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## OTHER AGENCIES

### (a)

#### **PUBLIC EMPLOYMENT RELATIONS COMMISSION Representation Procedures Proposed Readoption with Amendments: N.J.A.C. 19:11**

Authorized By: Public Employment Relations Commission, P. Kelly Hatfield, Chair.

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

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

Proposal Number: PRN 2017-241.

Submit comments by November 17, 2017, to:

P. Kelly Hatfield, Chair  
Public Employment Relations Commission  
PO Box 429  
Trenton, New Jersey 08625-0429

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

The agency proposal follows:

#### **Summary**

In accordance with the provisions of Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the Public Employment Relations Commission ("Commission" or "PERC") proposes to readopt N.J.A.C. 19:11 with amendments. These rules contain the procedures to allow the Commission to resolve all questions concerning the representation of public employees in units appropriate for collective negotiations pursuant to the New Jersey Employer-Employee Relations Act. The rules describe: the types of petitions that can be filed; the parties permitted to file petitions; the required contents of petitions; the processing of petitions; hearing procedures; requests for Commission review; Commission review of hearing officer recommendations; and procedures for representation elections. Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 19:11 was scheduled to expire on November 3, 2017. As

the Commission filed this notice of proposal with the Office of Administrative Law prior to that date, the expiration date is extended 180 days to May 2, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2).

A summary of each section in N.J.A.C. 19:11 follows:

N.J.A.C. 19:11-1.1 describes the various types of representation petitions and the persons or parties permitted to file each petition.

N.J.A.C. 19:11-1.2 specifies the contents of a petition for certification filed by a public employee, a group of public employees, any individual, or an employee organization. Amendments to N.J.A.C. 19:11-1.2(a)1 and 7 would require the filing party to include e-mail addresses to the other contact information currently required by those rules. An amendment to N.J.A.C. 19:11-1.2(a)10 would clarify existing language to differentiate between petitions where certification as a majority representative is sought through a secret ballot election and those petitions where certification is sought in accordance with P.L. 2005, c. 161, on the basis of the submission of signed authorization cards. This proposed change is not substantive. A further clarifying change would provide that the name of the employee organization on the petition for certification and on the authorization cards must be identical.

N.J.A.C. 19:11-1.3 specifies the contents of a petition for decertification. A proposed amendment to N.J.A.C. 19:11-1.3(a)2 would provide that the information contained in N.J.A.C. 19:11-1.2(a)10 not be included on a petition for decertification as that paragraph is not relevant to a decertification petition.

N.J.A.C. 19:11-1.4 specifies the contents of a petition for certification filed by a public employer. A proposed amendment to N.J.A.C. 19:11-1.4(b) would provide that the information contained in N.J.A.C. 19:11-1.2(a)10 not be included on a petition for certification filed by a public employer as that paragraph is not relevant to a petition for certification that alleges the employer has a good faith doubt concerning the majority status of an employee representative.

N.J.A.C. 19:11-1.5 specifies the contents of a petition for clarification of unit.

N.J.A.C. 19:11-1.6 specifies the contents of a petition for amendment of certification.

N.J.A.C. 19:11-2.1 provides that the Director of Representation shall determine the validity of a showing of interest accompanying a petition and provides that the showing of interest is confidential. A proposed amendment to N.J.A.C. 19:11-2.1, consistent with the proposed amendment to N.J.A.C. 19:11-1.2(a)10, would clarify that the showing of interest includes authorization cards where certification of the majority representative is based upon card check. In addition, a proposed amendment to the section and its heading would clarify and reinforce that a showing of interest is confidential.

N.J.A.C. 19:11-2.2 provides that the Director will investigate any petition to determine the facts and whether a question concerning the representation of employees has been raised.

N.J.A.C. 19:11-2.3 allows the Director to request a party to withdraw a petition that fails to raise a timely or valid representation issue and to dismiss such a petition absent a requested withdrawal.

