papers.

(b) No further arguments, documents or affidavits shall be filed except by leave of the Commission or hearing examiner, as applicable. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

(c) The Commission or hearing examiner, as applicable, may decide to hear oral argument or take testimony on any motion. The parties shall be notified of the time and place of hearing argument or taking testimony.

### **19:14-4.5 Rulings**

Rulings and orders by the Commission or its named designee on motions shall be issued in writing and a copy served on

each party. Rulings and orders, if announced at the hearing, shall be stated on the record; in all other cases the hearing examiner shall issue rulings and orders in writing and shall serve a copy on each party, or shall make such ruling in the hearing examiner's report and recommended decision, provided that where the hearing examiner has reserved ruling and the case is transferred to the Commission, the Commission shall issue the ruling.

### **19:14-4.6 Motions and rulings part of the record; appeal on special permission**

(a) All motions, rulings and orders of the hearing examiner shall become part of the record, except that rulings on motions to quash a subpoena shall become a part of the record only upon request of an aggrieved party. Unless expressly authorized by these rules, rulings by the hearing examiner on motions and objections shall not be appealed to the Commission except by special permission of the Commission, but shall be considered by the Commission in reviewing the record, if exception to the ruling or order is included in the statement of exceptions filed with the Commission, pursuant to N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

(b) A request for special permission to appeal shall be filed in writing within five days from the service of written rulings or statement of oral rulings, and shall briefly state the grounds relied on. An original and nine copies of such request shall be filed with the Chairman, together with proof of service of a copy on all other parties, and, if the request involves a ruling by a hearing examiner, upon that hearing examiner. A party opposing the request may file an original and nine copies of a statement in opposition within five days of service on it of the request for special permission to appeal, together with proof of service of a copy on all other parties. If the Chairman grants special permission to appeal, the proceedings shall not be stayed unless otherwise ordered by the Chairman. The Commission shall consider an appeal on the papers submitted to the Chairman, or on such further submission as it may require.

### **19:14-4.7 Motion to dismiss complaint; appeal**

If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the hearing examiner before the filing of a report and recommended decision, the charging party may appeal such action by filing an original and nine copies of an appeal with the Commission, stating the grounds for appeal, together with proof of service of a copy on all other parties. Unless an appeal is filed within 10 days from the date of the order of dismissal, the case shall be closed. A party opposing the request may file an original and nine copies of an answering statement or brief within five days of service on it of the appeal, together with proof of service of a copy on all other parties.

### **19:14-4.8. Motions for summary judgment**

(a) Any motion in the nature of a motion for summary judgment may only be made after a complaint issues and shall be filed with the Chairman, who shall refer the motion to either the Commission or the hearing examiner. The parties shall be notified in writing of such referral. Any request for a stay of proceedings must accompany the motion for summary judgment.

(b) A motion for summary judgment shall be in writing and accompanied by a brief and may be filed with supporting affidavits. An original and nine copies of the motion and all supporting documents shall be filed with the Chairman, together with proof of service of a copy on all other parties.

(c) Within 10 days of service on it of the motion for summary judgment or such longer period as the Chairman or hearing examiner may allow, the responding party shall serve and file its answering brief and affidavits, if any. Such answering documents shall be served in accordance with (b) above and may include a cross-motion for summary judgment which shall conform to the requirements of (b) above.

(d) No further arguments, documents or affidavits shall be filed except by leave of the Commission or hearing examiner, as applicable. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

(e) If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

(f) If a hearing examiner grants a motion or cross-motion for summary judgment which resolves all issues in the complaint, the hearing examiner shall prepare a report and recommended decision as set forth in N.J.A.C. 19:14-7.1 (Hearing examiner's report and recommended decision and transfer of case to the Commission). If the ruling of the hearing examiner does not fully resolve all issues in the complaint, the ruling shall not be appealed directly to the Commission except by special permission pursuant to N.J.A.C. 19:14-4.6.

(g) The granting of a motion or cross-motion for summary judgment by the Commission resolving all issues in the complaint shall constitute the final decision and order of the Commission. If the decision and order on motion does not resolve all issues in the complaint, the matter shall be referred back to the hearing examiner for a hearing on the remaining issues, unless the Commission shall order such other disposition as it deems reasonable. If the Commission denies a motion and/or cross-motion for summary judgment, it shall refer the case to the hearing examiner for a full hearing.

## **SUBCHAPTER 5. INTERVENTION**

### **19:14-5.1 Intervention**

A motion for leave to intervene shall be filed in writing or made orally on the record at hearing. A motion shall state the grounds for intervention and the extent to which intervention is sought. Any party opposing a written motion to intervene may file a written response within five days, together with

proof of service on the other parties. If the motion is made orally at hearing, any party opposing intervention may do so orally on the record. Filing, service, and proof of service of a motion and any response shall conform to the provisions of N.J.A.C. 19:14-4.3. The Commission, the Director of Unfair Practices, or the hearing examiner, as the case may be, may by order permit intervention on such terms as may be deemed just.

## **SUBCHAPTER 6. HEARINGS**

### **19:14-6.1 Who shall conduct; to be public unless otherwise ordered**

The hearing for the purpose of taking evidence upon a complaint shall be conducted by a designated hearing examiner, unless the Commission or any member of the Commission presides. The hearing shall be public unless otherwise ordered by the Commission or the hearing examiner.

### **19:14-6.2 Prehearing conference**

The hearing examiner assigned to conduct such hearing, or an alternate designee, may hold a pre-hearing conference to clarify the issues, explore the possibility of settlement, or take stipulations of fact. All of the parties or their authorized representatives shall attend any prehearing conference.

### **19:14-6.3 Duties and powers of hearing examiner**

(a) The hearing examiner shall hear the facts as to whether a respondent has engaged or is engaging in an unfair practice as set forth in the complaint or amended complaint. Before the case is transferred to the Commission, the hearing examiner shall have authority, subject to these rules and the Act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon motions to quash subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Permit and regulate discovery in accordance with regulations promulgated by the Office of Administrative Law, as applicable, and consistent with the purposes of the Act;
6. Regulate the course of the hearing, and if appropriate, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of a witness refusing to answer any proper question;
7. Hold conferences for settling or simplifying the issues;
8. Dispose of procedural requests, motions, or similar matters, including motions for summary judgment or to amend pleadings; also to dismiss complaints in whole or in part; to

order hearings reopened; and upon motion, order proceedings consolidated or severed prior to issuance of the hearing examiner's report and recommended decision.

9. Approve a stipulation by all parties dispensing with a verbatim transcript of record of the oral testimony adduced at the hearing, and which will also include a waiver of the parties' right to file with the Commission exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the hearing examiner shall make in a report and recommended decision;

10. Request the parties to state their positions concerning any issue; and

11. Take any other necessary action authorized by these rules.

#### **19:14-6.4 Unavailability of hearing examiner**

(a) If the hearing examiner becomes unavailable, the Director of Unfair Practices or the Commission may designate another hearing examiner for the purpose of further hearing or issuance of a report and recommended decision on the record as made, or both. The parties shall be notified of that designation.

(b) If the hearing examiner becomes unavailable after the hearing has been conducted and before a report and recommended decision has been issued, the Commission may transfer the case to itself to issue a decision and order.

#### **19:14-6.5 Rights of parties**

(a) Any party shall have the right to appear at such hearing in person or by authorized representative to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing examiner. Five copies of documentary evidence shall be submitted, unless the hearing examiner permits a reduced number of copies upon good cause shown.

(b) If a transcript of the proceedings is ordered before a recommended decision has been issued, the party ordering the transcript shall, at the time of ordering, notify the hearing examiner that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the hearing examiner for inclusion in the record.

#### **19:14-6.6 Rules of evidence not controlling**

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted by the Rules of Court. All relevant evidence is admissible, except as otherwise provided by this rule. The hearing examiner may in the exercise of discretion exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create

substantial danger of undue prejudice or confusion. The hearing examiner shall give effect to the rules of privilege recognized by law. Notice may be taken of administratively noticeable facts and of facts within the Commission's specialized knowledge. The material noticed shall be referred to in the hearing examiner's report and recommended decision, and any party may contest the material so noticed by filing timely exceptions pursuant to N.J.A.C. 19:14-7.3 (exceptions; cross-exceptions; briefs; answering briefs).

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

#### **19:14-6.7 Stipulations of fact**

In any proceeding stipulations of fact may be submitted. The parties may submit a stipulation of facts to the Commission for a decision without a hearing. The parties may also agree to waive a hearing examiner's report and recommended decision.

#### **19:14-6.8 Prosecution by charging party; burden of proof**

The charging party shall prosecute the case and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. The respondent shall have the burden of establishing any affirmative defenses in accordance with law.

#### **19:14-6.9 Objection to conduct of hearing; waiver of objections**

(a) Any objection to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing and accompanied by a short statement of the grounds for objection, and will be included in the record.

(b) An objection shall not be deemed waived by further participation in the hearing. An objection not duly raised before a hearing examiner shall be deemed waived unless the Commission excuses the failure to raise the objection because of extraordinary circumstances.

(c) During a hearing, the Commission will not review any objection to the rulings of a hearing examiner except by special permission to appeal pursuant to N.J.A.C. 19:14-4.6(b). Review by the Commission shall not stay the conduct of the hearing unless otherwise ordered by the Commission.

#### **19:14-6.10 Oral argument at hearing; briefs; proposed findings**

Any party shall be entitled, upon request, to a reasonable period before the hearing closes for oral argument, which shall be included in the official transcript of the hearing. Any party shall be entitled, upon request made before the hearing closes, to file a brief or proposed findings and conclusions, or both.

The hearing examiner shall fix a reasonable time for such filing and may grant extensions of time for good cause shown. No request for an extension of time will be considered unless received before the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the hearing examiner, and accompanied by proof of service of a copy on all other parties. Two copies of any brief or proposed findings and conclusions shall be filed with the hearing examiner, together with proof of service of a copy on all other parties.

#### **19:14-6.11 Continuance or adjournment**

In the hearing examiner's discretion, the hearing may be continued from day to day, or adjourned to a later date or different place, by announcement at the hearing by the hearing examiner, or by other appropriate notice to the parties.

#### **19:14-6.12 Misconduct at hearing**

Misconduct at any hearing before a hearing examiner or the Commission shall be grounds for summary exclusion from the hearing. Misconduct of an aggravated character by a representative of a party shall be grounds for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

#### **19:14-6.13 Settlement or adjustment of issues**

(a) In any proceeding conducted pursuant to this chapter, all interested parties shall have an opportunity to submit to the Commission or its designated officer for consideration, facts, arguments, offers of settlement, or proposals of adjustment.

(b) In any proceeding conducted pursuant to this chapter, any facts, admissions against interest, offers of settlement or proposals of adjustment shall not be admissible unless mutually agreed by all parties. No Commission officer shall be permitted to testify in any proceeding with respect to such submissions.

### **SUBCHAPTER 7. HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION AND TRANSFER OF CASE TO THE COMMISSION**

#### **19:14-7.1 Hearing examiner's report and recommended decision and transfer of case to the Commission**

After the hearing or upon the parties' consent before the conclusion of the hearing, the hearing examiner shall prepare a report and recommended decision which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made, including, where appropriate, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The hearing examiner shall file the original with the Commission, and shall serve a copy on the parties. Service shall be complete upon mailing and the case shall then be deemed transferred to the Commission.

#### **19:14-7.2 Record in the case**

The record shall consist of the charge and any amendments; the complaint and any amendments; notice of hearing; answer and any amendments; motions; rulings; orders; any official transcript of the hearing; and stipulations, exhibits, documentary evidence, and depositions admitted into evidence; together with the hearing examiner's report and recommended decision and any exceptions, cross-exceptions, and briefs and answering briefs in support of, or in opposition to, exceptions and cross-exceptions.

#### **19:14-7.3 Exceptions; cross-exceptions; briefs; answering briefs**

(a) Within 10 days of service on it of the hearing examiner's report and recommended decision or such longer period as the Commission may allow, any party may file with the Commission an original and nine copies of exceptions to the report and recommended decision or to any other part of the record or proceedings (including rulings upon motions or objections), together with an original and nine copies of a brief in support of the exceptions. Any party may, within the same period, file an original and nine copies of a brief in support of the report and recommended decision. A request for an extension of time to file exceptions or briefs shall be in writing and shall state the other parties' positions with respect to such request. Filings under this subsection shall be accompanied by proof of service of a copy on all other parties.

(b) Each exception shall specify each question of procedure, fact, law, or policy to which exception is taken; identify that part of the report and recommended decision to which objection is made; designate by precise page citation the portions of the record relied on; state the grounds for the exception; and include the citation of authorities unless set forth in a supporting brief. Any exception which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with these requirements may be disregarded. If a transcript of the proceedings is ordered for the purposes of filing exceptions to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the Commission for inclusion in the record.

(c) Any brief in support of exceptions shall not contain any matter outside the scope of the exceptions and shall contain the points of fact and law relied on in support of the position taken on each question, with specific page references to the transcript and the legal or other material relied on.

(d) Within five days of service on it of exceptions or such longer period as the Commission may allow, a party opposing the exceptions may file an original and nine copies of an answering brief limited to the questions raised in the exceptions and in the brief in support of exceptions, together with proof of service of a copy on the other parties. Filing,

service, and proof of service of request for an extension of time shall conform to (a) above.

(e) Within five days of service on it of exceptions or such longer period as the Commission may allow, any party that has not previously filed exceptions may file an original and nine copies of cross-exceptions to any portion of the report and recommended decision, together with a supporting brief, in accordance with (b) above, together with proof of service of a copy on the other parties. Filing, service, and proof of service of a request for an extension of time shall conform to (a) above.

