

2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;

3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or

4. An important Commission rule or policy should be reconsidered.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-8.3 Contents of request for review; timely presentment of facts**

(a) A request for review must be a self-contained document enabling the Commission or Chairman to rule on the basis of its contents.

(b) A request must contain a summary of all evidence and rulings bearing on the issues, together with page citations from the official transcript and a summary of argument.

(c) A request may not raise any issue or allege any facts not timely presented to the Director of Representation or the hearing officer, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

(d) A request for review must specify both the grounds supporting review and address the merits of the issues for which relief is sought.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).  
Amended by R.2000 d.320, effective August 7, 2000.  
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).  
Added (d).

#### **19:11-8.4 Statement in opposition to a request for review**

Within seven days of service on it of a request for review, any party may file with the Commission an original and nine copies of a statement in opposition to the request, together with proof of service of a copy on all other parties.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-8.5 Waiver of right to request review**

(a) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any Commission proceeding, any issue which was or could have been raised in the proceeding.

(b) A Commission order disposing of a case in its entirety, or a Commission order denying a request for review of a decision, order or certification issued by the Director of

Representation disposing of a case in its entirety shall constitute the final administrative determination of the Commission.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-8.6 Stay of decision; filing of briefs with the Commission; Commission consideration**

(a) The granting of a request for review shall not stay the Director of Representation's decision unless otherwise ordered by the Commission.

(b) Where review has been granted, the Commission will consider the entire record in the light of the grounds relied on for review.

(c) Any request for review may be withdrawn with the permission of the Commission before issuance of a Commission decision.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).  
Amended by R.2000 d.320, effective August 7, 2000.  
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

Deleted former (b) and (c); and recodified former (d) and (e) as (b) and (c).

#### **19:11-8.7 Decision by the Commission**

The Commission shall proceed upon the record to decide the issues referred to it or to review the decision of the Director of Representation. It shall affirm or reverse the decision of the Director of Representation, in whole or in part, or make such other disposition of the matter as it deems appropriate.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **SUBCHAPTER 9. TRANSFER TO THE COMMISSION; RECONSIDERATION**

#### **19:11-9.1 Transfer to Commission on its own motion**

The Commission may, at any time, on its own motion, transfer a case to itself for appropriate action.

Recodified from 19:11-8.8 and amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-9.2 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. 19:11-7.3 (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.

New Rule, R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### 19:11-9.3 Motion for Commission reconsideration

After a Commission decision has been issued, a party may move for reconsideration. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. 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. 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. 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.

Recodified from 19:11-8.9 and amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

## SUBCHAPTER 10. ELECTION PROCEDURES

### 19:11-10.1 Eligibility list

(a) In all representation elections conducted pursuant to this subchapter, unless otherwise directed by the Director of Representation, the public employer is required to file simultaneously with the Director of Representation and with the employee organization(s) an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters and their last known mailing addresses and job titles. In addition, the public employer shall file a statement of service with the Director of Representation. In order to be timely filed, the eligibility list must be received by the Director of Representation no later than 10 days before the date of the election. The Director of Representation shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

(b) Failure to comply with the requirements of this section may be grounds for setting aside the election whenever proper objections are filed pursuant to N.J.A.C. 19:11-10.3(h). Additionally, the Director of Representation may, in the exercise of reasonable discretion, issue a subpoena or direction requiring the production of the eligibility list, and in the event of noncompliance, may institute appropriate enforcement proceedings pursuant to court rules.

(c) Actions of the Director of Representation pursuant to this section shall not be reviewable under N.J.A.C. 19:11-8.1 (Request for review).

New Rule, R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).  
Amended by R.2000 d.320, effective August 7, 2000.  
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).  
In (b), substituted "may" for "shall" in the first sentence.

### 19:11-10.2 Notices of election; improper use of notices

(a) Notices of election shall be furnished by the Director of Representation to the public employer for posting where notices are normally posted affecting the employees in the unit involved in the election. Such notices shall set forth the details and procedures for an election, the appropriate unit, the eligibility period, and the date(s), hours and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the Commission's official ballot which suggests either directly or indirectly to employees that the Commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

Recodified from 19:11-9.1 and amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### 19:11-10.3 Election procedures

(a) All elections shall be by secret ballot and shall be conducted under the supervision and direction of a Commission agent. The secret ballot may be accomplished manually or by the use of a mail ballot or by a mixed manual-mail ballot system, as determined by the Director of Representation.

(b) Whenever two or more employee organizations are included as choices in an election, any employee organization may request the Director of Representation to remove its name from the ballot. The request must be received not later than five days before the date of the election or the mailing of ballots to the eligible voters. Such request shall be subject to the approval of the Director of Representation whose decision shall be final. In a proceeding involving a public employer-filed petition or a petition for decertification, the employee organization that is certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Director of Representation, disclaiming any representation interest among the employees in the unit.

(c) The eligible voters shall be those employees included within the unit described in the agreement for consent election or as determined by the Commission or Director of Representation, who were employed during the payroll period for eligibility, including employees who did not work during that period because they were ill, or on vacation, or temporarily laid off, including those in the military service, and those on leaves of absence. In a manual ballot election, employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are those employees who have retired or quit or were discharged for cause prior to the commencement of the election and who have not been rehired or reinstated before the counting of ballots.

