

56 N.J.R. 2300(c)

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RULE ADOPTIONS

Reporter

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Agency

OTHER AGENCIES > PUBLIC EMPLOYMENT RELATIONS COMMISSION

Administrative Code Citation

Readoption with Amendments: N.J.A.C. 19:14

Adopted New Rule: N.J.A.C. 19:14-9.6

Text

Unfair Practice Proceedings

Proposed: June 3, 2024, at 56 N.J.R. 1012(a).

Adopted: October 28, 2024, by the Public Employment Relations Commission, Mary E. Hennessy-Shotter, Chair.

Filed: October 28, 2024, as R.2024 d.114, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 34:13A-5.4.c and 34:13A-11.

Effective Dates: October 28, 2024, Readoption;

December 2, 2024, Amendments and New Rule.

Expiration Date: October 28, 2031.

Summary of Public Comments and Agency Responses:

Comments were received from the following interested party:

Ira W. Mintz, Esq., of the law firm Weissman and Mintz, LLC, on behalf of the following labor union organizations (Union Commenters): Rutgers Council of AAUP Chapters; AAUP-AFT, AFL-CIO; Union of Rutgers Administrators-AFT; AAUP-Biomedical and Health Sciences of New Jersey; and the Communications Workers of America, AFL-CIO.

N.J.A.C. 19:14-8.1

1. COMMENT: The Union Commenters assert that the proposed amendment at N.J.A.C. 19:14-8.1(a), stating what the Public Employment Relations Commission (Commission) may do if exceptions are filed to a hearing examiner's report, contradicts the unchanged language at N.J.A.C. 19:14-8.1(b), which provides that the Commission may consider the matter further even if no exceptions are filed.

RESPONSE: The Commission's discretion pursuant to N.J.A.C. 19:14-8.1(b) to consider the matter further "if no exceptions are filed" is not limited by the amendment at N.J.A.C. 19:14-8.1(a) specifying what the Commission may do "[i]f exceptions are filed." The clarification of the possible actions by the Commission following the filing of exceptions does not preclude those possible actions by the Commission in the absence of exceptions pursuant to N.J.A.C. 19:14-8.1(b).

2. COMMENT: The proposed amendment at N.J.A.C. 19:14-8.1(c) does more than clarify that a party must file exceptions with the Commission to exhaust administrative remedies, but encroaches on the powers of the Superior Court, by defining when a party has a right to appeal.

[page=2301] RESPONSE: In *City of Ocean City, 2023 N.J. Super. Unpub. LEXIS 1445* (App. Div. 2023), the Superior Court, Appellate Division allowed a party to appeal a hearing examiner's report directly to the Appellate Division despite not having first appealed to the Commission. In rejecting the Commission's procedural argument that the party had failed to exhaust administrative remedies because it did not file exceptions with the Commission, the court noted that N.J.A.C. 19:14-8.1 "does not, however, provide that a party to an administrative proceeding waives its right to appeal by failing to file an exception to an initial agency decision." *Id.* at 12. Relying on the Appellate Division's decision in *Ocean City*, as proposed for amendment, N.J.A.C. 19:14-8.1(c) clarified that exceptions to the full Commission are necessary to exhaust administrative remedies and preserve a right to appeal. The Commission's amendment attempts to avoid any possible interference with the court's jurisdiction by stating that a party may still seek leave to appeal "according to court rules."

3. COMMENT: Proposed N.J.A.C. 19:14-8.1(c), by stating that exceptions must be filed to exhaust administrative remedies, conflicts with the portion of N.J.A.C. 19:14-8.1(b) that provides that the Commission may consider the matter further in the absence of exceptions.

RESPONSE: Although the Commission believes that in the extremely rare occurrence of a Commission decision made *sua sponte*, pursuant to N.J.A.C. 19:14-8.1(b), the exhaustion of administrative remedies would be apparent, as there would be no further appeals within the agency, the Commission will make a non-substantial change to clarify this exception to the new language at N.J.A.C. 19:14-8.1(c). The Commission will add the language "unless the Commission has notified the parties that it will consider the matter further in the absence of exceptions pursuant to N.J.A.C. 19:14-8.1(b)" to the end of the first sentence at N.J.A.C. 19:14-8.1(c).

N.J.A.C. 19:14-8.4

4. COMMENT: The proposed amendment inappropriately replaces the "extraordinary circumstances" standard for motions for reconsideration of Commission unfair practice decisions with a higher "extraordinary circumstances and exceptional importance" standard that had historically only been applied to Commission designee interim relief decisions and was also incorrectly incorporated into the scope of negotiations motion for reconsideration rules.

RESPONSE: As stated in the notice of proposal, the Commission is aware that the "extraordinary circumstances and exceptional importance" standard for motions of reconsideration had originally been adopted for interim relief decisions through case law and later adopted for Commission scope of negotiations decisions through rulemaking. The Commission believes that this standard has served the agency well and that the standards for motions for reconsideration should be synchronized for unfair practice decisions, interim relief decisions, and scope of negotiations decisions.

5. COMMENT: The proposed amendments delete the requirement that the movant specify the extraordinary circumstances warranting reconsideration and specify the pages of the record it relies upon.