(f) Within five days of service on it of cross-exceptions or such longer period as the Commission may allow, any other party may file an original and nine copies of an answering brief in accordance with (c) above, limited to the questions raised in the cross-exceptions, together with proof of service of a copy on the other parties. Filing, service, and proof of service of a request for an extension of time shall conform to (a) above.

(g) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on the other parties.

(h) Any matter not included in exceptions or cross-exceptions may not be urged before the Commission in any proceeding.

## **SUBCHAPTER 8. PROCEDURE BEFORE THE COMMISSION**

### **19:14-8.1 Action by the Commission; decision in the absence of exceptions**

(a) The Commission shall adopt, reject or modify the hearing examiner's report and recommended decision. The Commission may decide the matter upon the record or after oral argument. It may also reopen the record and receive further evidence.

(b) If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

### **19:14-8.2 Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and filed simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs), together with proof of service of a copy on all other parties. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

## **19:14-8.3 Hearings before the Commission**

Whenever necessary to effectuate the purposes of the Act or to avoid unnecessary costs or delay, the Commission may order that a complaint and any related proceeding be transferred to and continued before it or any member or members of the Commission. In such case, the provisions of this chapter shall govern, as applicable.

### **19:14-8.4. Motions for reconsideration**

After a Commission decision has been issued, a party may move for reconsideration. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. No further submissions shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Commission decision unless otherwise ordered by the Commission. A motion for reconsideration need not be filed to exhaust administrative remedies.

## **SUBCHAPTER 9. INTERIM RELIEF**

### **19:14-9.1 Applicability of subchapter; nature of proceedings**

This subchapter shall be applicable to requests for interim relief in both unfair practice proceedings under this chapter and in scope of negotiations proceedings pursuant to N.J.A.C. 19:13-3.11. Any order issued pursuant to this subchapter is interlocutory.

### **19:14-9.2 When to file; form and contents; insufficient pleadings; processing of interim relief applications**

(a) Upon or after the filing of an unfair practice charge or a petition for scope of negotiations determination, the charging party or petitioner may apply to the Chairman for an order requiring the respondent to show cause why specified interim relief should not be granted pending the final disposition of the proceeding by the Commission.

(b) The application for interim relief shall include an order to show cause, shall state the relief sought, and shall be supported by an affidavit or verified charge or petition if it relies on facts not already in the record.

(c) The Commission Chair or such other person designated by the Commission Chair shall review the interim relief application and any accompanying documents and may deny the application, if there is insufficient basis in the pleadings to meet the standards for granting interim relief.

(d) Where the pleadings are sufficient to warrant further processing of the application, the Commission Chair or the designee may direct one or more of the following:

1. Issue an order requiring the respondent to file a response to the application;
2. Schedule a pre-hearing conference;
3. Execute the order to show cause, which shall be returnable at such time and place as the Commission Chair or the Designee shall fix in the order, except that the order to show cause shall not include any temporary restraints unless permitted by, and pursuant to, (f) and (g) below;
4. Issue a determination based on the pleadings and any written response; and/or
5. Take, or direct the parties to take, any other action deemed necessary to process the application.

(e) The charging party shall serve the application, order to show cause, and any supporting affidavits upon the respondents at least 10 days before the return date and in a manner prescribed by N.J.A.C. 19:10-2.3, Filing by original, facsimile transmission and e-mail, unless the Commission Chair or the designee orders a shorter or longer time or other manner of service. If an order to show cause issues upon the filing of the charge or petition, a copy of such charge or petition shall be served simultaneously with the order and supporting affidavits.

(f) An order to show cause shall not include any temporary restraints unless:

1. The respondent has been notified of and consents to the application; or
2. It appears from the specific facts shown by affidavit or other verified pleading that the charging party or petitioner has a substantial likelihood of success on the merits and that the charging party or petitioner will probably suffer immediate and irreparable harm before notice can be given and a hearing on the application can be held.

(g) Any order to show cause issued without notice which includes temporary restraints shall provide that the respondents may move for dissolution or modification of the restraints on two days' notice or on such other notice as may be ordered. The order to show cause may provide that the restraints shall continue until further order of the Commission, the Commission Chair, or the designee.

### **19:14-9.3 Briefs**

(a) By no later than five days before the return date of an order to show cause, unless otherwise ordered by the Commission Chair or the designee, the charging party or petitioner shall file an original and two copies of its brief together with proof of service of a copy on all other parties. The brief shall explain clearly the nature of the proceeding, the

interim relief sought, and why such relief should be ordered under the applicable legal standards.

(b) By no later than two days before the return date, unless otherwise ordered by the Commission Chair or the designee, the respondent shall file an original and two copies of its answering brief and any opposing affidavits or verified pleadings, together with proof of service of a copy on all other parties. The answering brief shall set forth the grounds of opposition, together with copies of any papers relied on which are not in the charging party's or petitioner's submissions. If no answering brief is filed, the application may be considered to be unopposed, provided, however, that an unopposed application must still satisfy the standards for granting interim relief.

(c) No further briefs shall be filed without leave of the Commission Chair or the designee. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

### **19:14-9.4 Hearing or telephone conference on return date**

On the return date of the order to show cause or a respondent's motion to dissolve or modify any temporary restraints, the application shall be considered by means of a hearing or a telephone conference call before the Commission Chair or the designee with all parties and their representatives having the right to appear. The parties shall have the right to argue orally and the hearer may permit testimony.

### **19:14-9.5 Decision; enforcement**

(a) An interim relief decision granting relief in proceedings under this subchapter shall be in writing and shall include findings of fact and conclusions of law. Any order granting interim relief and any restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail the act or acts sought to be restrained; and shall apply to only such parties and such of their officers, agents, employees, and attorneys, and such persons in active concert or participation with them, as receive actual notice of the order by service in the manner prescribed by N.J.A.C. 19:10-2.3. A decision issued pursuant to this subsection may be preceded by an order, issued at the end of the proceedings on the return date, containing a brief statement of reasons for granting the application.

(b) An interim relief decision dismissing an application may be made by:

1. An order of dismissal in cases covered by N.J.A.C. 19:14-9.2(c);
2. An order, issued at the end of the proceedings on the return date, containing a brief statement of reasons for denying the application; or
3. A written decision including findings of fact and conclusions of law.

(c) Pursuant to N.J.S.A. 34:13A-5.4(f) and as permitted by Court rules, the Commission and/or the prevailing party shall have the power to apply to the Superior Court for an appropriate order enforcing any order issued under this subchapter.

## **SUBCHAPTER 10. COMPLIANCE AND ENFORCEMENT**

### **19:14-10.1 Applicability**

The provisions of this subchapter shall be applicable to orders issued by the Commission or persons designated to act for the Commission in unfair practice proceedings pursuant to N.J.S.A. 34:13A-5.4(c) and (f) and this chapter, and in scope of negotiations proceedings pursuant to N.J.S.A. 34:13A-5.4(d) and (f) and N.J.A.C. 19:13.

### **19:14-10.2 Procedures for compliance and enforcement**

(a) The Chairman or the Commission's designee shall have the authority and discretion to take reasonable action to ascertain if compliance with the Commission's order has been or is being achieved. Such action may include, but shall not be limited to, soliciting information from the party to whom the order is directed or any other party, convening a conference among one or more of the parties to the proceeding; conducting an investigation and/or a hearing; or taking such other action reasonably designed to determine if compliance with the Commission's order has occurred.

(b) The Commission may at any time in the exercise of its discretion institute proceedings for enforcement of its order pursuant to court rules. The Commission may institute such proceedings without regard to the provisions of (a) above.

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<sup>1</sup>Title 19, Chapter 14 -- Chapter Notes

#### **CHAPTER AUTHORITY:**

N.J.S.A. 34:13A-5.4c and 34:13A-11.

#### **SOURCE AND EFFECTIVE DATE:**

See: 42 N.J.R. 1693(a), 42 N.J.R. 2968(c).

R.2010 d.278, effective November 3, 2010.

#### **EXPIRATION DATE:**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 14, Unfair Practice Proceedings, expires on November 3, 2017. See: 43 N.J.R. 1203(a).

(c) Filing a notice of appeal with the Appellate Division of the Superior Court from a decision and order of the Commission, or some other action designed to seek a review of the Commission's decision and order, shall not relieve the party to whom the order is directed from compliance with its requirements unless so ordered by the Commission or the reviewing court.

### **19:14-10.3 Request for compliance and enforcement**

(a) Any party to the proceeding which resulted in the order for which compliance is sought may request that the Commission seek compliance with and enforcement of any Commission order.

(b) Such a request shall normally take the form of a motion addressed to the Chairman and shall be accompanied by affidavits, as appropriate, setting forth the facts regarding the noncompliance of the party to whom the order was directed. An original and two copies of such request shall be filed with the Chairman, together with proof of service of a copy on all other parties.

(c) Within five days of service on it of the request for action to ascertain compliance and enforcement, the party to whom the order is directed may respond to the request. Such response may include affidavits or other submissions. An original and two copies of the response and supporting submissions shall be filed with the Chairman, together with proof of service of copies of such documents on all other parties.

## CHAPTER 15

### SUBPOENAS<sup>1</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. GENERAL PROVISIONS

19:15-1.1 Issuance of subpoena

19:15-1.2 Application for subpoena

19:15-1.3 Failure to comply with subpoena

19:15-1.4 Fees

##### SUBCHAPTER 2. PETITION TO QUASH

19:15-2.1 Petition to quash

19:15-2.2 Ruling on petition to quash

19:15-2.3 Timeliness of petition to quash

19:15-2.4 Inclusion in the record

##### SUBCHAPTER 1. GENERAL PROVISIONS

###### 19:15-1.1 Issuance of subpoena

The commission or any designated officer thereof may issue subpoenas to require the attendance of witnesses in the State and the production of books, papers, and other materials at a proceeding held under the provisions of these rules.

###### 19:15-1.2 Application for subpoena

(a) A party may file a written application for subpoena with the commission or any designated officer thereof.

(b) The application for subpoena need not name the witness or the books, papers, and other materials sought.

(c) Notice of an application for subpoena need not be communicated to the parties.

(d) The commission or any designated officer shall furnish all subpoenas requested.

(e) The party requesting the subpoena shall be responsible for service in accordance with the provisions of N.J.A.C. 19:10-2.3 (Service of pleading and other process; proof of service).

###### 19:15-1.3 Failure to comply with subpoena

(a) No person served with a subpoena issued in accordance with this provision of this chapter shall refuse or neglect to appear or testify or to produce books, papers, and other materials relevant to such investigation, inquiry or hearings as commanded in such subpoena without the timely filing of a petition to quash a subpoena, with the commission or designated officer.

(b) Failure to comply with, or neglect of a subpoena issued by the commission or an officer thereof pursuant to N.J.A.C. 19:15-1.1 (Issuance of subpoena) may be certified by the commission to a court of competent jurisdiction for an order of compliance. An application to enforce the subpoena may be made by the Commission or the party that has requested the subpoena, in accordance with court rules.

###### 19:15-1.4 Fees

(a) The fees for witnesses for attendance and travel shall be paid from appropriations made to the Division of Public Employment Relations to those witnesses subpoenaed by the commission or any officer thereof.

(b) The fees for witnesses for attendance and travel shall be paid by the party requesting the subpoena.

##### SUBCHAPTER 2. PETITION TO QUASH

###### 19:15-2.1 Petition to quash

(a) A petition to quash a subpoena may be filed with the commission or designated officer not later than five days from the date of service of the subpoena.

(b) The commission or designated officer shall give notice of the filing of a petition to quash to the applicant for subpoena. Any party may file a response within five days after receiving notice of the petition to quash. Neither the petitioner nor any other party shall file any further reply or response without leave of the Commission or the designated officer.

###### 19:15-2.2 Ruling on petition to quash

(a) The commission or designated officer may quash a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry or hearing, or the subpoena does not describe with sufficient particularity the evidence sought, or that the evidence sought from the witness is privileged under the law or these rules.

(b) The commission or designated officer shall make a statement as to the basis for the ruling.

###### 19:15-2.3 Timeliness of petition to quash

A failure to file a timely petition to quash shall bar the filing of a subsequent petition to quash a subpoena.

###### 19:15-2.4 Inclusion in the record

An aggrieved party may request that the petition to quash a subpoena, the answer thereto and the commission's or designated officer's statement of the basis for the ruling, as the case may be, be made a part of the record.



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<sup>i</sup> Title 19, Chapter 15 -- Chapter Notes

CHAPTER AUTHORITY:

N.J.S.A. 34:13A-5.4.c and d, 34:13A-6(e), and 34:13A-11.

SOURCE AND EFFECTIVE DATE:

R.2014 d.067, effective March 24, 2014.

See: 45 N.J.R. 2200(a), 46 N.J.R. 710(a).

EXPIRATION DATE:

Chapter 15, Subpoenas, expires on March 24, 2021.

