

**OTHER AGENCIES**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Unfair Practice Proceedings**

**Interim Relief**

**Proposed Amendments: N.J.A.C. 19:14-9**

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

Authority: N.J.S.A. 34:13A-5.4.c,d, and f; and 34:13A-11.

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

Proposal Number: PRN 2012-043.

Submit written comments by May 4, 2012 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**

As part of its jurisdiction in unfair practice and scope of negotiations cases (see N.J.S.A. 34:13A-5.4.c and d), the Commission has the authority to issue interim relief orders pending a final administrative determination. See *Englewood Bd. of Ed. and Englewood Teachers Ass'n*, 135 N.J. Super. 120 (App. Div. 1975). In unfair practice cases, the test for granting interim relief, analogous to the standard a court applies in considering whether to grant an interlocutory injunction, is very stringent. To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. *Crowe v. De Gioia*, 90 N.J. 126, 132-134 (1982); *Whitmyer Bros., Inc. v. Doyle*, 58 N.J. 25, 35 (1971); *State of New Jersey (Stockton State College)*, P.E.R.C. No. 76-6, 1 NJPER 41 (1975); *Little Egg Harbor Tp.*, P.E.R.C. No. 94, 1 NJPER 37 (1975). The proposed amendments to N.J.A.C. 19:14-9.1 through 9.5 would allow

the Commission to dismiss, without any further proceedings, those few applications, which, on their face, do not meet the standard quoted above, and would also provide greater flexibility in processing and resolving interim relief applications that warrant further consideration. Other proposed amendments would make titles gender neutral and make non-substantive changes in wording and sentence structure.

N.J.A.C. 19:14-9.1 is amended to update a cross-reference to N.J.A.C. 19:13-3.11, formerly codified as N.J.A.C. 19:13-3.10.

The heading of N.J.A.C. 19:14-9.2, When to file; form, is proposed for amendment as, "When to file; form and contents; insufficient pleadings; processing of interim relief applications." Proposed amendments to the rule would: relocate the text of current subsection (c) to proposed N.J.A.C. 19:14-9.2(d)3; allow the Commission Chair or such other person designated by the Commission Chair to dismiss an interim relief application(s) if there is insufficient basis in the pleadings to meet the standards

for granting interim relief (N.J.A.C. 19:14-9.2(c)); spell out, in cases not covered by amended N.J.A.C. 19:14-9.2(c), the options available to the Commission Chair or the designee to process interim relief applications (N.J.A.C. 19:14-9.2(d)); and add the modifier "substantial" at the start of the phrase "likelihood of success on the merits" to conform the regulation on when an order to show cause may include temporary restraints to the actual standard applied by the Commission and the courts (N.J.A.C. 19:14-9.2(f)2).

N.J.A.C. 19:14-9.3, Briefs, is proposed for amendment at subsection (b) to clarify that even if unopposed, an application for interim relief must still satisfy the standards warranting the issuance of an order granting interim relief.

The heading of N.J.A.C. 19:14-9.4, Hearing on return date, is proposed for amendment as, "Hearing or telephone conference on return date." In accordance with a practice that has been developed by consent among the Commission Chair, the designees, and the parties, the rule is proposed

for amendment to provide for hearings to be conducted on the return date by telephone conference call.

N.J.A.C. 19:14-9.5, Decision; enforcement, is proposed for amendment to separately address, in subsections (a) and (b), respectively, the form and contents of decisions and orders granting or denying interim relief applications. As proposed, N.J.A.C. 19:14-9.5(a) maintains the requirement that a decision granting interim relief 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; and shall describe in reasonable detail the act or acts sought to be restrained; but the proposed amendments also provides that such written decision may be preceded by an order, issued after the interim relief proceedings, containing a brief statement of reasons for granting the application. Proposed amendments to N.J.A.C. 19:14-9.5(b) would provide three methods of denying interim relief applications: an order of dismissal in cases covered by N.J.A.C. 19:14-9.2(c); an order, issued after the interim relief proceedings, containing a brief

statement of reasons for denying the application; or a written decision including findings of fact and conclusions of law. A proposed amendment to N.J.A.C. 19:14-9.5(c) would conform its text to court rules which allow, in addition to the Commission, a prevailing party to seek enforcement of an interim relief order in court.

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

### **Social Impact**

The proposed amendments will aid in ensuring that the resources of the Commission and of the parties, which include public employers, will not be unnecessarily expended in responding to and processing patently non-meritorious interim relief applications in unfair practice cases. In addition, the proposed amendments will afford the Commission and the parties more expeditious and less

costly options in processing interim relief applications that warrant consideration on the merits.

#### **Economic Impact**

As noted in the Social Impact statement, the proposed amendments are expected to result in savings through the expeditious dismissal of non-meritorious applications; however, there is no reliable way to predict the exact economic impact the amendments will have.

#### **Federal Standards Statement**

These amendments are proposed under the authority of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and are not subject to any Federal statutes, regulations, or standards. Therefore, an analysis pursuant to Executive Order No. 27 (1994)/P.L. 1995, c.65 is not required.

#### **Jobs Impact**

The proposed amendments should have no impact on jobs to be generated or lost.

#### **Agriculture Industry Impact**

The Commission's jurisdiction is limited to employer-employee relations in public employment. The proposed amendments impose no requirements on the agriculture industry.

#### **Regulatory Flexibility Statement**

The Commission's jurisdiction is limited to employer-employee relations in public employment. The proposed amendments impose no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

There is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs

associated with housing. The Commission's jurisdiction is limited to employer-employee relations in public employment. The proposed amendments concern interim relief in unfair practice proceedings before the Commission.

### **Smart Growth Development Impact Analysis**

There is an extreme unlikelihood that the proposed amendments would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The Commission's jurisdiction is limited to employer-employee relations in public employment. The proposed amendments concern interim relief in unfair practice proceedings before the Commission.

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

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-[3.10]**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) (No change.)

(b) The application for interim relief shall [be by] **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 order to show cause shall be returnable at such time and place as the Chairman or such other person designated by the Commission shall fix in the order. The order to show cause shall not include any temporary restraints except as permitted by and pursuant to (e) and

(f) below.] 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.

[(d)] (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, [(Service of pleading and other process; proof of service)] **Filing by original, facsimile transmission and e-mail**, unless the [Chairman] **Commission Chair** or the [Commission's] designee orders a shorter or longer time or other manner of service. If [the] **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.

[(e)] **(f)** [The] **An** order to show cause shall not include any temporary restraints unless:

1. (No change.)
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.

[(f)] **(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, [or its designee or the Chairman] **the Commission Chair, or the designee.**

19:14-9.3 Briefs

(a) By no later than five days before the return date of [the] **an** order to show cause, unless otherwise ordered by the [Chairman] **Commission Chair** or the [Commission's] 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 [Chairman] **Commission Chair** or the [Commission's] 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 [Chairman] **Commission Chair** or the [Commission's] 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

[A hearing shall be conducted on] **On** the return date of the order to show cause [and on the return date of the] **or a** respondent's motion to dissolve or modify [the] **any** temporary restraints, [unless otherwise ordered by the Chairman or the Commission's designee] **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. Unless otherwise ordered by the Commission Chair or the designee, [The] the parties shall have the right to argue orally and the hearer may permit testimony.**

[The Chairman or the Commission's designee shall conduct such hearings.]

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.

[(b)](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.