

CHAPTER 14**UNFAIR PRACTICE PROCEEDINGS****Authority**

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

Source and Effective Date

R.2010 d.278, effective November 3, 2010.
See: 42 N.J.R. 1693(a), 42 N.J.R. 2968(c).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 14, Unfair Practice Proceedings, expires on November 3, 2017. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 14, Unfair Practice Proceedings, was filed and became effective prior to September 1, 1969.

Subchapter 9, Interim Relief, was adopted as R.1975 d.90, effective April 1, 1975. See: 7 N.J.R. 242(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Unfair Practice Proceedings, was readopted as R.1995 d.489, effective August 8, 1995. See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Unfair Practice Proceedings, was readopted as R.2000 d.321, effective July 14, 2000. See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Chapter 14, Unfair Practice Proceedings, was readopted as R.2005 d.249, effective June 30, 2005. See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).

Chapter 14, Unfair Practice Proceedings, was readopted as R.2010 d.278, effective November 3, 2010. See: Source and Effective Date.

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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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Case Notes

Resident and taxpayer lacked standing to bring action to enforce clause in collective negotiation agreement with police officers' union regarding pay of superior officers; taxpayer was not party to agreement,

taxpayer was seeking to compel expenditure of public funds, and responsibility for labor relations matters was better left to Public Employment Relations Commission. *Loigman v. Township Committee of the Tp. of Middletown*, 297 N.J.Super. 287, 687 A.2d 1091 (A.D.1997).

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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

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 and telephone number of the public employer, public employee or public employee organization making the charge (the charging party);
2. The full name, 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>.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).
Amended by R.2000 d.321, effective August 7, 2000.
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).
Rewrote (a), added (b).

Case Notes

Unfair practice charge. *Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries*, 78 N.J. 25, 393 A.2d 218 (1978).

19:14-1.4 Number of copies; service

The charging party shall file an original and four copies 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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).
Amended by R.2005 d.249, effective August 1, 2005.
See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).
Substituted "four" for "nine".

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 Chairman. Unless otherwise provided by the Chairman 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 under 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 two copies 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 two copies 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.

As amended, R.1975 d.89, eff. April 1, 1975.
See: 7 N.J.R. 243(a).
Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

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.

Amended by R.1990 d.406, effective August 20, 1990.
See: 20 N.J.R. 1910(a), 22 N.J.R. 2531(b).

Party ordering a transcript required to have reporter service file a copy with the Commission.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Rewrote section.

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 nine copies 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 nine copies of a brief in support of the exceptions. Any party may, within the same period, file an original and nine copies 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 under 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 nine copies 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 nine copies 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 nine copies 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.

Amended by R.1990 d.406, effective August 20, 1990.

See: 22 N.J.R. 1910(a), 22 N.J.R. 2531(b).

Party ordering a transcript required to have reporter service file a copy with the Commission.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Rewrote (b).

Case Notes

Failure to except to hearing examiner's report does not constitute waiver of appeal (decided under former regulation). In re: Maywood Bd. of Ed., 168 N.J.Super. 45, 401 A.2d 711 (App.Div.1979), certification denied 81 N.J. 292, 405 A.2d 836 (1979).

SUBCHAPTER 8. PROCEDURE BEFORE THE COMMISSION**19:14-8.1 Action by the Commission; decision in the absence of exceptions**

(a) 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 Chairman 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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Case Notes

Community and conflict of interest findings required to settle Director inclusion in negotiating unit issue. Bd. of Ed., West Orange, Essex Cty. v. Wilton, 57 N.J. 404, 273 A.2d 44 (1971).

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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

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. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. 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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).
Amended by R.2000 d.321, effective August 7, 2000.
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).
Rewrote section.
Amended by R.2005 d.249, effective August 1, 2005.
See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).
Added the fifth and sixth sentences.

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. 19:13-3.10. Any order issued pursuant to this subchapter is interlocutory.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).
Amended by R.2003 d.64, effective February 3, 2003.
See: 34 N.J.R. 3076(a), 35 N.J.R. 631(a).
Added last sentence.

19:14-9.2 When to file; form

(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 Chairman 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 be by 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 order to show cause shall be returnable at such time and place as the Chairman or such other person designated by the Commission shall fix in the order. The order to show cause shall not include any temporary restraints except as permitted by and pursuant to (e) and (f) below.

(d) The charging party shall serve the 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 (Service of pleading and other process; proof of service), unless the Chairman or the Commission's designee orders a shorter or longer time or other manner of service. If the 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.

(e) The 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 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.

(f) 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 or its designee or the Chairman.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

19:14-9.3 Briefs

(a) By no later than five days before the return date of the order to show cause, unless otherwise ordered by the Chairman or the Commission's designee, the charging party or petitioner shall file an original and two copies 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 under the applicable legal standards.

(b) By no later than two days before the return date, unless otherwise ordered by the Chairman or the Commission's designee, the respondent shall file an original and two copies 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.

(c) No further briefs shall be filed without leave of the Chairman or the Commission's designee. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).
Amended by R.2005 d.249, effective August 1, 2005.
See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).
Added (c).

19:14-9.4 Hearing on return date

A hearing shall be conducted on the return date of the order to show cause and on the return date of the respondent's motion to dissolve or modify the temporary restraints, unless

otherwise ordered by the Chairman or the Commission's designee. The parties shall have the right to argue orally and the hearer may permit testimony. The Chairman or the Commission's designee shall conduct such hearings.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

19:14-9.5 Decision; enforcement

(a) An interim relief decision 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.

(b) Pursuant to N.J.S.A. 34:13A-5.4(f) and Court rules, the Commission shall have the power to apply to the Superior Court for an appropriate order enforcing any order issued under this subchapter.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).
Amended by R.2003 d.64, effective February 3, 2003.
See: 34 N.J.R. 3076(a), 35 N.J.R. 631(a).

In (a), substituted "An interim relief" for "A final"; rewrote (b).

Case Notes

No authority to enjoin strikes as interim relief measure; acceptable interim relief measures (cited as former N.J.A.C. 19:14-9.1). Bd. of Ed. of Asbury Park v. Asbury Park Education Assn., 145 N.J. Super. 495, 368 A.2d 396 (Ch.Div.1976) affirmed in part, appeal dismissed in part 155 N.J. Super. 76, 382 A.2d 392 (App.Div.1977).

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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Case Notes

Responsibility to determine bona fide request for negotiations. Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 1, 393 A.2d 207 (1978).

19:14-10.2 Procedures for compliance and enforcement

(a) The Chairman 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.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Case Notes

Enforcement action discretionary; judicial enforcement assistance permitted; judicial affirmation of decision not required prior to enforcement action. *Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries*, 78 N.J. 25, 393 A.2d 218 (1978).

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 Chairman 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 two copies of such request shall be filed with the Chairman, 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 two copies of the response and supporting submissions shall be filed with the Chairman, together with proof of service of copies of such documents on all other parties.

Amended by R.1995 d.489, effective September 5, 1995.
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Case Notes

Successful charging party may only request Commission seek judicial order enforcement. *Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries*, 78 N.J. 25, 393 A.2d 218 (1978).