## CHAPTER 16

### NEGOTIATIONS, IMPASSE PROCEDURES, AND COMPULSORY INTEREST ARBITRATION OF LABOR DISPUTES IN PUBLIC FIRE AND POLICE DEPARTMENTS<sup>i</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

##### SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:16-2.1 Commencement of negotiations

##### SUBCHAPTER 3. MEDIATION

19:16-3.1 Initiation of mediation

19:16-3.2 Appointment of a mediator

19:16-3.3 Mediator's function

19:16-3.4 Mediator's confidentiality

19:16-3.5 Mediator's report

##### SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding

19:16-4.2 Appointment of a fact-finder

19:16-4.3 Fact-finder's function

##### SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION

19:16-5.1 Scope of compulsory interest arbitration

19:16-5.2 Initiation of compulsory interest arbitration

19:16-5.3 Contents of the petition requesting the initiation of compulsory interest arbitration; proof of service; notice of filing

19:16-5.4 Conventional arbitration to be terminal procedure

19:16-5.5 Response to the petition requesting the initiation of compulsory interest arbitration

19:16-5.6 Appointment of an arbitrator; arbitrator training and discipline

19:16-5.7 Conduct of the arbitration proceeding

19:16-5.8 Stenographic record

19:16-5.9 Opinion and award

19:16-5.10 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes

19:16-5.11 Cost of arbitration

19:16-5.12 Fees for filing and processing interest arbitration petitions

19:16-5.13 Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders

19:16-5.14 Comparability guidelines

19:16-5.15 Standards for appointment and reappointment to the special panel

19:16-5.16 Suspension, removal or discipline of members of the special panel

19:16-5.17 Interlocutory rulings; appeal on special permission

##### SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION

19:16-6.1 Purpose of procedure

19:16-6.2 (Reserved)

##### SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT

19:16-7.1 Failure to submit a notice or other document

##### SUBCHAPTER 8. APPEALS

19:16-8.1 Appeals and cross-appeals

19:16-8.2 Oral argument

19:16-8.3 Action by the Commission

##### SUBCHAPTER 1. PURPOSE OF PROCEDURES

###### 19:16-1.1 Purpose of procedures

(a) The rules of this chapter provide for implementation of the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, as amended by P.L. 2010, c. 105, and P.L. 2014, c. 11, and codified at N.J.S.A. 34:13A-14 et seq., providing for compulsory interest arbitration of labor disputes in public fire and police departments.

(b) The Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of the institution and termination of impasse procedures, at the request of the parties, or on its own motion, and to adhere to the time limits established in N.J.S.A. 34:13A-16, as amended.

(c) Impasse procedures that may be invoked include mediation, fact-finding, and binding conventional interest arbitration, as set forth in N.J.S.A. 34:13A-16d.

(d) Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations and for institution of impasse procedures, including compulsory interest arbitration of unresolved impasses and appeals of arbitration awards.

## **SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS**

### **19:16-2.1 Commencement of negotiations**

(a) The parties shall commence negotiations for a new or successor agreement, or in the case of an agreed reopener provision, shall commence negotiations pursuant to such reopener provision, at least 120 days prior to the day on which their collective negotiations agreement is to expire. The following provisions shall not preclude the parties from agreeing to the automatic renewal of a collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement.

1. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiations agreement is to expire.

2. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the date on which their collective negotiations agreement is to expire.

3. A violation of these requirements shall constitute an unfair practice and the violator shall be subject to penalties prescribed by law and by the Commission pursuant to rule and regulation.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this subchapter, notify the other party in writing of its intention to commence negotiations on such date, and shall simultaneously file with the Commission a copy of such notification. Forms for filing such petitions may be downloaded from the Commission's web site at: [http://www.state.nj.us/perc/NJ\\_PERC\\_Notification\\_of\\_Intent\\_to\\_Commence\\_Negotiations\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Notification_of_Intent_to_Commence_Negotiations_-_Form.pdf) or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) Nothing in this subchapter shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

## **SUBCHAPTER 3. MEDIATION**

### **19:16-3.1 Initiation of mediation**

(a) In the event that a public employer and an exclusive employee representative have failed to achieve an agreement through direct negotiations, either the public employer, the employee representative, or the parties jointly, may notify the Director of Conciliation and Arbitration, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed, and shall be signed and dated and shall contain the following information:

1. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;

3. A description of the collective negotiations unit, including the approximate number of employees in the unit;

4. The dates and duration of negotiations sessions;

5. The termination date of the current agreement, if any;

6. The public employer's required budget submission date;

7. Whether the request is a joint request; and

8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

(b) A blank form for filing a Notice of Impasse to request mediation may be downloaded from the Commission's web site [http://www.state.nj.us/perc/NJ\\_PERC\\_Notice\\_of\\_Impasse\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Notice_of_Impasse_-_Form.pdf) or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) Upon receipt of the Notice of Impasse, the Director of Conciliation and Arbitration shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach an agreement through direct negotiations, and that an impasse exists in negotiations.

(d) The Commission or the Director of Conciliation and Arbitration may also initiate mediation at any time in the absence of a request in the event of the existence of an impasse.

(e) Any mediation invoked pursuant to this section shall terminate immediately upon the filing of a petition for interest arbitration.

### **19:16-3.2 Appointment of a mediator**

(a) The mediator appointed pursuant to this subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's mediation panel, or any other appointee, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Director of Conciliation and Arbitration shall have the authority to appoint a mediator without regard to the parties' joint request. The appointment process begins once the

Commission receives a Notice of Impasse requesting the assignment of a mediator and the Commission retains jurisdiction until the docket is closed.

(b) If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed.

(c) The appointment of a mediator pursuant to this subchapter shall not be reviewable in any other proceeding before the Commission.

### **19:16-3.3 Mediator's function**

The function of a mediator shall be to assist the parties to reach a voluntary agreement. A mediator may hold separate or joint conferences as he or she deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties.

### **19:16-3.4 Mediator's confidentiality**

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding, under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

### **19:16-3.5 Mediator's report**

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation and Arbitration which shall normally be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;
3. A statement of the issues which have been resolved through mediation;
4. A statement of the issues which are still unresolved if any; and
5. A statement setting forth any other relevant information in connection with the mediator's involvement in the performance of his or her functions.

## **SUBCHAPTER 4. FACT-FINDING**

### **19:16-4.1 Initiation of fact-finding**

(a) If the parties fail to resolve the impasse through mediation, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation and Arbitration, in writing, to invoke fact-finding and upon

receipt of such request, fact-finding with recommendations for settlement shall be invoked. An original and four copies of such request shall be filed with the Director of Conciliation and Arbitration, together with proof of service upon the other party. The request shall be signed and dated and shall contain the following information:

1. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;
3. A description of the collective negotiations unit, including the approximate number of employees in the unit;
4. The name of the mediator;
5. The number and duration of mediation sessions;
6. The date of the last mediation effort;
7. Whether the request is a joint request; and
8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

(b) A blank form for filing a request for fact-finding may be downloaded from the Commission's web site at: [http://www.state.nj.us/perc/NJ\\_PERC\\_Request\\_for\\_Invocation\\_of\\_Factfinding\\_with\\_Recommendations\\_for\\_Settlement\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Request_for_Invocation_of_Factfinding_with_Recommendations_for_Settlement_-_Form.pdf) or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) In the absence of a joint request seeking the invocation of fact-finding, the non-filing party may submit a statement or response within seven days of receipt of the request for fact-finding, setting forth the following:

1. Any additional unresolved issues to be submitted to the fact-finder;
2. A statement as to whether it refuses to submit any of the issues listed on the request to fact-finding on the ground that such issue is not within the required scope of negotiations; and
3. Any other relevant information with respect to the nature of the impasse.

(d) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation and Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the invocation of fact-finding as submitted by the requesting party.

(e) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the request for fact-finding or within five days after receipt of the response to a request for fact-finding. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to fact-finding.

#### **19:16-4.2 Appointment of a fact-finder**

(a) Upon the invocation of fact-finding pursuant to this subchapter, the Director of Conciliation and Arbitration shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which it objects, indicate the order of its preference regarding the remaining names, and communicate the foregoing to the Director of Conciliation and Arbitration no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not responded within the time specified, all names submitted shall be deemed acceptable. The Director of Conciliation and Arbitration shall appoint a fact-finder giving recognition to the parties' preferences. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding these provisions, the Director of Conciliation and Arbitration shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties whenever he or she deems it necessary to effectuate the purposes of the Act.

(b) The fact-finder appointed pursuant to this subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's fact-finding panel, or any other appointee, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement and/or making findings of fact and recommending the terms of settlement. If an appointed fact-finder cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable by the Commission.

(c) Fact-finding invoked pursuant to this section shall terminate immediately upon the filing of a petition for interest arbitration.

#### **19:16-4.3 Fact-finder's function**

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or their representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties agree to have them public, or take other steps deemed appropriate in order to discharge the function of the fact-finder.

(b) For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum and require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before the fact-finder.

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) If the impasse is not resolved during fact-finding, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the process as possible.

(e) Any findings of fact and recommended terms of settlement shall be limited to those issues that are within the required scope of negotiations, unless the parties have agreed to submit issues to the fact-finder which involved permissive subjects of negotiations.

(f) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties privately and to the Director of Conciliation and Arbitration.

(g) The parties shall meet within five days after receipt of the fact-finder's findings of fact and recommended terms of settlement, to exchange statements of position and to have an opportunity to reach an agreement.

### **SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION**

#### **19:16-5.1 Scope of compulsory interest arbitration**

The provisions in this subchapter relate to notification requirements, compulsory interest arbitration proceedings, and the designation of arbitrators to resolve impasses in collective negotiations involving public employers and exclusive employee representatives of public fire and police departments. The processing of petitions to initiate compulsory interest arbitration, any related filings, the appointment of interest arbitrators, the conduct of interest arbitration hearings, appeals from interest arbitration awards, decisions reviewing awards, and all other matters stemming from interest arbitration proceedings, including schedules and fines relating to the compensation of interest arbitrators, shall adhere to the deadlines and monetary limits established by N.J.S.A. 34:13A-14 et seq., as amended.

### **19:16-5.2 Initiation of compulsory interest arbitration**

(a) Compulsory interest arbitration may be initiated through appropriate utilization of any of the following:

1. In the event of a continuing impasse following receipt of a fact-finder's findings of fact and recommended terms of settlement, a petition requesting that an impasse be resolved through compulsory interest arbitration may be filed by an employee representative and/or public employer. A blank form to file a petition to initiate compulsory interest arbitration may be downloaded from the Commission's web site at: [http://www.state.nj.us/perc/NJ\\_PERC\\_Petition\\_to\\_Initiate\\_Compulsory\\_Interest\\_Arbitration\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Petition_to_Initiate_Compulsory_Interest_Arbitration_-_Form.pdf) or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

2. On or after the date on which their collective negotiations agreement expires, either party may file a petition with the Director of Conciliation and Arbitration requesting the initiation of compulsory interest arbitration.

3. Any mediation or fact-finding shall terminate immediately upon the filing of a petition for arbitration.

(b) Prior to the expiration of their collective negotiations agreement, either party may file an unfair practice charge with the Commission alleging that the other party is refusing to negotiate in good faith because the other party has refused to schedule or attend a negotiations session within the time periods set forth in N.J.S.A. 34:13A-16a(1). The charge shall be filed and served in the manner and form specified by N.J.A.C. 19:14-1.3.

1. If the charge is sustained, the Commission shall order that the respondent be assessed for all legal and administrative costs associated with the filing and resolution of the charge.

2. If the charge is dismissed, the Commission shall order that the charging party be assessed for all legal and administrative costs associated with the filing and resolution of the charge.

(c) The filing and resolution of the unfair practice charge shall not delay or impair the impasse resolution process.

### **19:16-5.3 Contents of the petition requesting the initiation of compulsory interest arbitration; proof of service; notice of filing**

(a) An original and four copies of a petition requesting the initiation of compulsory interest arbitration shall be filed with the Director of Conciliation and Arbitration. This document shall be signed and dated and contain the following information:

1. Name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. Name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;

3. A description of the collective negotiations unit and the approximate number of employees involved;

4. A statement as to whether either party has previously requested mediation, whether a mediator has been appointed, the name of the mediator, and the dates and duration of mediation sessions, if any;

5. A statement as to whether fact-finding with recommendations for settlement has been invoked, whether a fact-finder has been appointed, and whether a fact-finding report and recommendations have been issued, and the date of such report, if any;

6. The termination date of the current agreement, if any;

7. The required budget submission date of the public employer;

8. Whether the request is a joint request;

9. A statement indicating which issues are in dispute, and, if applicable, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2); and

10. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.

(b) In the absence of a joint petition, the petitioner shall file proof of service of a copy of the petition on the other party.

(c) In the absence of a joint petition, the Director of Conciliation and Arbitration shall, upon receipt of the petition, send a notice of filing to the non-petitioning party advising it that it must, within five days, respond to the petition in accordance with N.J.A.C. 19:16-5.5.

### **19:16-5.4 Conventional arbitration to be terminal procedure**

The terminal procedure for the resolution of the issues in dispute shall be conventional interest arbitration.

### **19:16-5.5 Response to the petition requesting the initiation of compulsory interest arbitration**

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party, within five days of receipt of the petition, shall separately notify the Commission in writing of all issues in dispute. The filing of the written response shall not, in any manner, delay the interest arbitration process. The statement of response shall include:

1. Any additional unresolved issues to be submitted to arbitration;

2. A statement as to whether it disputes the identification of any of the issues as economic or noneconomic;
3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and
4. Any other relevant information with respect to the nature of the impasse.

(b) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation and Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party. The substance of this response shall not provide the basis for any delay in effectuating the provisions of this chapter.

(c) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission Chair, a petition for an expedited scope of negotiations determination. The failure to file a request for a scope determination pursuant to N.J.A.C. 19:13 or this chapter shall be deemed a waiver of the negotiability objection.

1. A request for an expedited scope of negotiations determination shall be accompanied by a scope of negotiations petition in the form published on the Commission's website (<http://www.nj.gov/perc/html/forms.htm>) and shall be filed and served, where the requestor is not the party who petitioned for interest arbitration, within 10 days after receipt of the interest arbitration petition, or where the requestor is the petitioner for interest arbitration, within 10 days after receipt of the response to the interest arbitration petition.