N.J.A.C. 19:11-2.4 provides that after a representation petition is filed, the public employer will be directed to post a notice to employees prepared by the Commission and that the employer will certify that the notice has been properly posted for at least 10 days. A proposed amendment to 19:11-2.4(b)3, in accordance with the proposed amendment to N.J.A.C. 19:11-1.2(a)10, would clarify existing language to have the notice to employees differentiate between petitions where certification as a majority representative is sought through a secret ballot election and those petitions where certification is sought in accordance with P.L. 2005, c. 161, on the basis of the submission of signed authorization cards.

N.J.A.C. 19:11-2.5 provides that a public docket of all petitions will be maintained at the Commission's offices.

N.J.A.C. 19:11-2.6 provides that after investigating a petition, the Director may: request the petition be withdrawn and absent such withdrawal, dismiss it; issue a decision dismissing the petition; issue a decision directing an election; issue a decision clarifying a unit; issue a decision amending a certification or take other measures deemed appropriate. A proposed amendment to 19:11-2.6(b) would clarify and notify parties that as reflected in Commission case law, executed

authorization cards are presumed valid absent substantial, reliable evidence raising a substantial doubt.

N.J.A.C. 19:11-2.7 specifies how a party may intervene in a representation proceeding and when a motion to intervene may be filed.

N.J.A.C. 19:11-2.8 lists the time periods when a representation petition can be filed.

N.J.A.C. 19:11-3.1 specifies the procedure by which a public employer may grant recognition as a majority representative to an employee organization, without Commission intervention.

N.J.A.C. 19:11-4.1 provides that the parties may sign an agreement consenting to a representation election to be conducted by the Commission.

N.J.A.C. 19:11-5.1 provides that, where the Director or Commission has ordered that an election be held, the parties may agree on the election details (subject to the Director's approval) or, absent agreement, the Director may set them.

N.J.A.C. 19:11-6.1 provides that representation hearings shall be public, unless otherwise ordered, and may be conducted by a hearing officer, the Commission or one of its members, or the Director of Representation.

N.J.A.C. 19:11-6.2 provides that a notice of hearing specifying the hearing details will be served on all parties at least 10 days prior to the hearing, which is to be considered investigatory and not adversarial.

N.J.A.C. 19:11-6.3 specifies the duties and powers of a hearing officer.

N.J.A.C. 19:11-6.4 provides that the Director or Commission may designate a new hearing officer if the hearing officer is unavailable, or, after a hearing is over, the Commission may instead transfer the case to itself and issue a decision.

N.J.A.C. 19:11-6.5 provides that parties shall have the right at a hearing to call, examine, and cross-examine witnesses, and to submit documentary or other relevant evidence.

N.J.A.C. 19:11-6.6 provides that the parties shall not be bound by rules of evidence, that all relevant evidence is admissible, and that a hearing officer may exclude evidence and shall give effect to the rules of privilege.

N.J.A.C. 19:11-6.7 provides that the record may contain the parties' stipulations as to facts and issues and that the Director may accept an agreed statement of facts that may operate as a waiver of the hearing.

N.J.A.C. 19:11-6.8 allows a party to make oral or written objections, including evidentiary objections, and provides that objections are not waived by further participation in the hearing.

N.J.A.C. 19:11-6.9 specifies when and to whom written or oral motions and responses to motions are to be made, depending upon the stage of the proceeding, and allows the hearer to take testimony and/or hear argument before ruling.

N.J.A.C. 19:11-6.10 provides that interlocutory rulings in representation cases shall not be appealed directly to the Commission except by special permission.

N.J.A.C. 19:11-6.11 provides that objections not duly urged before a hearing officer shall be deemed waived unless the Commission excuses such failure because of extraordinary circumstances.

N.J.A.C. 19:11-6.12 provides that a party may argue orally before a hearing closes and may file a brief and proposed findings.

N.J.A.C. 19:11-6.13 allows the hearing officer, on appropriate notice, to continue or adjourn the hearing.

N.J.A.C. 19:11-6.14 allows the hearing officer or Commission to exclude a party's representative for misconduct and provides that aggravated misconduct shall be grounds for suspension or disbarment by the Commission from further practice before it.

