

## CHAPTER 14

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

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## **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, 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. 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 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) 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 Chair. Unless otherwise provided by the Chair 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 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.

### **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) Within 180 days after a charge has been filed, 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 180 day period for determining whether to issue a complaint may be extended by mutual consent of the parties. The complaint with notice of hearing shall include:

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 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 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) 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 one copy 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 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.

### **19:14-4.4. 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 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) 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 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) 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 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 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) 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; 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) 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.

(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 N.J.A.C. 19:14-8.1(b). A party who chooses not to file exceptions with the Commission may seek leave to appeal from the Appellate Division according to court rules.

### **19:14-8.2 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. 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 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 Chair 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 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 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.

#### **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 to 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**

#### **19:14-10.1 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 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) 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.

(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 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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Title 19, Chapter 14 -- Chapter Notes

CHAPTER AUTHORITY:

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

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