2. The issues for which a negotiability determination is sought must be among those identified as being in dispute in either the interest arbitration petition or the response to the interest arbitration petition. The Commission will not determine the negotiability of any issues that are no longer in dispute during the pending interest arbitration. It shall be the obligation of all parties to immediately advise the Commission Chair and the assigned interest arbitrator that an issue that is the subject of a pending scope of negotiations petition is no longer actively in dispute during interest arbitration.

3. The party filing a request for an expedited scope determination shall file a supporting brief with its request, a copy of which shall be served simultaneously upon the other party. The other party shall file with the Commission Chair a brief in response to the request within seven business days of receipt of the request and shall serve simultaneously a copy of the brief upon the party who requested the expedited scope determination. All briefs shall conform to the requirements set forth in N.J.A.C. 19:13-3.6(f). No additional briefs or submissions shall be filed.

4. Within 10 days after receipt of an expedited scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure. The decision to issue an expedited scope of negotiations ruling during the pendency of a compulsory interest arbitration proceeding shall be within the sole, non-reviewable discretion of the Commission Chair.

5. If the Commission Chair decides to issue an expedited scope of negotiations ruling, the Commission or Commission Chair, pursuant to the authority delegated to the Chair by the full Commission, shall issue a written decision within 21 days after the respondent's brief is due. A copy of the decision shall be simultaneously sent to the assigned interest arbitrator.

6. Any contract language or proposals that are determined in the expedited scope of negotiations ruling to be not mandatorily negotiable shall not be considered by the interest arbitrator. If time permits, and in accordance with N.J.A.C. 19:16-5.7, the interest arbitrator may allow the parties to amend their final offers to take into account the negotiability determination.

7. A decision by the Commission or Commission Chair pursuant to this expedited scope of negotiations process shall be a final agency decision. Any appeal must be made to the Superior Court, Appellate Division.

8. If the Commission Chair decides not to issue an expedited scope of negotiations ruling, then any negotiability issues pending in interest arbitration may be raised to the interest arbitrator and either party may seek a negotiability determination by the Commission as part of an appeal from an interest arbitration award. See N.J.A.C. 19:16-5.7(i).

(d) Where a dispute exists regarding the identification of an issue as economic or noneconomic, the party contesting the identification of the issue shall file with the Commission a petition for issue definition determination. This petition must be filed within five days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

#### **19:16-5.6 Appointment of an arbitrator; arbitrator training and discipline**

(a) The Commission shall maintain a special panel of interest arbitrators. Members of this panel shall be appointed for three-year terms following a screening process as set forth in N.J.S.A. 34:13A-16(e) and pursuant to the standards set forth in N.J.A.C. 19:16-5.15. Reappointments to the panel shall also be contingent upon a similar screening process. The arbitrators appointed pursuant to this subchapter shall be from this special panel. All arbitrators appointed by the

Commission shall be considered officers of the Commission while performing duties pursuant to this subchapter.

(b) In accordance with N.J.S.A. 34:13A-16e(4), members of the Commission's special panel of interest arbitrators shall be required to complete annual training offered by the State Ethics Commission.

(c) The Commission may suspend, remove, or otherwise discipline an arbitrator for violating the Police and Fire Public Interest Arbitration Reform Act or for good cause in accordance with the procedures set forth at N.J.A.C. 19:16-5.16. Any arbitrator who fails to attend the Commission's annual continuing education program may be removed from the special panel. Any arbitrator who fails to participate in the continuing education program for two consecutive years shall be removed.

(d) An arbitrator from the special panel of interest arbitrators shall be assigned to a petition through a computerized random selection process. On the first business day following receipt of an interest arbitration petition, the Commission, or its designee, independent of and without any participation by either of the parties, shall begin the computerized process of randomly selecting an arbitrator from its special panel of interest arbitrators. The selection shall be final and shall not be subject to review or appeal.

#### **19:16-5.7 Conduct of the arbitration proceeding**

(a) The conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator.

(b) The filing of an interest arbitration petition shall terminate formal mediation or fact-finding proceedings.

(c) The appointed arbitrator shall conduct an initial meeting as a mediation session to effect a voluntary resolution of the impasse. In addition, the appointed arbitrator, throughout formal arbitration proceedings, may mediate or assist the parties in reaching a mutually agreeable settlement.

(d) Information disclosed by a party to an arbitrator while functioning in a mediatory capacity shall not be divulged by the arbitrator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by an arbitrator while serving in a mediatory capacity shall be classified as confidential. The arbitrator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the arbitrator, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(e) The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas and shall entertain any motions to quash such subpoenas. Any

hearings conducted shall not be public unless all parties agree to have them public.

(f) The procedure to provide finality for the resolution of unsettled issues shall be conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria set forth in N.J.S.A. 34:13A-16.g.

(g) The arbitrator, after appointment, shall communicate with the parties to arrange for a date, time, and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time, and place for a hearing. The arbitrator shall submit a written notice containing arrangements for a hearing within a reasonable time period before hearing.

1. Such notice shall also set forth the dates, both of which shall precede the hearing, by which the public employer shall provide the arbitrator and the employee representative with the following information and the format in which it shall be provided and by which the employee representative shall respond to the information:

i. A list of all unit members during the final year of the expired agreement, their salary guide step(s) during the final year of the expired agreement, and their anniversary date of hire (that is, the date or dates on which unit members advance on the guide);

ii. Costs of increments and the specific date(s) on which they are paid;

iii. Costs of any other base salary items (for example, longevity) and the specific date(s) on which they are paid;

iv. The total cost of all base salary items for the 12 months immediately preceding the first year of the new agreement; and

v. A list of all unit members as of the last day of the year immediately preceding the new agreement, their step, and their rate of salary as of that same day.

2. At least 10 days before the hearing, the parties shall submit to the arbitrator and to each other their final offers on each economic and noneconomic issue in dispute. The parties must also submit written estimates of the financial impact of their respective last offers on the taxpayers as part of their final offer submissions. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.



(h) The arbitrator's authority shall be limited to those issues which are within the required scope of negotiations, unless the parties have mutually agreed to submit issues to the arbitrator which involve permissive subjects of negotiation.

(i) Unless the Commission Chair decides to issue an expedited scope of negotiations determination pursuant to N.J.A.C. 19:16-5.5(c), if a party objects to an issue as being outside the scope of mandatorily negotiable subjects, the parties may state their positions to the arbitrator on the record. The arbitrator shall be permitted to take evidence and render a preliminary decision on the issue for purposes of rendering the award. Any further negotiability argument may be made to the Commission post-award if the award is appealed.

(j) The arbitrator shall have the authority to grant adjournments.

(k) The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.

(l) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not stay the 90-day time period, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for issuing an award. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

(m) An arbitrator must issue an award within 90 days from appointment or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.

(n) All interest arbitration awards shall be implemented immediately.

#### **19:16-5.8 Stenographic record**

(a) A stenographic record shall not be a procedural requirement for the conduct of a hearing. However, any party shall have the right to a stenographic record taken of the arbitration proceeding.

(b) The arrangements for a stenographic record must be made by the requesting party after the appointment of the arbitrator. The cost of such record shall be paid by the party requesting it or divided equally between the parties if both make such a request. If a stenographic record is requested by either or both parties, the party or parties making the request shall provide at its/their cost a copy of a transcript to the arbitrator.

(c) The arbitrator shall have the authority to set a deadline for the submission of the stenographic record to the arbitrator.

(d) Any delay in receiving a stenographic record shall not extend:

1. The 90-day time period, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for rendering an award; or

2. The 14-day time limit, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for submitting an appeal to the Commission.

#### **19:16-5.9 Opinion and award**

(a) If the impasse is not otherwise resolved, the arbitrator shall decide the dispute and issue a written opinion and award within 90 days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., of the Director of Conciliation and Arbitration's assignment of that arbitrator. Any arbitrator who fails to issue an award within 90 days, or within such other period of time that may be prescribed by N.J.S.A. 34:13A-14 et seq., shall be fined \$ 1,000 per each day late.

(b) Each arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16.g.

(c) Where applicable, the arbitrator's economic award must comply with the two percent cap on average annual increases to base salary items pursuant to N.J.S.A. 34:13A-16.7, as amended by P.L. 2014, c. 11. In all awards, whether or not subject to the two percent cap, the arbitrator's decision shall set forth the costs of all "base salary" items for each year of the award, including the salary provided pursuant to a salary guide or table, any amount provided pursuant to a salary increment, any amount provided for longevity or length of service, and any other item agreed to by the parties or that was included as a base salary item in the prior award or as understood by the parties in the prior contract. These cost-out figures for the awarded base salary items are necessary in order for the arbitrator to determine, pursuant to N.J.S.A. 34:13A-16.d, whether the total net annual economic changes for each year of the award are reasonable under the statutory criteria.

(d) The arbitrator shall certify that the statutory limitations imposed by the local levy cap were taken into account in making the award.

(e) The arbitrator's opinion and award shall be signed and notarized. An original and four copies of the opinion and award shall be submitted directly to the Director of Conciliation and Arbitration who will then serve the parties simultaneously. The signed original must be filed with the Director of Conciliation and Arbitration. The copies may be transmitted electronically.

(f) Any arbitrator violating the provisions of this section may be subject to suspension, removal, or discipline under N.J.A.C. 19:16-5.6.

ruling, the party shall pay a \$ 75.00 fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

#### **19:16-5.10 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes**

Arbitrators serving on the Commission's special panel shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

#### **19:16-5.11 Cost of arbitration**

- (a) The costs of services performed by the arbitrator shall be borne equally by the parties. Each party shall pay its share of the arbitrator's fee within 60 days of receipt of the arbitrator's bill or invoice.
- (b) The fee for services provided by the arbitrator shall not exceed \$1,000 per day, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq. The total cost of services provided by an arbitrator shall not exceed \$10,000, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq.
- (c) An assessment of not more than \$500.00 may be imposed by the arbitrator if a proceeding is cancelled without good cause. If the parties jointly cancel the proceeding the fee will be shared. Otherwise the party causing the cancellation or adjournment shall be responsible for payment of the entire fee.

#### **19:16-5.12 Fees for filing and processing interest arbitration petitions**

- (a) At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a \$175.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a \$ 175.00 fee upon filing the petition and the non-petitioning party shall pay a \$175.00 fee upon filing its response to the petition pursuant to N.J.A.C. 19:16-5.5.
- (b) The petition shall not be processed until the petitioning party pays the filing fee of \$175.00.
- (c) Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

#### **19:16-5.13 Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders**

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a \$200.00 fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a \$200.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or

#### **19:16-5.14 Comparability guidelines**

- (a) N.J.S.A. 34:13A-16.g identifies the factors that an interest arbitrator must consider in reviewing the parties' proposals. In addition, in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in N.J.S.A. 34:13A-16.g(6): the financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to P.L. 2007, c. 62, section 10 (N.J.S.A. 40A:4-45.45), and taxpayers. The arbitrator must indicate which of the factors listed in N.J.S.A. 34:13A-16.g are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor. N.J.S.A. 34:13A-16.g(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions...." Subsection a of section 5 of P.L. 1995, c. 425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.
- (b) The guidelines set forth in (c) and (d) below are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. The guidelines are intended to be instructive but not exhaustive. The arbitrator shall consider any and all evidence submitted pursuant to the comparability guidelines and shall apply these guidelines in addressing the comparability criterion.

1. The Public Employment Relations Commission recognizes that the extent to which a party to an arbitration proceeding asserts that comparisons to public employment in the same or similar comparable jurisdictions are relevant to that proceeding is a matter to be determined by that party. The Commission also recognizes that it is the responsibility of each party to submit evidence and argument with respect to the weight to be accorded any such evidence.
2. The Commission further recognizes that it is the arbitrator's responsibility to consider all the evidence submitted and to determine the weight of any evidence submitted based upon the guidelines in (c) and (d) below and to determine the relevance or lack of relevance of comparability in relationship to all of the factors set forth in N.J.S.A. 34:13A-16.g. Promulgation of these guidelines is not intended to require that any party submit evidence on all or any of the elements set forth in (c) and (d) below or assert that the comparability factor should or should not be deemed relevant or accorded any particular weight in any arbitration proceeding. Nothing in this section shall preclude the arbitrator from supplementing the factual record by issuing subpoenas to require the attendance of witnesses and the production of documents. Nor does anything in this section prevent the arbitrator from requesting the parties to supplement their presentations in connection with this factor or any other factor set forth in the law.

(c) The following are comparability considerations within the same jurisdiction:

1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;
2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;
3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;
4. History of negotiations:
  - i. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and
  - ii. History of differentials between uniformed and non-uniformed employees;
5. Pattern of salary and benefit changes; and
6. Any other considerations deemed relevant by the arbitrator.

(d) The following are comparability considerations for similar comparable jurisdictions:

1. Geographic:
  - i. Neighboring or overlapping jurisdictions;
  - ii. Nearby jurisdictions;
  - iii. Size; and
  - iv. Nature of employing entity.
2. Socio-economic considerations:
  - i. Size, density, and characteristics of population;
  - ii. Per capita income;
  - iii. Average household income;
  - iv. Average property values;
  - v. Gain or loss of assessed value;
  - vi. Ratable increases/decreases from year to year;
  - vii. Tax increases/decreases over last few years;
  - viii. Cost-of-living (locally);
  - ix. Size and composition of police force or fire department;
  - x. Nature of services provided;
  - xi. Crime rate;
  - xii. Violent crime rate;
  - xiii. Fire incident rate; and
  - xiv. Fire crime rate.