(d) Unless otherwise approved by the Director of Representation or by the election agent, all observers shall be non-supervisory employees of the public employer. Each party shall be allowed an equal number of observers. Observers shall:

1. Act as checkers at the voting place and in the counting of the ballots;
2. Assist in the identification of voters;
3. Challenge the eligibility of voters and ballots; and
4. Otherwise assist the election agent.

(e) An observer or the election agent may challenge the eligibility of any person to participate in the election. Such challenge must be asserted before a person casts a ballot and shall be recorded in writing specifying the name of the challenged person, the name of the challenging party, and the reason for the challenge. All persons whose names do not appear on the eligibility list maintained by the Commission election agent shall automatically be challenged by the election agent. A challenged voter shall be permitted to vote and the ballot shall be sealed in an appropriate challenge ballot envelope after the voter marks the ballot, which sealed envelope shall be dropped in the ballot box. At the conclusion of the balloting, the parties may be provided the opportunity to resolve the challenged ballots, subject to the approval of the election agent.

(f) The election agent shall have responsibility for the conduct of the election, and may establish any procedures the agent deems necessary to facilitate the election process and preserve the integrity of the secret ballot.

(g) The ballots shall be counted at a location designated by the Director of Representation or the election agent before the election. Any person may attend and witness the tally subject to such limitation as the Director of Representation or the election agent may prescribe. After the election, the Director of Representation shall furnish the parties with a tally of ballots.

(h) Within five days after the tally of ballots has been furnished, a party may file with the Director of Representation an original and four copies of objections to the conduct of the election or conduct affecting the results of the election, together with proof of service of a copy on all other parties. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A party filing objections must furnish evidence, such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The objecting party shall bear the burden of proof regarding all matters alleged in the objections and shall produce the specific evidence supporting its claim of irregularity in the election process. Failure to submit such evidence may result in the immediate dismissal of the objections.

(i) If the party filing objections has furnished sufficient evidence to support a prima facie case, the Director of Representation shall conduct an investigation into the objections.

(j) A hearing may be conducted where an administrative investigation into the objections reveals that substantial and material factual issues have been placed in dispute which, in the exercise of the reasonable discretion of the Director of Representation, may more appropriately be resolved after a hearing. After the investigation and any hearing has been completed, an administrative determination will be made either setting aside the election and directing a new one, or dismissing the objections and issuing the appropriate certification.

(k) If challenged ballots are sufficient in number to affect the results of an election, the Director of Representation shall investigate such challenges. All parties to the election shall present documentary and other evidence, as well as statements of position, relating to the challenged ballots. After the administrative processing of the challenged ballots and any hearing has been completed, the Director of Representation shall make an administrative determination which shall resolve the challenges and contain the appropriate administrative direction.

(l) If no objections are filed within five days after the tally of ballots has been furnished, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held, the Director of Representation shall issue to the parties a certification of results of the election, or a certification of representative, where appropriate.

Recodified from 19:11-9.2 and amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (c), inserted “, and those on leaves of absence” at the end of the first sentence, and rewrote the third sentence.

Petition for Rulemaking.

See: 33 N.J.R. 136(b).

#### 19:11-10.4 Runoff elections

(a) An election with three or more choices on the ballot (for example, at least two representatives and “no representative”) that results in no choice receiving a majority of the valid ballots cast will be considered an inconclusive election. In such cases, the Director of Representation shall order a runoff election.

1. Objections, timely filed, shall be disposed of before a runoff election is ordered.

2. The ballot for a runoff election shall provide for a choice between the two choices receiving the largest number of votes in the prior election.

3. Employees who were eligible to vote in the prior election and who continue to be included in the voting

unit on the date of the runoff election shall be eligible to vote in the runoff election.

4. The runoff election shall be conducted in accordance with N.J.A.C. 19:11-10.3 (Election procedures), as applicable.

(b) Only one runoff election shall be held pursuant to this section, but a rerun election may be ordered pursuant to N.J.A.C. 19:11-10.5.

Recodified from 19:11-9.3 and amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### 19:11-10.5 Rerun elections

(a) An election will be declared a nullity when objections are sustained pursuant to N.J.A.C. 19:11-10.3. A nullity shall also be declared where an election with three or more ballot choices is inconclusive because either all choices received an equal number of votes or two choices received an equal number of votes and a third choice received a higher number of votes that is less than a majority. If an election is declared a nullity, the Director of Representation shall order a rerun election.

1. The ballot for a rerun election shall have the same choices as provided on the ballot in the prior election.

2. Employees who are eligible to vote pursuant to N.J.A.C. 19:11-10.3(c) shall be eligible to vote in the rerun election.

3. The rerun election shall be conducted in accordance with N.J.A.C. 19:11-10.3 (Election procedures) as applicable.

(b) The scheduling of further elections pursuant to this section shall be at the discretion of the Director of Representation.

Recodified from 19:11-9.4 and amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### 19:11-10.6 No majority representative

In a rerun election, if no ballot choice receives a majority of the valid ballots cast, and there are no unresolved challenged ballots, and all eligible voters have cast ballots, then the Director of Representation may certify the results of the election indicating that no exclusive representative has been chosen.

New Rule, R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### 19:11-10.7 Determination of exclusive representative

The exclusive representative shall be determined by a majority of the valid ballots cast in the election.

Recodified from 19:11-9.5 by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).