

SUBTITLE F. PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHAPTER 10

DEFINITIONS, SERVICE, CONSTRUCTION

Authority

N.J.S.A. 34:13A-11.

Source and Effective Date

R.1994 d.437, effective July 28, 1994.
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Executive Order No. 66(1978) Expiration Date

Chapter 10, Definitions, Service, Construction, expires on July 28, 1999.

Chapter Historical Note

Chapter 10 became effective with Subchapter 1, Definitions, which was adopted and filed prior to September 1, 1969. Subchapters 2, 3, 4 and 5 were adopted as R.1977 d.272, effective August 2, 1977. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a). Subchapter 6, Rulemaking Petitions Filed by Interested Persons, was adopted as R.1989 d.461, effective September 5, 1989. See: 21 N.J.R. 1505(a), 21 N.J.R. 2808(b).

Pursuant to Executive Order No. 66(1978), Chapter 10 was readopted as R.1994 d.437. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. DEFINITIONS

19:10-1.1 Definitions

The following words and terms, when used in this subtitle, shall have the following meanings unless the context clearly indicates otherwise.

“Act” means the New Jersey Employer-Employee Relations Act, as amended, (N.J.S.A. 34:13A-1 et seq.).

“Arbitration panel” means a roster of arbitrators maintained by the commission.

“Arbitrator” means a member of the arbitration panel chosen in accordance with these rules.

“Certification of representative” means the designation by the commission of an employee organization as the exclusive representative of employees in an appropriate unit.

“Certification of results” means the certification by the commission of the results of an election conducted by the commission in which no employee organization received a majority of the valid ballots cast.

“Chairman” means the full-time member of the Public Employment Relations Commission who is its chief executive officer and administrator and is also the chief executive officer and administrator of the Division of Public Employment Relations.

“Commission” means the New Jersey Public Employment Relations Commission.

“Craft employee” means any employee who is engaged with helpers or apprentices in a manual pursuit requiring the exercise of craft skills which are normally acquired through a long and substantial period of training or a formal apprenticeship and which in their exercise call for a high degree of judgment and manual dexterity, one or both, and for ability to work with a minimum of supervision. The term shall also include an apprentice or helper who works under the direction of a journeyman craftsman and is in a direct line of succession in that craft.

“Director of Arbitration” means that officer of the commission designated to act on behalf of the commission with respect to arbitration procedures contained in N.J.A.C. 19:12 and 19:16.

“Director of Conciliation” means that officer of the commission designated to act on behalf of the commission with respect to those matters related to negotiations impasses contained in N.J.A.C. 19:12 and 19:16.

“Director of Representation” means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to representation procedures contained in N.J.A.C. 19:11.

“Director of Unfair Practices” means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to unfair practice proceedings contained in N.J.A.C. 19:14.

"Election agent" means that officer of the commission designated to conduct elections in accordance with the procedures set forth in N.J.A.C. 19:11.

"Fact-finder" means the commission, any member of the commission or any officer so designated by the commission.

"Fact-finding panel" means a roster of fact-finders maintained by the commission.

"Hearing examiner" means an officer of the commission designated to conduct any unfair practice or scope of negotiations hearings and to issue a recommended report and decision.

"Hearing officer" means an officer of the commission designated to conduct any representation hearing and to issue a report and recommendations.

"Mediation panel" means a roster of mediators maintained by the commission.

"Mediator" means the commission, its members, employees of the commission or any officer so designated by the commission to perform the functions and duties of mediation.

"Officer" means all personnel of the Division of Public Employment Relations or any other individual designated by the commission to act on the commission's behalf. The commission may delegate to such officer all of the powers conferred upon the commission in connection with the discharge of its duty or duties.

"Party" means any person, employee, group of employees, organization or public employer filing a charge, petition, request or application or other document under these rules; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under this act; or any person, organization or public employer whose intervention in a proceeding has been permitted or directed by the commission, or any designated officer.

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

"Recognition" means the written acceptance by a public employer of an employee organization as the exclusive representative of employees in an appropriate unit.

"Representation proceeding" means a procedure under these rules for the purpose of determining the exclusive representative of employees, if any, in an appropriate collective negotiations unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations, including a question concerning the composition of a unit designated for the purpose of collective negotiations.

"Scope of negotiations proceeding" means a procedure under these rules for the purpose of determining whether a matter in dispute is within the scope of collective negotiations.