3. Financial considerations:

i. Revenue:

- (1) Taxes:
    - (A) School;
    - (B) County;
    - (C) Municipal;
    - (D) Special district;
    - (E) State equalization valuation and ratio; and
    - (F) Other taxes;
  - (2) Tax base/ratables;
  - (3) Equalized tax rate;
  - (4) Tax collections;
  - (5) Payments in lieu of taxes;
  - (6) Delinquent tax and lien collections;
  - (7) State aid revenues;
  - (8) Federal aid revenues;
  - (9) Sale of acquired property;
  - (10) Budget surplus;
  - (11) Other miscellaneous revenues;
  - (12) Prior years surplus appropriated;
  - (13) Total revenues;
  - (14) Reserve for uncollected taxes;
  - (15) Taxes as percentage of total municipal revenues;
  - (16) All other municipal revenues;
  - (17) Any other sources of revenue;
  - (18) Total municipal revenues; and
  - (19) Budget cap considerations;
- ii. Expenditures:
- (1) Police protection;
  - (2) Fire protection;
  - (3) Total municipal functions;
  - (4) Police protection as percentage of total municipal functions;
  - (5) Fire protection as percentage of total municipal functions; and
  - (6) Percentage of net debt/bond rating;

- iii. Trends in revenues and expenditures;
- 4. Compensation and other conditions of employment:
  - i. Relative rank within jurisdictions asserted to be comparable;
  - ii. Wage and salary settlements of uniformed employees;
  - iii. Wage and salary settlements of non-uniformed employees in negotiations units;
  - iv. Wage and salary settlements of employees not in negotiations units;
  - v. Top step salaries;
  - vi. Overall compensation:
    - (1) Wage and salaries;
    - (2) Longevity;
    - (3) Holidays;
    - (4) Vacations;
    - (5) Uniform allowance;
    - (6) Medical and hospitalization benefits;
    - (7) Overtime;
    - (8) Leaves of absence;
    - (9) Pensions; and
    - (10) Other retiree benefits;
  - vii. Work schedules;
  - viii. Work hours;
  - ix. Workload:
    - (1) Number of calls or runs per officer; and
    - (2) Other relevant standards for measuring workload; and
  - x. Other conditions of employment; and
- 5. Any other comparability considerations deemed relevant by the arbitrator.

**19:16-5.15 Standards for appointment and reappointment to the special panel**

(a) Because any special panel member may be assigned to the most demanding and complex interest arbitration matter, appointments to the special panel will be limited to those labor relations neutrals who, in the Commission's expert judgment, have the demonstrated ability to mediate the most complex labor relations disputes and resolve the most demanding interest arbitration matters in the most professional, competent and neutral manner. No applicant shall have any right or expectation to be appointed or reappointed to the special panel.

(b) An applicant shall already be a member of the Commission's mediation, fact-finding and grievance arbitration panels, have an impeccable reputation in the labor-management community for professional competence, ethics and integrity, shall have complied with all applicable codes of conduct, and shall demonstrate:

1. Ability to write a well-reasoned decision consistent with applicable legal standards and within statutory deadlines;
2. Knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings;
3. Substantial experience both as a mediator and arbitrator; and
4. Competent performance on the Commission's mediation, fact-finding and grievance arbitration panels.

(c) An applicant's qualifications shall be determined by an overall assessment of the following considerations, with special emphasis to be given to considerations (c)1 through 3 below. An applicant shall, at a minimum, satisfy either considerations (c)1 and 2 below, or (c)2 and 3 below.

1. Demonstrated experience as an interest arbitrator and demonstrated ability to write well-reasoned interest arbitration decisions consistent with applicable legal standards and within statutory deadlines. Experience and writing ability shall be evaluated by a review of the cases where the applicant served as an interest arbitrator and a review of the quality of the arbitrator's work product.

i. To satisfy this consideration, an applicant shall have had at least 15 interest arbitration appointments in the last five years and shall have performed assignments in a superior manner. An applicant shall also submit at least five interest arbitration awards written by the applicant, which awards shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector appointments and awards.

2. Demonstrated experience and acceptability as a public or private sector mediator and/or fact-finder. An applicant shall exhibit the ability to serve in complex and difficult public sector negotiations disputes and shall be evaluated by a review of his or her cases as a mediator and/or fact-finder and the quality of the applicant's performance in those cases.

i. To satisfy this consideration, an applicant shall have the equivalent of three years of mediation and/or fact-finding experience and shall have performed assignments in a superior manner. Special emphasis will be given to New Jersey public sector assignments.

3. Demonstrated experience as a public or private sector grievance arbitrator involving the ability to decide complex and difficult labor relations issues in a fair and objective manner. Experience shall be evaluated by a review of the

cases where an applicant served as a grievance arbitrator and the quality of the applicant's work product in those cases.

i. To satisfy this consideration, an applicant shall have the equivalent of three years of grievance arbitration experience. An applicant shall submit at least 10 awards written by the applicant, which awards shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector awards.

4. Membership and offices in the National Academy of Arbitrators or other relevant professional organizations and panel memberships in any labor dispute settlement agency.

i. This consideration simply augments the considerations in (c)1 through 3 above.

5. Formal educational attainments, teaching positions, and professional publications demonstrating knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings.

i. This consideration simply augments the considerations in (c)1 through 3 above.

6. Other labor relations, arbitration, governmental or fiscal experience.

i. This consideration simply augments the considerations in (c)1 through 3 above.

(d) Every applicant shall complete an application form prepared by the Director of Conciliation and Arbitration. That form is designed to solicit information concerning the foregoing requirements and considerations. The form also allows an applicant the opportunity to submit any other information he or she deems relevant. The Director shall review all applications and make a recommendation to the Commission regarding each one within 60 days. The Commission shall notify an applicant in writing of any action taken upon an application.

(e) In addition to the requirements and considerations listed in (c) above, an applicant seeking reappointment shall have demonstrated successful service during the terms of his or her previous appointments to the special panel, as measured by:

1. The issuance of well-reasoned, legally sound, and timely awards;
2. Compliance with statutory standards and deadlines; case law requirements; agency regulations, rules, policies, administrative memoranda, and reporting procedures; and
3. Any other applicable requirements.

(f) An applicant for reappointment shall also have abided by the Code of Professional Responsibility for Interest Arbitrators adopted by the New Jersey Public Employment Relations Commission; the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes adopted by the National Academy of Arbitrators, American Arbitration

Association, and Federal Mediation and Conciliation Service; and the Code of Professional Conduct for Labor Mediators adopted by the Association of Labor Relations Agencies and the Federal Mediation and Conciliation Service. An applicant for reappointment shall also have attended the Commission's continuing education programs, as directed, per N.J.S.A. 34:13A-16.1.

(g) Satisfying one or more of the considerations listed in (c) above does not necessarily qualify an applicant for appointment or reappointment to the special panel. An appointment or reappointment depends upon the Commission's overall expert assessment of an applicant's ability to handle the most complex and demanding interest arbitration assignments.

(h) No applicant shall be appointed to the panel who, in the three years prior to the application date, has:

1. Served as an advocate for labor or management in the public or private sector;
2. Been elected or appointed to a political office or a governing body; or
3. Has served in a partisan political capacity.

#### **19:16-5.16 Suspension, removal or discipline of members of the special panel**

(a) Pursuant to N.J.S.A. 34:13A-16(e), this section provides a procedure to be followed by the Commission in deciding whether to suspend, remove, or otherwise discipline an arbitrator during his or her three-year term.

(b) If it appears that suspension, removal, or discipline may be warranted, the Director of Conciliation and Arbitration shall provide a written statement to the arbitrator specifying the reasons for the action being considered. The arbitrator shall have an opportunity to submit a prompt written response to the Director. The arbitrator shall also be given an opportunity to meet with the Director to discuss the matter.

(c) If a suspension or removal is being contemplated, if the arbitrator requests a hearing, and if it appears to the Director that substantial and material facts are in dispute, the Director may designate a hearing officer to conduct a hearing and make findings of fact.

(d) The Director may temporarily suspend an arbitrator from the panel pending any hearing.

(e) After receiving the arbitrator's response, meeting with the arbitrator, and considering the facts found at any hearing, the Director may decide to reprimand, suspend, or remove an arbitrator or may decide that no action is warranted. The Director shall send a written decision to the arbitrator.

(f) Within 14 days of receiving the Director's decision, an arbitrator may file a written appeal of that decision with the Commission. Such appeal shall specify the grounds for disagreeing with the Director's decision.

(g) A temporary suspension may be continued pending that appeal.

(h) The Commission or its designee may sustain, modify, or reverse the action taken by the Director and shall provide the arbitrator with a written statement explaining the basis for that decision.

#### **19:16-5.17 Interlocutory rulings; appeal on special permission**

(a) Interlocutory rulings or orders issued before the arbitrator's final written opinion and award under N.J.S.A. 34:13A-16f(5) and N.J.A.C. 19:16-5.9 shall not be appealed to the Commission except by special permission to appeal. All such rulings and orders shall become part of the record of the arbitration proceedings and shall be reviewed by the Commission in considering any appeal or cross-appeal from an arbitrator's final award, provided exception to the ruling or order is included in the appeal or cross-appeal filed with the Commission pursuant to N.J.A.C. 19:16-8.1 through 8.3.

(b) A request for special permission to appeal shall be filed in writing on the next business day following service of written rulings or statements of oral rulings, and shall briefly state the grounds for granting special permission to appeal and the grounds for reversing or modifying the ruling or order in question. An original and nine copies of the request shall be filed with the Chair, together with the \$75.00 fee required under N.J.A.C. 19:16-5.13 and proof of service of a copy of the request on all other parties and the arbitrator assigned to the case. A party opposing the request may file an original and nine copies of a statement in opposition within two business days of service on it of the request for special permission to appeal and shall briefly state the grounds for denying special permission to appeal and the grounds for affirming the ruling or order in question. An original and nine copies of the statement shall be filed with the Chair, together with proof of service of a copy on all other parties and the arbitrator assigned to the case.

(c) The Chair has the authority to grant or deny special permission to appeal. If the Chair grants special permission to appeal, the arbitration proceeding shall not be stayed unless otherwise ordered by the Chair. The Commission shall consider an appeal on the papers submitted to the Chair, or on such further submission as it may require.

### **SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION**

#### **19:16-6.1 Purpose of procedure**

The Commission has the statutory authority to resolve disputes as to whether an issue is an economic or a noneconomic issue as defined in N.J.S.A. 34:13A-16f(2). After the filing of a petition to initiate compulsory interest arbitration, the Commission will not exercise that authority until an award has been issued and will do so only if necessary to resolve an appeal of an interest arbitration award.

#### **19:16-6.2 (Reserved)**

### **SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT**

#### **19:16-7.1 Failure to submit a notice or other document**

The failure to submit any notification, petition, statement, or other document as set forth in this chapter shall not provide the basis for any delay in these proceedings, nor shall it otherwise prevent or preclude the resolution of a dispute through compulsory interest arbitration pursuant to this chapter, except as provided by N.J.A.C. 19:16-5.12.

### **SUBCHAPTER 8. APPEALS**

#### **19:16-8.1 Appeals and cross-appeals**

(a) Within 14 calendar days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., after receiving an award forwarded by the Director of Conciliation and Arbitration, an aggrieved party may file an original and nine copies of an appeal brief with the Commission, together with the \$200.00 fee required under N.J.A.C. 19:16-5.13. Any cross-appeal must also be filed within this same 14-day period and comply with the fee, briefing, and service requirements of this section.

1. The brief shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16.g and each alleged violation of the standards set forth in N.J.S.A. 2A:24-8 or 2A:24-9.

2. The appellant shall simultaneously file an original and nine copies of an appendix containing those parts of the record the appellant considers necessary to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.

3. If a stenographic record of the hearing was prepared, the appellant shall certify to its existence and provide a copy of the transcript to the Commission upon receipt.

4. Filings shall be accompanied by proof of service of a copy to the other party.

5. The appellant shall also file a copy of the brief on the arbitrator.

(b) Within 14 days after the service of a brief in support of an appeal or cross-appeal, the respective respondents shall file an original and nine copies of an answering brief limited to the issues raised in the appeal or cross-appeal. The respective respondents may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's or cross-appellant's appendix that the respondent considers necessary to the proper consideration of the issues. Filings shall be accompanied by proof of service of a copy on the other party.

(c) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on the other party.

(d) The Commission shall render a decision within 60 days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., from receipt of the appeal.

(e) The Commission decision shall be in writing and shall include an explanation as to how each statutory criterion was considered on appeal and that the statutory tax levy cap was considered.

### **19:16-8.2 Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and shall be filed simultaneously with the appeal or cross-appeal, together with proof of service of a copy on the other party. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

### **19:16-8.3 Action by the Commission**

The Commission may affirm, modify, correct, or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator selected at random by computer.

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<sup>1</sup>Title 19, Chapter 16 -- Chapter Notes

#### **CHAPTER AUTHORITY:**

N.J.S.A. 34:13A-6(b), 34:13A-5.4(e), 34:13A-11, and 34:13A-16.5.

#### **SOURCE AND EFFECTIVE DATE:**

R.2012 d.166, effective September 7, 2012.  
See: 44 N.J.R. 562(a), 44 N.J.R. 2304(a).

Amended, R.2018, d.087, effective March 5, 2018  
See 49 N.J.R. 2509(a), 50 N.J.R. 990 (a)

#### **EXPIRATION DATE:**

Chapter 16, Negotiations, Impasse Procedures, and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on September 7, 2019.

