

CHAPTER 13

SCOPE OF NEGOTIATIONS PROCEEDINGS

Authority

Unless otherwise expressly noted, all provisions of this chapter were adopted pursuant to authority of N.J.S.A. 34:13A-11 and were filed and became effective prior to September 1, 1969. Revisions which deleted the text of this chapter in its entirety were filed and became effective on September 4, 1973, as R.1973 d.248. See: 5 N.J.R. 358(c). Subsequent revisions which adopted new text for this chapter were filed and became effective on January 20, 1975, as R.1975 d.10. See: 7 N.J.R. 78(a). Further revisions were filed and became effective on August 2, 1977, as R.1977 d.272. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a).

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SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:13-1.1 Nature of proceedings

N.J.S.A. 34:13A-5.4(d) provides that the commission shall at all times have the power and duty, upon the request of any public employer or exclusive representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. With respect to the negotiability of a matter sought to be processed pursuant to a collectively negotiated grievance/arbitration procedure, the commission will not determine whether that matter is within the arbitration clause of an agreement, whether the facts are as alleged by the grievant, whether a contract provides a defense for the employer's alleged action, whether there is a valid arbitration clause in an agreement, or any other similar question. The procedure set forth in this chapter is intended to effectuate that which the commission views as legislative intent to avoid protracted administrative litigation with respect to disputes which normally will involve solely questions of law and policy. It is accordingly anticipated that

scope of negotiations proceedings will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which the procedure set forth in this chapter is intended to accommodate.

Case Notes

Grievance procedures. *Twp. of West Windsor v. Public Employment Relations Commission*, 78 N.J. 98, 393 A.2d 255 (1978).

Public employee layoff procedure and effect of seniority not negotiable. *State v. State Supervisory Employees Assn.*, 78 N.J. 54, 393 A.2d 233 (1978).

Citation. In re: *Bryam Twp. Bd. of Ed.*, 152 N.J. Super. 12, 377 A.2d 745 (App.Div.1977).

PERC lacks authority to hear and decide unfair labor practice cases and issue affirmative remedial orders (under former statutory authorization). *Burlington County Evergreen Park Mental Hospital v. Cooper*, 56 N.J. 579, 267 A.2d 533 (1970).

SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:13-2.1 Who may file

Any public employer or recognized or certified public employee exclusive representative, either individually or jointly, may initiate scope of negotiation proceedings by filing with the commission an original and four copies of a petition for scope of negotiations determination, together with proof of service of a copy of such petition upon the other party to the collective negotiations relationship. A copy of each such petition filed shall be retained in a public docket until the case is closed.

19:13-2.2 Contents of petition for scope of negotiations determination¹

(a) A petition for scope of negotiations determination shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person or persons signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." Such petition shall contain the following:

1. The full name, address and telephone number of the public employer who is a party to the collective negotiations relationship;

2. The full name, address and telephone number of the recognized or certified public employee exclusive representative who is a party to the collective negotiations relationship;

3. A clear and concise statement of the matter or matters in dispute concerning which a determination by the commission is sought which shall include a statement of the facts in which the dispute arose;

4. A statement that the dispute has arisen:

i. During the course of collective negotiations, and that one party seeks to negotiate with respect to a matter or matters which the other party contends is not a required subject for collective negotiations; or

ii. With respect to the negotiability of a matter or matters sought to be processed pursuant to a collectively negotiated grievance procedure; or

iii. Other than in subparagraphs i and ii above, with an explanation of the circumstances.

¹ A blank form for filing such a petition will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625.

Case Notes

Pension system transfer issue negotiability referred to Commission. *Policemen's Benevolent Assn. v. Public Employment Relations Commission*, 187 N.J. Super. 202, 453 A.2d 1373 (App.Div.1982), certiorari denied 93 N.J. 269, 460 A.2d 672 (1983).

SUBCHAPTER 3. PROCEDURE

19:13-3.1 "Petitioner" or "respondent"

As used in this subchapter, the term "petitioner" shall refer to the party initiating the proceeding or, in the case of a joint petition, the party contending that the disputed matter is within the scope of collective negotiations; the term "respondent" shall refer to the other party to the proceeding.

19:13-3.2 Intervention

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the commission or its named designee, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The commission or its named designee may be ordered permit intervention to such extent and upon such terms as may be deemed just.

19:13-3.3 Informal conference

An officer of the commission may hold a conference for the purpose of clarifying the issues in dispute, exploring the possibility of voluntary resolution and settlement of the dispute, or for the taking of stipulations of fact.

19:13-3.4 Amendment; withdrawal; dismissal

(a) The chairman of the commission or such other person designated by the commission may permit the petitioner to amend its petition for scope of negotiations determination at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition for scope of negotiations determination shall conform to the provisions of these rules relating to the original petition for scope of negotiations determination.

(b) A petition for scope of negotiations determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal of the petition for scope of negotiations determination at any time subsequent to the filing of the charge and prior to the issuance of the commission's decision. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) In the absence of a notice of withdrawal, the chairman of the commission or such other person designated by the commission may request the petitioner to file such notice. Where it appears to the chairman of the commission or such other person designated by the commission that the petitioner has no further interest in processing its petition for scope of negotiations determination, that individual may, upon appropriate notice, deem the petition for scope of negotiations determination to have been withdrawn. Unless otherwise stated, a withdrawal and dismissal under this subsection is without prejudice.