RESPONSE: The proposed rule does not remove the requirement that the movant specifies the extraordinary circumstances it relies upon, as it first states reconsideration requires "a demonstration of extraordinary circumstances and exceptional importance" and in the immediately following sentence requires that the "movant shall specify and bear the burden of establishing the grounds warranting reconsideration." Given these requirements to specify and establish how the motion meets the extraordinary circumstances and exceptional importance standard, the Commission did not find it necessary to retain the "pages of the record it relies on" language and instead sought to harmonize this standard with the language used for scope of negotiations motions for reconsideration. See N.J.A.C. 19:13-3.12.

N.J.A.C. 19:14-9.6

6. COMMENT: Proposed new N.J.A.C. 19:14-9.6 removes a party's ability to file motions for reconsideration of interim relief decision directly with the Commission's designee, but instead requires that it be filed with the full Commission.

RESPONSE: The Commission has, in practice, already adopted a policy of requiring motions for reconsideration to go to the full Commission rather than before the Commission's designee. In *Rockaway Tp.*, P.E.R.C. No. 2018-30, 44 NJPER 308 (¶86 2018), the Commission found that, while a Commission's designee did not err by reconsidering his own interim relief decision, there was neither a regulation nor a consistent practice specifying whether motions for reconsideration of interim relief decisions should be addressed to a designee first or directly to the Commission. Since that decision, the Commission has consistently considered motions for reconsideration of interim relief decisions to go directly to the Commission. The Commission finds that having the full Commission consider a designee's interim relief decision provides a more comprehensive level of review. N.J.A.C. 19:14-9.6 codifies this policy.

Federal Standards Statement

The National Labor Relations Act excludes "any State or political subdivision thereof." See 29 U.S.C. § 152(2). No Federal law or regulation applies and the Commission cannot rely upon a comparable Federal rule or standard to achieve the aims of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The rules readopted with amendments and a new rule are, thus, necessary and proper.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 19:14.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks ***thus***):

SUBCHAPTER 1. CHARGE

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, email 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, email address, and telephone number of the public employer or public employee organization against whom the charge is made (the respondent); and
3. (No change.)

(b) (No change.)

19:14-1.4 Number of copies; service

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The charging party shall file an original and one copy 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)-(d) (No change.)

(e) Within 15 days after the date a charge has been dismissed pursuant to 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 one copy 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 one copy 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.

SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING

19:14-2.3 Refusal to issue; appeal

(a) (No change.)

(b) Where no complaint is issued, the charging party may appeal that action by filing an original and one copy 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 [page=2302] opposing the appeal may file an original and one copy 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) (No change.)

SUBCHAPTER 3. ANSWER

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

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

SUBCHAPTER 4. MOTIONS

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

All written motions, referred to at 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 one copy of its motion papers, if made to the hearing examiner or Director of Unfair Practices, and an original and one copy if made to the Commission, together with proof of service of a copy on all other parties.

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

(a) (No change)

(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 one copy of such request shall be filed with the Chair, 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 one copy 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 Chair grants special permission to appeal, the proceedings 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.

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 one copy 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 one copy 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 Chair, 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 one copy of the motion and all supporting documents shall be filed with the Chair, 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 Chair 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 at (b) above.

(d)-(g) (No change.)

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

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 one copy 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 one copy of a brief in support of the exceptions. Any party may, within the same period, file an original and one copy 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 pursuant to this subsection shall be accompanied by proof of service of a copy on all other parties.

(b)-(c) (No change.)

(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 one copy 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 one copy of cross-exceptions to any portion of the

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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 one copy 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)-(h) (No change.)

SUBCHAPTER 8. PROCEDURE BEFORE THE COMMISSION

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

(a) If exceptions are filed, 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) (No change.)

(c) A party must file exceptions to a hearing examiner's report pursuant to N.J.A.C. 19:14-7.3 in order to exhaust administrative remedies before the Commission and preserve a right to appeal to the Superior Court, Appellate Division *, **unless the Commission has notified the parties that it will consider the matter further in the absence of exceptions, pursuant to (b) above***. A party who chooses not to file exceptions with the Commission may seek leave to appeal from the Appellate Division according to court rules.

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. 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. 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 [page=2303] 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

19:14-9.3 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 one copy 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 pursuant to 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 one copy 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 change.)

19:14-9.6 Motions for reconsideration of interim relief decisions

After an interim relief decision has been issued, a party may move for reconsideration before the Commission. Any motion pursuant to this section shall be filed within 15 days of service of the interim relief decision, together with proof of service of a copy 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. 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's designee's interim relief decision unless otherwise ordered by the Commission.

SUBCHAPTER 10. COMPLIANCE AND ENFORCEMENT

19:14-10.2 Procedures for compliance and enforcement

(a) The Chair, 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)-(c) (No change.)

19:14-10.3 Request for compliance and enforcement

(a) (No change.)

(b) Such a request shall normally take the form of a motion addressed to the Chair 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 one copy of such request shall be filed with the Chair, 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 one copy of the response and supporting submissions shall be filed with the Chair, together with proof of service of copies of such documents on all other parties.

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