**CHAPTER 17**  
**PUBLIC EMPLOYMENT RELATIONS COMMISSION**  
**APPEAL BOARD<sup>i</sup>**

**N.J.A.C. 19:17 (2016)**

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION**

19:17-1.1 Description of the Appeal Board

19:17-1.2 Staff of the Appeal Board

19:17-1.3 Delegation of authority to staff of the Division of Public Employment Relations, officers of the Appeal Board

**SUBCHAPTER 2. PROCEDURES**

19:17-2.1 Rules to be read in conjunction with the rules of the Office of Administrative Law

**SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES**

19:17-3.1 Designation of fiscal year

19:17-3.2 Designation of dues year

19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer

19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment

**SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES**

19:17-4.1 Period for filing of requests for review

19:17-4.2 Fees of nonmembers filing requests for review; escrow of amounts reasonably in dispute

19:17-4.3 Time for completion of demand and return system

19:17-4.4 Results of demand and return system, payment of interest on amounts returned

19:17-4.5 Time for filing petitions with Appeal Board

**SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION**

**§ 19:17-1.1 Description of the Appeal Board**

The Public Employment Relations Commission Appeal Board (the "Appeal Board") is the board established by N.J.S.A. 34:13A-5.6 to consider petitions of appeal of public employees, who are not members of the employee organization which represents the employees' collective negotiations unit, concerning the amount of the representation fee in lieu of dues paid by the nonmember employees.

**CASE NOTES:**

Tender by union of disputed fees rendered moot teachers' challenge to fees. *Daly v. High Bridge Teachers' Ass'n*, 242 N.J.Super. 12, 575 A.2d 1373 (A.D.1990), certification denied 122 N.J. 356, 585 A.2d 366

**§ 19:17-1.2 Staff of the Appeal Board**

The staff of the Appeal Board shall consist of the personnel of the Division of Public Employment Relations (N.J.S.A. 34:13A-5.1), and the Appeal Board may utilize the services of the personnel of the Division of Public Employment Relations as well as the offices and equipment of the said Division, to process those matters which come before it and to otherwise perform its functions pursuant to N.J.S.A. 34:13A-5.6.

**§ 19:17-1.3 Delegation of authority to staff of the Division of Public Employment Relations, officers of the Appeal Board**

When the personnel of the Division of Public Employment Relations are carrying out functions on behalf of the Appeal Board, it shall be understood that such personnel are acting as officers of the Appeal Board and that the Appeal Board has delegated all the powers necessary to permit the discharge of the duty or duties delegated.

**SUBCHAPTER 2. PROCEDURES**

**§ 19:17-2.1 Rules to be read in conjunction with the rules of the Office of Administrative Law**

These rules are to be read in conjunction with the Uniform Administrative Procedure Rules of Practice (UAPRP), N.J.A.C. 1:1-1, and the rules of special applicability for hearings initiated in contested cases before the Public Employment Relations Commission Appeal Board, N.J.A.C. 1:20.

**SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES**

**§ 19:17-3.1 Designation of fiscal year**

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a fiscal year system of accounting for the expenditures of such organization.

(b) The fiscal year may be the calendar year or any other 12 month period.

**§ 19:17-3.2 Designation of dues year**

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a dues year.

(b) The dues year may be the calendar year or any other 12 month period, except that the dues year may not commence prior to the start of the fiscal year.



§ 19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer

(a) Prior to the commencement of payroll deductions of the representation fee in lieu of dues for any dues year, the majority representative shall provide all persons subject to the fee with a notice adequately explaining the basis of the fee, which shall include:

1. A statement, verified by an independent auditor or by some other suitable method, of the expenditures of the majority representative for its fiscal year ending within 12 months prior to the date the notice required by this section is served on all persons subject to the fee. The statement shall set forth the major categories of expenditures and shall also identify expenditures of the majority representative and its affiliates which are in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of benefits only available to members of the majority representative.

2. A copy of the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6, including instructions to persons paying the representation fee in lieu of dues as to how to request review of the amount assessed as a representation fee in lieu of dues.

3. The name and address of the financial institution where the majority representative maintains an account in which to escrow portions of representation fees in lieu of dues which are reasonably in dispute. The interest rate of the account in effect on the date the notice required by (a) above is issued shall also be disclosed.

4. The amount of the annual representation fee in lieu of dues, or an explanation of the formula by which the representation fee is set, and the schedule by which the fee will be deducted from pay.

(b) The majority representative shall provide a copy of the demand and return system referred to in (a)2 above to the public employer.

§ 19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment

(a) The maximum representation fee in lieu of dues assessed nonmembers in any dues year shall be the lower of:

1. Eighty-five percent of the regular membership dues, fees and assessments charged by the majority representative to its own members.

2. Regular membership dues, fees and assessments, charged by the majority representative to its own members, reduced by the percentage amount spent during the most recently completed fiscal year by the majority representative and any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative on benefits available to or benefitting only its members and in aid of activities or

causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment. The amount shall be based upon the figures contained in the statement provided nonmembers prior to the start of the dues year in accordance with N.J.A.C. 19:17-3.3(a)1.

(b) Every majority representative shall annually recalculate its representation fee in lieu of dues in accordance with (a) above.

#### LAW REVIEW AND JOURNAL COMMENTARIES:

Public Employment--Representation Fees, P.R. Chenoweth, 134 N.J.L.J. No. 16, 61 (1993).

#### CASE NOTES:

Regulation requiring representative body to deduct political-activity portion of fee as to all nonmembers. New Jersey Educ. Ass'n v. New Jersey Public Employment Relations Com'n, 266 N.J.Super. 66, 628 A.2d 789 (A.D.1993), certification denied 134 N.J. 569, 636 A.2d 526.

### SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES

#### § 19:17-4.1 Period for filing of requests for review

(a) Each nonmember shall be afforded a period of at least 30 days after the majority representative has provided the information described in N.J.A.C. 19:17-3.3(a) within which to file a request for review of the amounts assessed by the majority representative as the nonmember's representation fee in lieu of dues.

(b) Any request for review of a representation fee in lieu of dues, filed within the time period set by the majority representative in accordance with (a) above, will be deemed effective to entitle the employee to a return of any portion of the employee's representation fee in lieu of dues which is determined to be non-chargeable to the employee.

#### § 19:17-4.2 Fees of nonmembers filing requests for review; escrow of amounts reasonably in dispute

(a) Prior to receiving representation fees in lieu of dues in any dues year, the majority representative shall open an interest-bearing escrow account in any financial institution in which to place all or part of representation fees in lieu of dues to be collected from nonmembers who have filed timely requests for review pursuant to N.J.A.C. 19:17-4.1.

(b) The majority representative shall place in escrow any amount which is reasonably in dispute.

#### LAW REVIEW AND JOURNAL COMMENTARIES:

Public Employment--Representation Fees. P.R. Chenoweth, 134 N.J.L.J. No. 16, 61 (1993).

**§ 19:17-4.3 Time for completion of demand and return system**

(a) Proceedings in the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6 shall be completed within 60 days after the commencement of payroll deductions of representation fees in lieu of dues for the current dues year.

(b) After 60 days from the commencement of payroll deductions of representation fees in lieu of dues for the current dues year, or the completion of demand and return system proceedings, whichever date is earlier, any nonmember who has a pending request for review shall be deemed to have exhausted demand and return system proceedings pursuant to N.J.A.C. 1:20-4.1 and N.J.A.C. 19:17-4.5 and may file a petition of appeal with the Appeal Board in accordance with N.J.A.C. 1:20-6.1.

(c) Any majority representative which has commenced, but has not completed, demand and return system proceedings within the time set forth in (a) above shall continue such proceedings to completion, notwithstanding the filing of petitions with the Appeal Board by nonmembers who have requests for review pending with the majority representative, unless all pending requests have been withdrawn or presented to the Appeal Board.

(d) This section shall also apply to demand and return system proceedings conducted by any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative.

**§ 19:17-4.4 Results of demand and return system, payment of interest on amounts returned**

(a) On completion of demand and return system proceedings, a written decision shall be served on each nonmember whose request for review of the fee is involved in such proceeding.

(b) If the demand and return system proceedings results in a determination that the amount charged to the nonmember was in excess of the amount allowed by statute, such excess amount shall accompany the written decision.

(c) If the amount returned is equal to or less than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the actual interest earned on the amount returned shall be paid to the nonmember.

(d) If the amount returned is greater than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the nonmember will receive interest payable at the judgment rate for the entire amount of the rebate. (See N.J. Court Rules, R. 4:42-11.)

**§ 19:17-4.5 Time for filing petitions with Appeal Board**

A petition of appeal seeking review by the Appeal Board of a representation fee in lieu of dues charged by a majority representative pursuant to N.J.S.A. 34:13A-5.5 shall be filed within six months after payroll deductions to collect the petitioner's fee have commenced.

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<sup>1</sup> Title 19, Chapter 17 -- Chapter Notes

**CHAPTER AUTHORITY:**

N.J.S.A. 34:13A-5.9.

**SOURCE AND EFFECTIVE DATE:**

Effective: May 26, 2015.

See: 47 N.J.R. 1651(b).

**EXPIRATION DATE:**

Chapter 17, Public Employment Relations Commission Appeal Board, expires on May 26, 2022.

## CHAPTER 18

### CONTESTED TRANSFER DETERMINATIONS<sup>i</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:18-1.1 Nature of proceedings

##### SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:18-2.1 Who may file

19:18-2.2 Contents of petition for contested transfer determination

19:18-2.3 Timeliness of petitions

##### SUBCHAPTER 3. PROCEDURE

§ 19:18-3.1 Intervention

19:18-3.2 Informal conference

19:18-3.3 Amendment; withdrawal; dismissal; consolidation

19:18-3.4 Answer

19:18-3.5 Where to file; number of copies; service

19:18-3.6 Amendment

19:18-3.7 Reply

19:18-3.8 Request for evidentiary hearing

19:18-3.9 Briefs

19:18-3.10 Evidentiary hearings; motions

19:18-3.11 Record before the Commission; exceptions; cross-exceptions

19:18-3.12 Oral argument

19:18-3.13 Final determination; decisions in the absence of exceptions

19:18-3.14 Motion for reconsideration

19:18-3.15 Interim relief

##### SUBCHAPTER 1. NATURE OF PROCEEDINGS

###### 19:18-1.1 Nature of proceedings

N.J.S.A. 34:13A-22 et seq. (P.L. 1989, c.269, effective January 4, 1990) provides that no employer, as defined in N.J.S.A. 34:13A-22, shall transfer an employee between worksites for disciplinary reasons. It further provides that the Commission shall determine whether the basis for a transfer between worksites is predominately disciplinary. The procedures in this chapter are intended to avoid protracted administrative litigation. Contested transfer proceedings will normally lend themselves to expeditious disposition on the

basis of the parties' submissions, which these procedures are intended to accommodate.

##### SUBCHAPTER 2. INITIATION OF PROCEEDINGS

###### 19:18-2.1 Who may file

Any employee, as defined in N.J.S.A. 34:13A-22, or the employee's majority representative may initiate a contested transfer proceeding by filing with the Commission, an original and nine copies of a petition for contested transfer determination together with proof of service of a copy of the petition on the employer. A copy of each petition filed shall be retained in a public docket until the case is closed.

###### 19:18-2.2 Contents of petition for contested transfer determination

(a) A petition n1 shall be in writing and the party or representative filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

n1 Petition forms will be supplied upon request. Address such requests to: Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from the Commission's website: [www.state.nj.us/perc](http://www.state.nj.us/perc).

(b) Such petition shall contain the following:

1. The full name, address and telephone number of the petitioner;

2. The full name, address and telephone number of the affected employee if the petitioner is an employee organization;

3. The full name, address and telephone number of the employer who has notified the employee of a transfer;

4. The date the employee was notified of the transfer;

5. The name and address of:

i. The employee's work site before the transfer; and

ii. The employee's work site after the transfer.

6. A statement of the specific factual allegations supporting the contention that the basis for the transfer between worksites is predominately disciplinary;

7. All documents and affidavits supporting the petition's factual allegations; and

8. A list of any other actions before the Commission or any other administrative agency, arbitrator or court, which the

petitioner knows about and which involve the same or similar issues.

### **19:18-2.3 Timeliness of petitions**

The petitioner shall file a petition no later than the 90th day from the date of receipt of a notice of transfer.

## **SUBCHAPTER 3. PROCEDURE**

### **19:18-3.1 Intervention**

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the Commission, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The Chairman or such other Commission designee, in his or her discretion, may permit intervention to such extent and upon such terms as may be deemed just.

### **19:18-3.2 Informal conference**

A Commission staff agent may hold a conference to clarify the issues in dispute, explore the possibility of settlement, or take stipulations of fact.

### **19:18-3.3 Amendment; withdrawal; dismissal; consolidation**

(a) The Chairman or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the provisions of these rules relating to the original petition for contested transfer determination.

(b) A petition for contested transfer determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal at any time before service of the respondent's answer. After service of the answer, a petition may be withdrawn only with the consent of the Chairman or such other Commission designee. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) The Chairman or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of lack of jurisdiction, insufficient cause for determination, failure to prosecute or other good reason.

(d) The Chairman or such other Commission designee, in his or her discretion, may consolidate any separate proceedings, or sever any consolidated proceedings whenever necessary to avoid unnecessary costs or delay or to effectuate the purposes of the Act.

### **19:18-3.4 Answer**

(a) Within 20 days from the service of the petition, the respondent shall file an answer.

(b) The answer shall specifically admit, deny or explain each of the allegations set forth in the petition, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

(c) All allegations in the petition, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(d) The answer shall include a specific factual rebuttal to the petition, accompanied by all supporting documents and affidavits.

(e) The answer shall also include a statement of facts constituting any affirmative defense.

(f) The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: "I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief."