19:13-3.5 Briefs

(a) The scheduling of the submission of briefs is intended to be consistent with the purposes of scope of negotiations procedures as set forth in N.J.A.C. 19:13-1.1 (Nature of proceedings). Therefore whenever possible the petitioner should file an original and nine copies of its brief, together with proof of service of a copy of such brief upon the respondent, simultaneously with the petition for scope of negotiations determination or as soon thereafter as possible. However, absent the grant of an extension of time for such filing, the petitioner's brief shall be filed within 14 days from the filing of the petition for scope of negotiations determination.

(b) Within 14 days after the service of the petitioner's brief, the respondent shall file with the chairman or such other person designated by the commission an original and nine copies of its brief, together with proof of service of a copy of such brief upon the petitioner.

(c) The petitioner may file with the chairman or such other person designated by the commission an original and nine copies of a reply brief within seven days after the service of the respondent's brief, together with proof of service of a copy of such reply brief upon the respondent. No other briefs shall be served or filed without leave of the chairman or such other person designated by the commission.

(d) The chairman or such other person designated by the commission may grant written requests for extension of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

19:13-3.6 Request for evidentiary hearing

(a) Any party desiring an evidentiary hearing shall file with the chairman or such other person designated by the commission an original and two copies of a written request therefor, together with proof of service of a copy of such requests upon the other party. Such request shall be filed no later than five days from the receipt of respondent's initial brief. Failure to file a timely request for evidentiary hearing shall constitute a waiver of any right to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends are substantial and material disputed factual issues necessitating an evidentiary hearing. Factual allegations not raised shall be deemed to be not in dispute.

(b) Upon a timely filing of such request, the other party shall within seven days from the service of the request file with the chairman or such other person designated by the commission an original and two copies of a written response to the request, together with proof of service of a copy of the response upon the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed not to be in dispute.

(c) The request for an evidentiary hearing and response, together with the petition for scope of negotiations determination, shall constitute the pleadings for the evidentiary hearing.

Case Notes

If scope of negotiability turns on factual dispute, Commission, not arbitrator, should resolve dispute through evidentiary hearings. *Bd. of Ed., Vocational School, Camden Cty. v. CAM/VOC Teachers Assn.*, 183 N.J.Super. 286, 443 A.2d 756 (App.Div.1982).

19:13-3.7 Evidentiary hearings

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to section 6 of this subchapter, it appears to the chairman of the commission or such other person designated by the commission that there exist substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. Evidentiary hearings pursuant to this subchapter shall be conducted by a hearing examiner so designated by the chairman or such other person designated by the commission.

(b) Any such evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and N.J.A.C. 19:14-4.1 through 19:14-8.1 et seq. on unfair practice proceedings, insofar as applicable.

(c) After completion of the evidentiary hearing, or upon the consent of the parties prior to the conclusion of the evidentiary hearing, the hearing examiner shall prepare a recommended report and decision which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made by the commission. The hearing examiner shall file the original thereof with the commission, and shall cause a copy to be served upon the parties. Upon service thereof upon the parties, which shall be complete upon mailing, the case shall be deemed transferred to the commission. The record in the case shall consist of the petition for scope of negotiations determination, the parties' briefs, the request for evidentiary hearing and any statement filed in response thereto, the notice of hearing, the official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's recommended report and decision and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

Case Notes

If scope of negotiability turns on factual dispute, Commission not arbitrator, should resolve dispute through evidentiary hearings. *Bd. of Ed., Vocational School, Camden Cty. v. CAM/VOC Teachers Assn.*, 183 N.J.Super. 286, 443 A.2d 756 (App.Div.1982).

19:13-3.8 Oral argument

Proceedings under this chapter shall be submitted for the commission's consideration without argument, unless argument is requested by one of the parties within seven days after service of the respondents brief or is ordered by the chairman or such other person designated by the commission, and said request is granted by the commission. Such request shall be made by a separate paper, 10 copies of which shall be filed with the commission, together with proof of service of a copy of such request upon the other party. The chairman or such other person designated by the commission shall notify the parties of the assigned argument date, if permission to argue orally is granted. The petitioner shall open and conclude argument. The commission may terminate the argument at any time it deems the issues adequately argued.

19:13-3.9 Final determination

Based upon the parties' submissions and oral argument, if any, or where an evidentiary hearing has been conducted, based upon the record in the case as set forth in subsection (b) of N.J.A.C. 19:13-3.7 (Evidentiary hearings), the commission shall issue and cause to be served upon the parties its findings of fact and conclusions of law, including its determination as to whether the disputed matter is a required, permissive, or illegal subject for collective negotiations and, where appropriate, an order reasonably designed to effectuate the purposes of the act.

Case Notes

Former N.J.A.C. 19:13-3.7 cited. *Ridgefield Park Education Assn. v. Ridgefield Park Bd. of Ed.*, 78 N.J. 144, 393 A.2d 278 (1978).

Negotiable issues (cited as former N.J.A.C. 19:13-3.7). In re: Byram Twp. Bd. of Ed., 152 N.J.Super. 12, 377 A.2d 745 (App.Div.1977).

19:13-3.10 Interim relief

Upon the filing of a petition for scope of negotiations determination or during the pendency of a scope of negotiations proceeding, the petitioner may apply to the chairman of the commission or such other person designated by the commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the scope of negotiations proceeding. The request for specified interim relief shall be governed by the provisions of N.J.A.C. 19:14-9.1 et seq. on unfair practice proceedings, insofar as applicable.

19:13-3.11 Motion for reconsideration

A motion for reconsideration may be filed after the commission decision has been rendered in accordance with the provisions of N.J.A.C. 19:14-8.4 (Motion for reconsideration).