"Showing of interest" means a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; current dues records; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

"Unfair practice proceeding" means a procedure under these rules for the purpose of determining whether or not anyone has engaged or is engaging in any unfair practice as set forth in N.J.S.A. 34:13A-5.4(a) and (b).

As amended, R.1974 d.56, effective March 7, 1974.
See: 6 N.J.R. 40(b), 6 N.J.R. 159(a).
Amended by R.1994 d.437, effective September 6, 1994.
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).
Public Notice: Receipt of Petition for Rulemaking.
See: 28 N.J.R. 4533(b).
Public Notice: Action on Petition for Rulemaking.
See: 28 N.J.R. 4534(a).
Public Notice: Action on Petition for Rulemaking.
See: 28 N.J.R. 4680(a).

Case Notes

Scope of negotiability issue determination delegated to Chairman. Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J.Super. 71, 469 A.2d 80 (App.Div.1983).

PERC has exclusive unfair practice proceedings jurisdiction. Gallo-way Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 25, 393 A.2d 218 (1978).

Certification of representative; representation proceedings. Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 1, 393 A.2d 207 (1978).

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. SERVICE AND FILING OF PAPERS

19:10-2.1 Time for filing papers; Commission address

(a) In computing any period of time prescribed by or allowed by these rules or by order of the commission or officer conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations.

(b) Regarding additional time after service by mail, whenever a party has the right or is required to do some act or take some action within a prescribed period after service of a notice or other paper, and the notice or paper is served by mail, three days shall be added to the prescribed period, provided, however, that three days shall not be added if any extension of such time may have been granted.

(c) Regarding extensions of time, the commission or officer having authority to dispose of the matter, may, for good cause shown, extend any time prescribed in these rules.

(d) When these rules require the filing of any paper, the original of such document must be received by the commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted. Facsimile transmission will not be accepted as a proper or timely filing.

(e) Any filings or other correspondence sent to the Commission by mail should be addressed to:

Public Employment Relations Commission
PO Box 429
Trenton, New Jersey 08625-0429

(f) Any filings or other correspondence sent to the Commission by courier or in person should be delivered to:

Public Employment Relations Commission
495 West State Street
Trenton, New Jersey 08625-0429

Amended by R.1994 d.437, effective September 6, 1994.
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

19:10-2.2 Form of documents

(a) Documents other than correspondence shall clearly show the title of the proceeding and the docket number, if any.

(b) Except as otherwise provided in these rules, any documents or papers shall be filed with four copies in addition to the original. All matters filed with the commission shall be printed, typed or otherwise legibly duplicated on letter size paper (8½ inch by 11 inch); copies will be accepted only if they are clearly legible.

(c) The original of each document filed shall be signed by an attorney or representative of record for the party, or by the party, or by an officer of the party and shall contain the address and telephone number of the person signing it.

Amended by R.1994 d.437, effective September 6, 1994.
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

19:10-2.3 Service of pleading and other process; proof of service

(a) Notices of hearings, decisions, orders and other process or papers may be served personally or by registered or certified mail and proof of service established by the verified return of the individual serving the same, setting forth the manner of such service or return post office receipt.

(b) Service upon an attorney or representative of record for the party shall constitute service upon the party.

(c) The party or person serving the papers or process shall submit simultaneously to the commission, or the individual conducting the proceeding, a written statement of such service; failure to file a statement of service shall not affect the validity of the service.

Amended by R.1994 d.437, effective September 6, 1994.
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

SUBCHAPTER 3. CONSTRUCTION OF RULES

19:10-3.1 Rules to be liberally construed

(a) Except as stated in (c) below, whenever the commission or a designated officer finds that unusual circumstances or good cause exists and that strict compliance with the terms of these rules will work an injustice or unfairness, the commission or such officer shall construe these rules liberal-

ly to prevent injustices and to effectuate the purposes of the act (N.J.S.A. 34:13A-1 et seq.).

(b) When an act is required or allowed to be done at or within a specified time, the commission may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the act (N.J.S.A. 34:13A-1 et seq.).

(c) In accordance with N.J.A.C. 1:1-1.3, the burden of proof shall not be relaxed.

Amended by R.1994 d.437, effective September 6, 1994.
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

19:10-3.2 Application of rules

Any valid action by parties prior to the effective date of the rules will not be held invalid because of a failure to comply with the procedural requirements set forth herein.