N.J.A.C. 19:11-7.1 provides, after hearing, for the preparation by the hearing officer of a report and recommendations to be served on the parties and to be filed with the Commission.

N.J.A.C. 19:11-7.2 describes the contents of the record in a representation hearing.

N.J.A.C. 19:11-7.3 allows parties to file exceptions and cross-exceptions, with supporting and answering briefs to the report and recommendations; specifies the contents of such submissions and requirements concerning timeliness, filing, service and a request to extend any time limits; and provides that any matter not included in

exceptions or cross-exceptions may not be urged before the Commission in any proceeding.

N.J.A.C. 19:11-7.4 provides that the Commission shall adopt, reject or modify the hearing officer's report and recommendations on the record or after oral argument.

Subsection (b) allows the Commission to consolidate or sever proceedings and subsection (c) provides that, where no exceptions are filed, a hearing officer's report and recommendations will become a final decision, unless the Chairman, or a Commission designee, notifies the parties within 45 days after receipt that the Commission will consider the matter further. A technical amendment would change Chairman to the gender neutral title Chair.

N.J.A.C. 19:11-8.1 provides that a party aggrieved by a decision, order, or direction of the Director of Representation may file a request for review with the Commission.

N.J.A.C. 19:11-8.2 specifies the grounds that must be shown for the Commission to grant a request for review. A technical amendment to N.J.A.C. 19:11-8.2(a) would change Chairman to the gender neutral title Chair.

N.J.A.C. 19:11-8.3 specifies the contents of a request for review. A technical amendment to N.J.A.C. 19:11-8.3(a) would change Chairman to the gender neutral title Chair.

N.J.A.C. 19:11-8.4 allows the filing of a statement opposing a request for review.

N.J.A.C. 19:11-8.5 provides that the parties may waive their right to request review and that a Commission order that disposes of a case in its entirety, or denies review of a Director's order that does the same, constitutes the final administrative determination of the Commission.

N.J.A.C. 19:11-8.6 provides that filing a request for review will not, absent a Commission order, stay the Director's decision.

N.J.A.C. 19:11-8.7 provides that where a request for review has been granted, the Commission shall affirm or reverse the decision of the Director of Representation, in whole or in part, or make some other appropriate disposition of the case.

N.J.A.C. 19:11-9.1 provides that the Commission may, at any time, transfer a case to itself.

N.J.A.C. 19:11-9.2 allows a party to request oral argument before the Commission and that the Commission has the discretion to grant or deny the request and to set the time and place of any oral argument.

N.J.A.C. 19:11-9.3 allows a party, after a Commission decision has been issued, to move for reconsideration based upon extraordinary circumstances and allows any party opposing reconsideration to file a response.

N.J.A.C. 19:11-10.1 provides that in all representation elections, the public employer shall file 10 days before the election an election eligibility list containing, in alphabetical order, the names, addresses, and job titles of the eligible voters.

N.J.A.C. 19:11-10.2 provides that the Director shall furnish election notices, including a sample ballot, to the employer; specifies the posting requirements; and provides that reproduction of any document purporting to be a copy of the official ballot and suggesting that the Commission endorses a particular choice may be grounds for setting aside an election, if objections are filed.

N.J.A.C. 19:11-10.3 sets forth the procedures for conducting a Commission representation election. The rule also addresses the method of voting, requests that names be removed from the ballot, observers for each party, challenged ballot procedures, authority of the election agent, counting of ballots, official tally of ballots, election objections, investigation and disposition of objections with or without a hearing, and certification of a majority representative or the results of the election.

N.J.A.C. 19:11-10.4 provides that where an election with three or more choices on the ballot results in no choice receiving a majority, the Director of Representation shall order a runoff election and describes the procedures for such a runoff election.

N.J.A.C. 19:11-10.5 authorizes the Director to conduct a rerun election and sets forth the procedures for such elections. Such elections are held in cases where the initial election has been declared a nullity after election objections have been sustained, or where the election is inconclusive, as described in this rule.

