

OTHER AGENCIES

Mary E. Hennessy-Shetter

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Notice of Action on Petition for Rulemaking

Definitions, Service, Construction

N.J.A.C. 19:10

Petitioner: Caleb L. McGillvary

Take notice that on August 17, 2026, the Public Employment Relations Commission (Commission) received a petition for rulemaking from the above petitioner requesting that N.J.A.C. 19:10 be amended to include new subsections at N.J.A.C. 19:10-14A.1 to require majority representatives/employee organizations to provide members with substantially equitable representation in the organization's principal legislative or policymaking body by requiring that representation bears a reasonable relationship to the number of members represented by each affiliated local organization. Pursuant to N.J.A.C. 1:30-4.1(c), the Commission submitted a notice acknowledging receipt of the petition and summarizing its contents to the Office of Administrative Law (OAL) on September 1, 2026. That notice was published in the October 5, 2026 edition of the New Jersey Register at 58 N.J.R. 2266(a).

Take further notice that this petition was considered by the Commission at its regular public meeting on September 24, 2026, and, upon due deliberation, the Commission determined that the petition to amend Commission rules to create new equitable representation internal governance standards for majority representatives is denied.

The basis for the petition is essentially an assertion that statewide employee organizations do not equitably or democratically represent the diversity of the membership of their constituent local majority representatives (locals). By way of example, the petitioner cites the New Jersey

State Policemen's Benevolent Association (State PBA) and asserts that its Constitution and Bylaws provide that each local has a delegate to the State PBA with an equally weighted vote regardless of the size of the membership of the local. The petitioner argues that the organizational structure of the State PBA therefore favors smaller majority-white locals and disfavors larger, more diverse locals. The petitioner contends that the outsized influence of smaller PBA locals on State PBA policy "affects bargaining policy, grievance handling, legal-protection benefits, discipline appeals, charting, dues, and allocation of resources: thereby breaching the duty of fair representation to the members of larger local chapters."

To promote more equitable and democratic representation in the internal governance of statewide employee organizations, the petitioner proposed rules that would require such organizations to "maintain a governance structure providing members with substantially equitable representation in the organization's principal legislative or policymaking body," and require that representation "bear a reasonable relationship to the number of members represented by each affiliated local organization." The proposed rules provide a suggested, but not exhaustive, list of various allocation methods to achieve "substantially equivalent representational fairness" including proportional representation and weighted voting. Additionally, the proposal requires employee organizations to publish and annually file reports and information concerning their active membership, assigned voting power, voting formula, delegate selection methods, demographics, and other "transparency requirements."

Section 5.3 of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., empowers a majority representative to negotiate collectively and administer

the collective negotiations agreement on behalf of all unit employees. N.J.S.A. 34:13A-5.3.¹ N.J.S.A. 34:13A-5.4b(1) prohibits an employee organization from “interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act.” An employee organization violates this proscription and breaches its duty of fair representation when its conduct towards a member of the negotiations unit is arbitrary, discriminatory or in bad faith. *Lullo v. IAFF*, 55 N.J. 409 (1970); *D’Arrigo v. New Jersey State Bd. of Mediation*, 119 N.J. 74, 76 (1990); *Belen v. Woodbridge Tp. Bd. of Ed.*, 142 N.J. Super. 486 (App. Div. 1976); see also *Vaca v. Sipes*, 386 U.S. 171 (1967). However, “[t]he complete satisfaction of all who are represented is hardly to be expected” and “[a] wide range of reasonableness must be allowed a statutory bargaining representative in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.” *PBA Local 187, P.E.R.C. No. 2005-78*, 31 NJPER 173 (¶70 2005) (citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337-338 (1953)).

Furthermore, employee organizations are free to create rules binding on their members to accomplish organizational objectives, often in the form of constitutions and by-laws. *Calabrese v. PBA Local 76*, 157 N.J. Super. 139 (Law Div. 1978); *Danese v. Ginesi*, 280 N.J. Super. 17, 25 (App. Div. 1995). The Commission will not intercede in intra-union disputes concerning majority representative affairs such as membership, leadership, and voting unless they are connected to allegations that an unfair practice has been committed. *In re Probation Ass’n (Tortoreto)*, 442 N.J. Super. 185 (App. Div. 2015); *Eastampton Tp. Ed. Ass’n (MacCarthy)*, 2026

¹ N.J.S.A. 34:13A-5.3 provides, in pertinent part: “A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.”

N.J. Super. Unpub. LEXIS 1296 (2026), aff'g P.E.R.C. No. 2025-21, 51 NJPER 186 (¶47 2024); NJ State PBA & PBA Local 199 (Rinaldo), P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011); and City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 565-566 (¶13260 1982).

In light of the statutory language and judicial precedent cited above, the Commission does not find that the proposed rule amendments are authorized by the Act. Within the Commission's unfair practice jurisdiction, it may consider an unfair practice charge alleging that a majority representative acted arbitrarily, discriminatorily, or in bad faith towards a unit employee concerning that employee's ability to participate in majority representative affairs. However, matters of general organizational structure and governance such as how delegates from local union affiliates are selected and how their votes in the statewide employee organization are weighed are much broader issues that concern internal union operations outside of the Commission's jurisdiction. The Act does not provide the Commission with the statutory authority to dictate the methods by which statewide employee organizations allocate voting authority from their constituent locals. In the absence of legislation authorizing the Commission to impose such internal union governance requirements, promulgation of the proposed rules would be ultra vires. The Commission therefore denies this petition for rulemaking.

Pursuant to N.J.A.C. 1:30-4.2, a copy of this notice has been mailed to the petitioner.