SUBCHAPTER 4. DELEGATION OF AUTHORITY

19:10-4.1 Delegation of authority

When in these rules an act is required or allowed to be done by a specific officer of the commission, it shall be understood that the specified officer acts as the designated officer of the commission and has all the powers necessary to permit the discharge of the duty or duties delegated. However, the commission at all times retains the authority to designate itself or some other officer of the commission to perform that function in a particular case or as circumstances may require.

SUBCHAPTER 5. DESCRIPTION OF ORGANIZATION

19:10-5.1 Description of organization

(a) The Division of Public Employment Relations is the administrative agency established to implement and administer the provisions of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq.) concerning employer-employee relations in public employment (N.J.S.A. 34:13A-5.1). The New Jersey Public Employment Relations Commission is the body established within the division which has been granted the powers and duties by the act (N.J.S.A. 34:13A-5.2). The commission is to consist of seven members to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, two shall be representatives of public employers, two shall be representatives of public employee organizations and three shall be representatives of the public. One of the public members is appointed as the full-time chairman and is the chief executive officer of the commission and the division (N.J.S.A. 34:13A-5.2).

(b) The staff of the commission consists of the personnel of the Division of the Public Employment Relations, all of whom have been designated officers of the commission (N.J.A.C. 19:10-1.1). The division is divided into three general sections—impasses, representation and unfair practices, which correspond to the three main areas of responsibility delegated to the commission by the act. (See N.J.S.A. 34:13A-6(b); N.J.S.A. 34:13A-6(d); and N.J.S.A. 34:13A-5.4(c), respectively.) The commission has designated a staff member of the division to be the director of the particular section of the division which administers that area of responsibility and has delegated to that officer the powers conferred on the commission in connection with the discharge of the duty or duties delegated as set forth in the appropriate chapters of these rules. (See N.J.A.C. 19:10-1.1 for the definition of Director of Arbitration; Director of Conciliation; Director of Representation; and Director of Unfair Practices. An additional area of statutory responsibility, scope of negotiations proceedings (N.J.S.A. 34:13A-5.4(d)), is administered under the direct supervision of the chairman.

(c) The staff of the commission also includes a full-time general counsel and one or more deputies who render legal advice with respect to commission matters, and represent the commission in judicial proceedings pursuant to special counsel appointments under N.J.S.A. 52:17A-13. Additionally, the chairman of the commission is assisted in the performance of his or her duties, particularly in the area of scope of negotiations proceedings, by an individual designated by the commission as the special assistant to the chairman.

(d) The division, including the commission, is located in Trenton and the public may obtain information with regard to the functions and proceedings of the commission at the offices of the commission or by writing to the New Jersey Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

Amended by R.1994 d.437, effective September 6, 1994.
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Case Notes

Scope of negotiability issue determination delegated to Chairman. *Atlantic Highlands v. Atlantic Highlands PBA Local 242*, 192 N.J.Super. 71, 469 A.2d 80 (App.Div.1983).

General Counsel appointed by Attorney General. *Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries*, 78 N.J. 25, 393 A.2d 218 (1978).

SUBCHAPTER 6. RULEMAKING PETITIONS FILED BY INTERESTED PERSONS

19:10-6.1 Rulemaking petition procedures

(a) Any interested person may petition the Commission to make, amend or repeal any rule. The petition must be written and signed by the petitioner.

(b) The petition shall state the following clearly and concisely:

1. The name of the person making the request;
2. That person's interest in the request, including any relevant organizational affiliation;
3. The substance or nature of the rulemaking requested;
4. The proposed text of the rule;
5. The reasons for the request;
6. The statutory authority for the Commission to take the requested action; and
7. Any existing State or Federal law or regulation which may be pertinent.

(c) Requests shall be addressed to:

Chairman
Public Employment Relations Commission
PO Box 429
Trenton, NJ 08625-0429

(d) Within 15 days of receiving the petition, the Commission shall file with the Office of Administrative Law the notice of petition required by N.J.A.C. 1:30-3.6(a).

(e) The petition shall be provided to the Commission at the next monthly meeting after filing.

(f) Within 30 days of receiving that petition, the Commission shall mail to the petitioner, and file with the Office of Administrative Law for publication, the notice of action on the petition required by N.J.S.A. 52:14B-4(f) and by N.J.A.C. 1:30-3.6(b) and (c).