

CHAPTER 18

CONTESTED TRANSFER DETERMINATIONS

Authority

N.J.S.A. 34:13A-11 and 34:13A-27.

Source and Effective Date

R.2005 d.140, effective April 8, 2005.
See: 37 N.J.R. 41(a), 37 N.J.R. 1539(a).

Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from April 8, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 42 N.J.R. 1347(a).

Chapter Historical Note

Pursuant to Executive Order No. 66(1978), Chapter 18, Contested Transfer Determinations, expired on May 21, 1995.

Chapter 18, Contested Transfer Determinations, was adopted as new rules by R.1995 d.316, effective June 19, 1995. See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

Pursuant to Executive Order No. 66(1978), Chapter 18, Contested Transfer Determinations, was readopted as R.2000 d.221, effective April 28, 2000. See: 31 N.J.R. 3939(a), 32 N.J.R. 2110(c).

Chapter 18, Contested Transfer Determinations, was readopted as R.2005 d.140, effective April 8, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:18-1.1 Nature of proceedings

N.J.S.A. 34:13A-22 et seq. (P.L. 1989, c.269, effective January 4, 1990) provides that no employer, as defined in N.J.S.A. 34:13A-22, shall transfer an employee between worksites for disciplinary reasons. It further provides that the Commission shall determine whether the basis for a transfer between worksites is predominately disciplinary. The procedures in this chapter are intended to avoid protracted administrative litigation. Contested transfer proceedings will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which these procedures are intended to accommodate.

SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:18-2.1 Who may file

Any employee, as defined in N.J.S.A. 34:13A-22, or the employee's majority representative may initiate a contested transfer proceeding by filing with the Commission, an original and nine copies of a petition for contested transfer determination together with proof of service of a copy of the petition on the employer. A copy of each petition filed shall be retained in a public docket until the case is closed.

19:18-2.2 Contents of petition for contested transfer determination

(a) A petition¹ shall be in writing and the party or representative filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

(b) Such petition shall contain the following:

1. The full name, address and telephone number of the petitioner;
2. The full name, address and telephone number of the affected employee if the petitioner is an employee organization;
3. The full name, address and telephone number of the employer who has notified the employee of a transfer;
4. The date the employee was notified of the transfer;
5. The name and address of:
 - i. The employee's work site before the transfer; and

ii. The employee's work site after the transfer.

6. A statement of the specific factual allegations supporting the contention that the basis for the transfer between worksites is predominately disciplinary;

7. All documents and affidavits supporting the petitioner's factual allegations; and

8. A list of any other actions before the Commission or any other administrative agency, arbitrator or court, which the petitioner knows about and which involve the same or similar issues.

¹Petition forms will be supplied upon request. Address such requests to: Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from the Commission's website: www.state.nj.us/perc.

Amended by R.1995 d.316, effective June 19, 1995.

See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

Amended by R.2005 d.140, effective May 2, 2005.

See: 37 N.J.R. 41(a), 37 N.J.R. 1539(a).

In (b), added a new 5 and recodified former 5 through 7 as 6 through 8; in the footnote, added the second sentence.

19:18-2.3 Timeliness of petitions

The petitioner shall file a petition no later than the 90th day from the date of receipt of a notice of transfer.

New Rule, R.1995 d.316, effective June 19, 1995.

See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

SUBCHAPTER 3. PROCEDURE

19:18-3.1 Intervention

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the Commission, 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 Chairman or such other Commission designee, in his or her discretion, may permit intervention to such extent and upon such terms as may be deemed just.

19:18-3.2 Informal conference

A Commission staff agent may hold a conference to clarify the issues in dispute, explore the possibility of settlement, or take stipulations of fact.

19:18-3.3 Amendment; withdrawal; dismissal; consolidation

(a) The Chairman or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the

provisions of these rules relating to the original petition for contested transfer determination.

(b) A petition for contested transfer determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal at any time before service of the respondent's answer. After service of the answer, a petition may be withdrawn only with the consent of the Chairman or such other Commission designee. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) The Chairman or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of lack of jurisdiction, insufficient cause for determination, failure to prosecute or other good reason.

(d) The Chairman or such other Commission designee, in his or her discretion, may consolidate any separate proceedings, or sever any consolidated proceedings whenever necessary to avoid unnecessary costs or delay or to effectuate the purposes of the Act.

19:18-3.4 Answer

(a) Within 20 days from the service of the petition, the respondent shall file an answer.

(b) The answer shall specifically admit, deny or explain each of the allegations set forth in the petition, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

(c) All allegations in the petition, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(d) The answer shall include a specific factual rebuttal to the petition, accompanied by all supporting documents and affidavits.

(e) The answer shall also include a statement of facts constituting any affirmative defense.

(f) 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."

Amended by R.2005 d.140, effective May 2, 2005.

See: 37 N.J.R. 41(a), 37 N.J.R. 1539(a).

Rewrote (f).

19:18-3.5 Where to file; number of copies; service

An original and nine copies of the answer shall be filed with the Commission together with proof of service of a copy of the answer on the petitioner and any intervenor.