### **19:18-3.5 Where to file; number of copies; service**

An original and nine copies of the answer shall be filed with the Commission together with proof of service of a copy of the answer on the petitioner and any intervenor.

### **19:18-3.6 Amendment**

The Chairman of the Commission or such other Commission designee may permit the respondent to amend its answer at any time upon such terms as may be deemed just.

### **19:18-3.7 Reply**

Within five days of receipt of the answer, the petitioner may file an original and nine copies of a reply and any supporting documents and affidavits together with proof of service of a copy of the reply on the respondent and any intervenor. No further replies shall be permitted without permission of the Chairman or such other Commission designee.

### **19:18-3.8 Request for evidentiary hearing**

(a) Any party desiring an evidentiary hearing shall file with the Commission an original and nine copies of a request therefor, together with proof of service of a copy of the request on the other party. The petitioner shall file such a request no later than five days from receipt of the respondent's answer. The respondent shall file such a request no later than five days from the date a reply is due. Failure to file a timely request for an evidentiary hearing shall constitute a waiver of any claim to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends necessitate an evidentiary hearing and shall explain why these issues are substantial and material. Factual allegations not raised shall be deemed to be undisputed for purposes of determining whether there shall be an evidentiary hearing.

(b) Within five days of receipt of a request for a hearing, the other party shall file with the Commission an original and nine copies of a written response, together with proof of service of a copy of the response on the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed to be undisputed for purposes of determining whether there shall be an evidentiary hearing.

(c) The request for an evidentiary hearing and the response, together with the petition, the answer and any reply, shall constitute the pleadings for the evidentiary hearing.

### **19:18-3.9 Briefs**

(a) In the absence of a hearing, the Chairman or such other Commission designee shall notify each party that it has 14 days from the date of notification to file an original and nine copies of a supporting brief, with proof of service of a copy of such brief on the other party.

(b) Within seven days after receipt of the initial brief, each party may file with the Commission an original and nine copies of a reply brief, together with proof of service of a copy of such brief on the other party. No other briefs shall be served or filed without leave of the Chairman or such other Commission designee.

(c) The Chairman or such other Commission designee, in his or her discretion, may grant written requests for extensions of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

### **19:18-3.10 Evidentiary hearings; motions**

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to N.J.A.C. 19:18-3.8, or after determination without a request, it appears to the Chairman or such other Commission designee that there are substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. The Chairman or such other Commission designee shall appoint a hearing examiner to conduct such hearing.

(b) Any motions filed pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-4.1 through 19:14-4.8 on unfair practice proceedings, insofar as applicable.

(c) Any evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-6.1 through 19:14-6.13 on unfair practice proceedings, insofar as applicable.

(d) After the evidentiary hearing, or upon the parties' consent before the conclusion of the evidentiary hearing, the hearing examiner shall prepare a report and recommended decision

which shall contain findings of fact, conclusions of law, and recommendations as to the disposition of the case. The hearing examiner shall file the original with the Commission, and shall serve a copy on the parties. Upon service on the parties, which shall be complete upon mailing, the case shall be deemed transferred to the Commission.

### **19:18-3.11 Record before the Commission; exceptions; cross-exceptions**

The record before the Commission after a hearing shall consist of the petition for contested transfer determination, the answer and any replies, the request for evidentiary hearing and any replies, the notice of hearing, any official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's report and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

### **19:18-3.12 Oral argument**

Proceedings under this chapter shall be submitted for the Commission's consideration without argument unless ordered by the Chairman or such other Commission designee. Requests for oral argument shall be filed by any party along with its initial brief, or where a hearing has been conducted, along with its exceptions or cross-exceptions. Such request shall be made by a separate paper, an original and two copies of which shall be filed with the Commission, together with proof of service of a copy of such request on the other party. The Chairman or such other Commission designee shall notify the parties of the assigned argument date, if permission to argue orally is granted. The Commission may terminate any argument permitted at any time it deems the issues adequately argued.

### **19:18-3.13 Final determination; decisions in the absence of exceptions**

Based on the parties' submissions and any oral argument, or where an evidentiary hearing has been conducted, based on the record in the case as set forth in N.J.A.C. 19:18-3.11 and any oral argument, the Commission or its designee shall issue and serve on the parties its findings of fact and conclusions of law, including its determination as to whether the basis of the disputed transfer was predominantly disciplinary, and may take reasonable action to effectuate the purposes of the Act. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

### **19:18-3.14 Motion for reconsideration**

After the decision of the Commission or its designee, a motion

for reconsideration may be filed in accordance with the provisions of N.J.A.C. 19:14-8.4 (Motion for reconsideration).

**19:18-3.15 Interim relief**

Upon the filing of a petition, the petitioner may apply to the

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<sup>1</sup> Title 19, Chapter 18 -- Chapter Notes

**CHAPTER AUTHORITY:**

N.J.S.A. 34:13A-11 and 34:13A-27.

**SOURCE AND EFFECTIVE DATE:**

R.2010 d.237, effective September 23, 2010.

See: 42 N.J.R. 1347(a), 42 N.J.R. 2435(a).

**EXPIRATION DATE:**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 18, Contested Transfer Determinations, expires on September 23, 2017. See: 43 N.J.R. 1203(a).

Commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the proceeding. Such a request shall be governed by the provisions of N.J.A.C. 19:14-9.1 through 9.5 on unfair practice proceedings, insofar as applicable.

## CHAPTER 20

### HEARINGS BEFORE THE PUBLIC EMPLOYMENT RELATIONS APPEAL BOARD<sup>1</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. APPLICABILITY

1:20-1.1 Applicability

##### SUBCHAPTER 2. DEFINITIONS

1:20-2.1 Definitions

##### SUBCHAPTER 3. COMMENCEMENT OF PROCEEDING

1:20-3.1 Commencement of proceeding before the Appeal Board

1:20-3.2 Who may commence a proceeding before the Appeal Board

##### SUBCHAPTERS 4 THROUGH 5. (RESERVED)

Title 1, Chapter 20, Subchapters 4 through 5. (RESERVED)

##### SUBCHAPTER 6. PLEADINGS

1:20-6.1 Time for filing of petition; exhaustion of demand and return system

1:20-6.2 Time for filing answer

1:20-6.3 Contents of petition

1:20-6.4 Contents of answer

##### SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION

1:20-7.1 Filing of petition and copies

1:20-7.2 Service of petition upon majority representative

1:20-7.3 Petition to public employer

1:20-7.4 Filing of answer and copies

1:20-7.5 Service of answer upon petition

##### SUBCHAPTER 8. TRANSMISSION OF CASES

1:20-8.1 Transmission of cases to the Office of Administrative Law

##### SUBCHAPTER 9. NOTICES

1:20-9.1 Notice of filing; employer posting

##### SUBCHAPTERS 10 THROUGH 13. (RESERVED)

Title 1, Chapter 20, Subchapters 10 through 13. (RESERVED)

##### SUBCHAPTER 14. CONDUCT OF CASES

1:20-14.1 Nature of hearing

1:20-14.2 Burden of proof

##### SUBCHAPTER 15. EVIDENCE

1:20-15.1 Evidence of demand and return proceedings

##### SUBCHAPTERS 16 THROUGH 17. (RESERVED)

Title 1, Chapter 20, Subchapters 16 through 17. (RESERVED)

##### SUBCHAPTER 18. CONCLUSION OF HEARING

1:20-18.1 Oral argument on exceptions

1:20-18.2 Motion to reopen

##### SUBCHAPTERS 19 THROUGH 21. (RESERVED)

Title 1, Chapter 20, Subchapters 19 through 21. (RESERVED)

#### SUBCHAPTER 1. APPLICABILITY

##### § 1:20-1.1 Applicability

The rules in this chapter shall apply to any hearing initiated before the Public Employment Relations Commission Appeal Board pursuant to P.L. 1979, c.477 (N.J.S.A. 34:13A-5.5 et seq.). Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

#### SUBCHAPTER 2. DEFINITIONS

##### § 1:20-2.1 Definitions

(a) "Appeal Board" means the Public Employment Relations Commission Appeal Board established by N.J.S.A. 34:13A-5.6 to consider complaints concerning the amount of fees paid by nonmembers who pay a representation fee in lieu of dues.

(b) "Demand and return system" means the procedure established and maintained pursuant to N.J.S.A. 34:13A-5.6 by a majority representative to provide a public employee who pays a representation fee in lieu of dues the right to demand and receive from the majority representative that portion of the fee returnable under the circumstances as described by N.J.S.A. 34:13A-5.5(c).

(c) "Employer" means, for purposes of these rules only, the public employer which is signatory to the agreement requiring payment by the petitioner nonmember of representation fee in lieu of dues.

(d) "Nonmember" means a public employee who is not a member of the majority representative which represents the employee's collective negotiations unit but who pays a representation fee in lieu of dues to the majority representative.

(e) "Petition" means the document described in N.J.A.C. 1:20-6 and which initiates a complaint before the Appeal Board about the amount of representation fee in lieu of dues.

(f) "Petitioner" means the nonmember who is filing a petition.

(g) "Representation fee" means the fee in lieu of dues defined in N.J.S.A. 34:13A-5.5, deducted from a nonmember's wages or salary and paid to the majority representative of the nonmember's unit.

(h) "Respondent" means the majority representative which represents the petitioner's collective negotiations unit and which receives petitioner's representation fee.

### **SUBCHAPTER 3. COMMENCEMENT OF PROCEEDING**

#### **§ 1:20-3.1 Commencement of proceeding before the Appeal Board**

A nonmember may initiate a proceeding before the Appeal Board to review the amount of a representation fee in lieu of dues by filing a petition with the Appeal Board pursuant to this chapter.

#### **§ 1:20-3.2 Who may commence a proceeding before the Appeal Board**

A petition may be filed by any nonmember public employee who pays a representation fee in lieu of dues to a majority representative. Neither a public employer nor a majority representative may file a petition.

### **SUBCHAPTERS 4 THROUGH 5. (RESERVED)**

#### **Title 1, Chapter 20, Subchapters 4 through 5. (RESERVED)**

### **SUBCHAPTER 6. PLEADINGS**

#### **§ 1:20-6.1 Time for filing of petition; exhaustion of demand and return system**

(a) At any time after the nonmember has exhausted, or has made a good faith attempt to exhaust, the demand and return system required to be maintained by the majority representative, the nonmember may file a petition with the Appeal Board.

(b) If during the administrative processing of the petition of appeal, it is determined that the majority representative's demand and return system has either not been utilized to resolve the dispute or that the demand and return proceeding has not been completed, the Appeal Board may take whatever

action it deems appropriate, including but not limited to dismissing the petition of appeal, staying the proceedings before the Board pending the completion of the majority representative's demand and return system, or continue to process the petition.

(c) A nonmember of a majority representative who has a claim pending in the majority representative's demand and return system may intervene in a proceeding before the Appeal Board involving the same majority representative, collective negotiations agreement, public employer and the same period of time, notwithstanding that the nonmember has not yet exhausted the majority representative's demand and return system.

#### **§ 1:20-6.2 Time for filing answer**

No later than 20 days from the date of service of the petition upon the respondent by the petitioner, the respondent shall file with the Appeal Board and serve upon the petitioner an answer to the petition. For good cause, the Appeal Board may extend the time for answer. Failure to file and serve an answer on time may result in a default judgment against the respondent.

#### **§ 1:20-6.3 Contents of petition**

(a) A petition shall be in writing and signed by the nonmember(s) making the complaint. More than one nonmember in the same negotiations unit may sign a petition.

(b) A blank form for filing such a petition will be supplied upon request. Requests shall be addressed to: Public Employment Relations Commission Appeal Board, 429 East State Street, Trenton, NJ 08608.

(c) The petition shall contain the following:

1. The full name, address and telephone number of the nonmember filing the petition and, where applicable, the name, address and telephone number of any authorized representative;
2. The full name and address of the majority representative of the nonmember's collective negotiations unit;
3. The full name and address of the public employer of the nonmember filing the petition;
4. The amount of the representation fee in lieu of dues and, where known, the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members;
5. A statement of the grounds for the nonmember's belief that the representation fee in lieu of dues is excessive or improper, including a brief recitation of the facts, if any, which give rise to the belief that the fee is excessive. It shall be sufficient for the petitioner to state opposition either to all expenditures of a



political or ideological nature only incidentally related to the terms and conditions of employment, or to expenditures applied toward the costs of any benefits available only to members of the majority representative, or to both; and

6. A statement as to whether the nonmember filing the petition has exhausted the majority representative's demand and return system and the result of that proceeding. If the result of that proceeding was in written form, a copy of the writing should be appended to the petition.

#### **§ 1:20-6.4 Contents of answer**

(a) An answer shall be in writing and signed by a representative of the respondent.

(b) An answer shall contain the following:

1. A statement of the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members in the petitioner's collective negotiations unit;

2. A statement of the representation fee in lieu of dues charged the petitioner;

3. A description of the disposition of the petitioner's demand and return system proceeding. A copy of any written decision or result of that proceeding shall be appended as an exhibit to the answer, unless it has been appended to the petition;

4. A clear and concise statement which specifically admits, denies or explains any factual allegations contained in the petition; and

5. Any affirmative defenses to the legal and factual allegations of the petition.

(c) Attached to the answer shall be:

1. A copy of the collective negotiations agreement or other written agreement with the public employer of the petitioner which provides for the payment of the representation fee in lieu of dues; and

2. A copy of the demand and return procedures established by the majority representative.

### **SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION**

#### **§ 1:20-7.1 Filing of petition and copies**

A petitioner shall file an original and four copies of the petition with the Appeal Board.