N.J.A.C. 19:11-10.6 describes those elections that result in no majority representative being selected.

N.J.A.C. 19:11-10.7 provides that the exclusive representative shall be determined by a majority of the valid ballots cast in the election.

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

#### **Social Impact**

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., at 34:13A-5.3, provides that representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the Commission shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit. N.J.S.A. 34:13A-6.d and e empower the Commission to resolve questions concerning representation of public employees by conducting secret ballot elections or other means to ascertain employee free choice, to decide which unit of employees is appropriate for collective negotiation using formal hearings, if necessary, and to determine the rules for the conduct of such elections and hearings.

The readoption of these rules is necessary to allow the Commission to continue to carry out its statutory mandate to resolve questions concerning the representation of public employees in units appropriate for collective negotiations. The rules proposed for readoption with amendments would help representation cases proceed smoothly and thus effectuate the Act's purposes concerning the right to seek representation.

#### **Economic Impact**

The rules, if readopted, with amendments, will have no discernible economic impact on the public. They outline the procedures for resolving questions concerning the representation of public employees in units appropriate for collective negotiations. In addition, the readoption of the rules will continue to encourage the parties to use the Commission's website to obtain forms and, thus, to provide some savings to both the Commission and the users of its services. Also, as many of the readopted rules are designed to permit the resolution of disputes by consent, rather than through administrative agency or court litigation, or to expedite litigation by encouraging stipulations, the readoption of these rules with amendments could result in cost savings to the public bodies subject to the Commission's jurisdiction.

#### **Federal Standards Statement**

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

#### **Jobs Impact**

The Commission does not expect that any job will be generated or lost as a consequence of the rules proposed for readoption with amendments.

#### **Agriculture Industry Impact**

The Commission does not expect that the agriculture industry will be affected as a consequence of the rules proposed for readoption with amendments.

#### **Regulatory Flexibility Statement**

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

#### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have no impact on the affordability of housing nor on the average costs of housing in the State because the rules are designed to resolve questions

concerning the representation of public employees in units appropriate for collective negotiations with their public employers.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules are designed to resolve questions concerning the representation of public employees in units appropriate for collective negotiations with their public employers.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:11.

**Full text** of the proposed amendments follows (additions listed in bold **thus**; deletions in brackets [thus]):

SUBCHAPTER 1. REPRESENTATION PETITIONS

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.-6. (No change.)

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

8.-9. (No change.)

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. (No change.)

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

3. (No change.)

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

(a) (No change.)

(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.

SUBCHAPTER 2. PROCESSING OF PETITIONS

19:11-2.1 Validity **and confidentiality** 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.

19:11-2.4 Posting of notice of petition

(a) (No change.)

(b) Such notices shall set forth:

1.-2. (No change.)

3. [In appropriate cases,] **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. (No change.)

19:11-2.6 Investigation of petition; disposition

(a) (No change.)

(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.**

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

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

(a)-(b) (No change.)

(c) If no exceptions are filed, the recommended decision shall become a final decision unless the [Chairman] **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

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

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

1.-4. (No change.)

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

(a) A request for review must be a self-contained document enabling the Commission or [Chairman] **Chair** to rule on the basis of its contents.

(b)-(d) (No change.)

**(a)**

**CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

**Casino Reinvestment Development Authority  
Tourism District Land Development Rules**

**Proposed New Rules: N.J.A.C. 19:66**

Authorized By: Casino Reinvestment Development Authority,  
Christopher M. Howard, Executive Director/Board of Directors.

Authority: N.J.S.A. 5:12-161.f and 5:12-218 et seq.

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

Proposal Number: PRN 2017-236.

Two **public hearings** on the proposed new rules will be held on the following dates at the following location:

Wednesday, October 4, 2017 at 10:00 A.M.

Tuesday, October 10, 2017 at 6:00 P.M.

Atlantic City Convention Center

One Convention Boulevard