#### **§ 1:20-7.2 Service of petition upon majority representative**

Upon filing of a petition, the petitioner shall serve a copy of the petition and any attached documents upon the respondent named in the petition. The petitioner shall file a proof of service with the Appeal Board.

#### **§ 1:20-7.3 Petition to public employer**

Upon receipt of a petition, the Appeal Board shall forthwith provide a copy of the petition to the public employer.

#### **§ 1:20-7.4 Filing of answer and copies**

(a) The respondent shall file an original and four copies of the answer with the Appeal Board.

(b) The respondent shall file two copies of the documents required by N.J.A.C. 1:20-6.4(c).

#### **§ 1:20-7.5 Service of answer upon petition**

Upon filing the answer, the respondent shall serve a copy of the answer and of the documents required by N.J.A.C. 1:20-6.4(c) upon the petitioner. The respondent shall file proof of service with the Appeal Board.

### **SUBCHAPTER 8. TRANSMISSION OF CASES**

#### **§ 1:20-8.1 Transmission of cases to the Office of Administrative Law**

In addition to the completed transmittal form, two copies of the petition and answer and other appropriate papers, the Appeal Board shall transmit to the Office of Administrative Law copies of the parties' proof of service of the petition and answer.

### **SUBCHAPTER 9. NOTICES**

#### **§ 1:20-9.1 Notice of filing; employer posting**

(a) In addition to the requirements of N.J.A.C. 1:1-9.4(a), a copy of the notice of filing shall be sent by the Office of Administrative Law to the public employer of the petitioner.

(b) The public employer shall post such notice at locations where notices to employees in the petitioner's collective negotiations unit are normally posted. The notice shall remain posted for a period of 30 days.

### **SUBCHAPTERS 10 THROUGH 13. (RESERVED)**

### **Title 1, Chapter 20, Subchapters 10 through 13. (RESERVED)**

## **SUBCHAPTER 14. CONDUCT OF CASES**

### **§ 1:20-14.1 Nature of hearing**

The hearing shall be a plenary de novo proceeding.

### **§ 1:20-14.2 Burden of proof**

Pursuant to N.J.S.A. 34:13A-5.6, the burden of proof shall be on the majority representative.

## **SUBCHAPTER 15. EVIDENCE**

### **§ 1:20-15.1 Evidence of demand and return proceedings**

The record, or any portion of it, developed at the demand and return system proceeding may be introduced as evidence by either party, subject to the general rules of evidence contained in N.J.A.C. 1:1-15.

## **SUBCHAPTERS 16 THROUGH 17. (RESERVED)**

### **Title 1, Chapter 20, Subchapters 16 through 17. (RESERVED)**

## **SUBCHAPTER 18. CONCLUSION OF HEARING**

### **§ 1:20-18.1 Oral argument on exceptions**

(a) As part of any written exceptions to an initial decision, a

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<sup>1</sup> For Title 1 Chapter 20

#### **CHAPTER AUTHORITY:**

N.J.S.A. 52:14F-5(e), (f), and (g).

#### **SOURCE AND EFFECTIVE DATE:**

Effective: October 16, 2014.

See: 46 N.J.R. 2277(a).

#### **EXPIRATION DATE:**

Chapter 20, Hearings Before the Public Employment Relations Appeal Board, expires on October 16, 2021.

party may file a written request for oral argument on the exceptions before the Appeal Board. The written request shall be served, along with the exceptions, upon the other parties to the hearing.

(b) If the Appeal Board grants the request for oral argument, the Appeal Board shall give each party at least five days notice of the date of the argument.

(c) Only issues and evidence of record at the hearing may be considered at the oral argument. No new issues or evidence may be presented.

### **§ 1:20-18.2 Motion to reopen**

A party to a proceeding before the Appeal Board may, because of extraordinary circumstances, move to reopen the matter after the Appeal Board decision has been rendered. The movant shall state with particularity the grounds claimed and, where applicable, shall specify the portion of the record relied upon. Any motion pursuant to this section shall be filed within 15 days after service of the Appeal Board decision. Copies shall be served on the parties of record, and a statement of service shall be filed with the motion papers. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Appeal Board decision unless otherwise ordered by the Appeal Board. A motion to reopen need not be filed to exhaust administrative remedies.

## **SUBCHAPTERS 19 THROUGH 21. (RESERVED)**

### **Title 1, Chapter 20, Subchapters 19 through 21. (RESERVED)**

## CHAPTER 19

### PAYROLL DEDUCTION DETERMINATIONS-- REPRESENTATION FEES<sup>i</sup>

#### CHAPTER TABLE OF CONTENTS

##### SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:19-1.1 Nature of proceedings

##### SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:19-2.1 Who may file

19:19-2.2 Contents of petition for payroll deduction determination

##### SUBCHAPTER 3. PROCEDURE

19:19-3.1 Amendment; withdrawal; dismissal; consolidation

19:19-3.2 Response

19:19-3.3 Where to file; number of copies; service

19:19-3.4 Amendment to response

19:19-3.5 Reply

19:19-3.6 Investigation; disposition

##### SUBCHAPTER 4. REQUEST FOR COMMISSION REVIEW

19:19-4.1 Request for Commission review

19:19-4.2 Grounds for granting a request for review

19:19-4.3 Contents of request for review; timely presentment of facts

19:19-4.4 Statement in opposition to a request for review

19:19-4.5 Waiver of right to request review

19:19-4.6 Stay of decision; record before the Commission; withdrawal; oral argument; Commission decision

19:19-4.7 Oral argument

19:19-4.8 Decision by the Commission

##### SUBCHAPTER 5. TRANSFER TO THE COMMISSION; RECONSIDERATION

19:19-5.1 Transfer to the Commission on its own motion

19:19-5.2 Motion for Commission reconsideration

##### SUBCHAPTER 1. NATURE OF PROCEEDINGS

###### 19:19-1.1 Nature of proceedings

(a) N.J.S.A. 34:13A-5.5 requires negotiations over the subject of requiring employees in a negotiations unit who are not members of their majority representative to pay a representation fee in lieu of dues to their majority

representative. As amended by P.L. 2002, c.46, effective August 1, 2002, that section permits the majority representative to petition the Commission to conduct an investigation if no agreement for representation fees in lieu of dues by payroll deduction is reached during negotiations. If the Commission determines that a majority of the negotiations unit employees are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6, the Commission shall order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the majority representative.

(b) These procedures are intended to avoid protracted administrative litigation. Proceedings seeking payroll deductions of representation fees will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which these procedures are intended to accommodate.

##### SUBCHAPTER 2. INITIATION OF PROCEEDINGS

###### 19:19-2.1 Who may file

Only the majority representative may petition for a payroll deduction determination. The majority representative must file an original and four copies of a petition for payroll deduction determination, together with a proof of service of a copy of the petition on the employer. A copy of each petition shall be retained in a public docket until the case is closed.

###### 19:19-2.2 Contents of petition for payroll deduction determination

(a) A petition for payroll deduction determination shall:

1. Specify the full name, address, and telephone number of the petitioning majority representative;
2. Specify the full name, address and telephone number of the employer;
3. Specify that the petitioner and the employer have negotiated concerning the subject of representation fees in lieu of dues and that no agreement requiring such payments has been reached;
4. Specify the collective negotiations unit description and the number of employees in the unit represented by the petitioner, and attach any pertinent certification of majority representative issued by the Commission or recognition agreement executed by the employer or recognition clause contained in the parties' current or most recent collective negotiations agreement;
5. List the employees in the negotiations unit who are voluntary dues paying members of the majority representative

as of the time of the filing of the petition, and attach any documents pertinent to verifying that list; and

6. Provide a written copy of the demand and return system, as required by N.J.A.C. 19:17-3.3(a), to be used by the majority representative if payroll deductions are ordered.

(b) A petition shall be in writing and the representative of the party filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

### **SUBCHAPTER 3. PROCEDURE**

#### **19:19-3.1 Amendment; withdrawal; dismissal; consolidation**

(a) The Commission Chair or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the provisions of these rules relating to the original petition for payroll deduction determination.

(b) A petition for payroll deduction determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) The Commission Chair or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of insufficient cause for determination, failure to prosecute, or other good reason.

#### **19:19-3.2 Response**

(a) Within 10 days from receiving service of the petition, the respondent employer shall file a response. The response shall:

1. Specify whether the petitioner and the employer have negotiated concerning the subject of representation fees in lieu of dues and whether an agreement requiring such payments has been reached;

2. Specify the collective negotiations unit description and the number of employees in the unit represented by the petitioner, and attach any documents pertinent to defining the collective negotiations unit and not already supplied by the petitioner;

3. Provide a list of all the employees in the negotiations unit, together with their job titles, as of the time of the filing of the petition;

4. Verify or correct where possible the list of the negotiations unit employees who are voluntary dues paying members of the majority representative as of the time of the filing of the petition and attach any documents pertinent to establishing such a list and not already supplied by the petitioner; and

5. State any other facts which the respondent believes are material to a payroll deduction determination.

(b) If no response is filed, all allegations in the petition shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. This mandate also applies to any allegation not specifically denied or explained in a response, unless the respondent states that it is without knowledge of the allegation.

(c) The response shall be in writing and the representative of the party filing the response shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

#### **19:19-3.3 Where to file; number of copies; service**

An original and four copies of the response shall be filed with the Commission, together with proof of service of a copy of the response on the petitioner.

#### **19:19-3.4 Amendment to response**

The Commission Chair or such other Commission designee may permit the respondent to amend its response at any time upon such terms as may be deemed just.

#### **19:19-3.5 Reply**

Within five days of receipt of the response, the petitioner may file an original and four copies of a reply and any supporting documents and affidavits together with proof of service of a copy of the reply on the respondent. No further replies shall be permitted without permission of the Commission Chair or such other Commission designee.

#### **19:19-3.6 Investigation; disposition**

(a) A Commission designee shall conduct an investigation. The designee may ask the parties to attend informal conferences and to submit additional documents, statements of position, or briefs on material legal issues.

(b) In addition, the designee may hold a hearing if it appears that there are substantial and material factual issues requiring a hearing to resolve. Such a hearing shall be governed by the provisions of N.J.A.C. 19:11-6 on representation proceedings, insofar as applicable.

(c) After the investigation or hearing, the designee shall issue written findings as to whether a majority of the negotiations unit employees are voluntary dues paying members of the majority representative and whether the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.5 and 5.6 and either:

1. Request the petitioner to withdraw the petition, or in the

absence of withdrawal, dismiss the petition, pursuant to N.J.A.C. 19:19-3.2;

2. Order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the majority representative; or

3. Take other measures the designee deems appropriate.

#### **SUBCHAPTER 4. REQUEST FOR COMMISSION REVIEW**

##### **19:19-4.1 Request for Commission review**

(a) Within 10 days of service on it of the designee's order, any aggrieved party may file a request for review with the Commission.

(b) An original and nine copies of a request for review shall be filed with the Commission, together with proof of service of a copy on the other party. The filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the designee.

##### **19:19-4.2 Grounds for granting a request for review**

(a) The Commission Chair may grant a request for review. A request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The designee's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

##### **19:19-4.3 Contents of request for review; timely presentment of facts**

(a) A request for review must be a self-contained document enabling the Commission or Commission Chair to rule on the basis of its contents.

(b) A request must contain a summary of all evidence and rulings bearing on the issues, together with page citations from any official transcript, and a summary of argument.

(c) A request may not raise any issue or allege any facts not timely presented to the designee, unless the facts alleged are

newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

(d) A request for review must specify both the grounds supporting review and address the merits of the issues for which relief is sought.

##### **19:19-4.4 Statement in opposition to a request for review**

Within seven days of service on it of a request for review, any party may file with the Commission an original and nine copies of a statement in opposition to the request, together with proof of service of a copy on all other parties.

##### **19:19-4.5 Waiver of right to request review**

(a) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any Commission proceeding, any issue that was or could have been raised in the proceeding.

(b) A Commission order disposing of a case in its entirety, or a Commission order denying a request for review of an order issued by the Commission designee disposing of a case in its entirety, shall constitute the final administrative determination of the Commission.

##### **19:19-4.6 Stay of decision; record before the Commission; withdrawal; oral argument; Commission decision**

(a) The granting of a request for review shall not stay the designee's decision unless otherwise ordered by the Commission.

(b) Where review has been granted, the Commission will consider the entire record in light of the grounds relied on for review.

(c) Any request for review may be withdrawn with the permission of the Commission before issuance of a Commission decision.

##### **19:19-4.7 Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and filed simultaneously with the request for review. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

##### **19:19-4.8 Decision by the Commission**

Where review has been granted, the Commission shall proceed upon the record to decide the issues referred to it or to review the decision of the designee. It shall affirm or reverse the decision of the designee, in whole or in part, or make such other disposition of the matter as it deems appropriate.

#### **SUBCHAPTER 5. TRANSFER TO THE COMMISSION; RECONSIDERATION**

**19:19-5.1 Transfer to the Commission on its own motion**

The Commission may, at any time and on its own motion, transfer a case to itself for appropriate action.

**19:19-5.2 Motion for Commission reconsideration**

A party may move for reconsideration of a Commission decision. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any motion pursuant to this section shall be

filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Commission decision, unless otherwise ordered by the Commission. A motion for reconsideration need not be filed to exhaust administrative remedies.

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<sup>1</sup> Title 19, Chapter 19 -- Chapter Notes

**CHAPTER AUTHORITY:**

N.J.S.A. 34:13A-5.9.

**SOURCE AND EFFECTIVE DATE:**

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See: 47 N.J.R. 664(b).

**EXPIRATION DATE:**

Chapter 19, Payroll Deduction Determinations--  
Representation Fees, expires on February 11, 2022.