



(STATE OF) NEW JERSEY.
 (2) PUBLIC EMPLOYMENT RELATIONS COMMISSION.

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[DRAFT RULES AND REGULATIONS UNDER
 L. 1974, c. 123, EFFECTIVE JANUARY 20, 1975]

December 31, 1974

SPECIAL NOTICE

TO: All Interested Parties

FROM: David A. Wallace, Counsel
 Public Employment Relations Commission

On January 20, 1975 various amendments to the New Jersey Employer-Employee Relations Act will go into effect. Commencing on that date, among other things:

1. The Public Employment Relations Commission will have the authority to prevent a public employer or a public employee organization from engaging in an "unfair practice".
2. The Commission will have the authority to determine whether or not a disputed subject is "within the scope of collective negotiations".
3. The Commission must develop rules to regulate the time that negotiations are to commence, as well as the time that mediation and fact-finding procedures are to be instituted, so that the parties will have full opportunity to reach an agreement before the public employer's "required budget submission date".

Attached to this Notice are draft rules and regulations concerning the above subjects, which the Commission intends to utilize on a temporary emergency basis commencing January 20, 1975, pending the adoption of final rules in accordance with the technical requirements of the Administrative Procedure Act.

Prior to utilizing the attached drafts even on a solely emergency basis, however, the Commission deems it in the best interests of all concerned parties to first seek the input of those public employers, public employee organizations, and

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others, who will be subject to the procedures contemplated by the Commission. Accordingly, an INFORMAL PUBLIC HEARING concerning the attached drafts has been scheduled for MONDAY, JANUARY 13, 1975, commencing at 10:00 A.M., to be held in ROOM 1308, LABOR AND INDUSTRY BUILDING, JOHN FITCH PLAZA, TRENTON, NEW JERSEY. All interested parties are urged to attend and to express their views. Persons desiring to submit written comments may present them at the hearing, or may mail them to the Commission in advance of the hearing (mail to the Commission at P.O. Box 2209, Trenton, New Jersey 08625). In order to schedule an order of appearances that will best accommodate the speakers' preferences, ALL PERSONS DESIRING TO SPEAK are strongly urged to NOTIFY THE COMMISSION IMMEDIATELY either by telephone /(609) 292-6780/ or in writing at the above mailing address, indicating the subject-matter(s) to which comments will be addressed, and preferences as to scheduling.

A transcript of the proceedings will be taken. Upon consideration of the oral and written views expressed by interested parties, the Commission will finalize its emergency rules. It is anticipated that an appropriate notice will be submitted for publication in the February, 1975 issue of the New Jersey Register.

CHAPTER 12

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CHAPTER 12

NEGOTIATIONS AND IMPASSE PROCEDURES

SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:12-1.1 Purpose of Procedures

N.J.S.A. 34:13A-5.4(e) provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates. Accordingly, the provisions of this Chapter establishing a time-table for the commencement of negotiations, mediation and fact-finding are intended to create mandatory standards with respect to public sector negotiations utilizing the public employer's required budget submission date as a definitive reference point. The provisions of this Chapter will also accommodate the parties to a collective negotiations relationship who have established an earlier negotiations time-table by mutual agreement.

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:12-2.1 Commencement of Negotiations

The parties to a collective negotiations agreement shall commence negotiations for a successor agreement no later than 120 days prior to the public employer's required budget submission date in the final year of the agreement, or in the case of an agreed re-opener provision which may be implemented prior to the final year of the agreement, no later than 120 days prior to the budget submission date in such prior contract year. The foregoing provision shall not preclude the parties from agreeing to the automatic renewal of the collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement, nor shall it preclude the parties from establishing by mutual agreement an earlier date for the commencement of negotiations. Any different or contrary provision in the parties' agreement notwithstanding, the party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this Section or any earlier commencement date agreed to by the parties, notify the other party in writing of its intention to commence negotiations on such date, and shall simultaneously file with the Commission a copy of such notification. Nothing in this Section shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

SUBCHAPTER 3. MEDIATION

19:12-3.1 Initiation of Mediation

(a) Whenever the parties to collective negotiations which have or should have commenced pursuant to the provisions of N.J.A.C. 19:12-2.1 (Commencement of Negotiations) shall fail to achieve an agreement by 90 days prior to the public employer's required budget submission date, and neither party shall have requested the appointment of a mediator pursuant to the provisions of subsection (b) below, the Commission or its named designee shall appoint a mediator.

(b) In other circumstances, in the event that a public employer and a certified or recognized employee representative have failed to achieve an agreement through direct negotiation, either the public employer, the employee representative, or the parties jointly, may notify the Commission or its named designee, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed, and shall be signed and dated and shall contain the following information:

(1) The name, address and telephone number of the public employer who is a party to the collective negotiations and its representative to be contacted and his title, if known;

(2) The name, address and telephone number of the employee representative and its representative to be contacted and his title, if known;

* A blank form for filing such notification and request will be supplied upon request. Address requests to: Public Employment Relations Commission, Trenton, New Jersey 08625.

- (3) A description of the collective negotiations unit including the approximate number of employees in the unit;
- (4) The dates and duration of negotiation sessions;
- (5) The termination date of the current agreement, if any;
- (6) The public employer's required budget submission date;
- (7) Whether the request is a joint request; and
- (8) A detailed statement of the facts giving rise to the request, including all issues in dispute, and a statement that the parties have failed to achieve an agreement.

Upon receipt of the aforementioned notification and request, the Commission or its named designee shall appoint a mediator if it is determined after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach agreement through direct negotiation, and that an impasse does in fact exist in negotiations concerning the terms and conditions of employment of the affected employees.

19:12-3.2 Appointment of Mediator

The mediator appointed pursuant to this Subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation panel, or any other mediator, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Commission or its named designee shall have the express reserved authority to appoint a mediator without regard

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to the parties' joint request if such is deemed to best effectuate the purposes of the Act. If an appointed mediator is unable to serve or if for any reason he cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this Subchapter shall not be reviewable under Chapter 17 of these rules (Request for Review).

19:12-3.3 Mediator's Function

The function of a mediator shall be to assist all parties to come to a voluntary agreement. A mediator may hold separate or joint conferences as he deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties. In the absence of an agreement between the parties, the mediator, at any time after his appointment, may recommend to the Commission or its named designee that the invocation of fact-finding would be useful in resolving the impasse, and that fact-finding procedures should be invoked.

19:12-3.4 Mediator's Confidentiality

Information disclosed by a party to a mediator in the performance of his mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him, on behalf of any party to any cause pending in any type of proceeding, including but not limited to

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unfair practice proceedings under Chapter 14 of these rules.

19:12-3.5 Mediator's Report

The mediator shall submit one or more confidential reports to the Commission or its named designee which shall, in general, be limited to the following:

- (a) A statement of the dates and duration of the meetings which have been held and their participants;
- (b) A brief description of the unresolved issues which existed at the beginning of the mediation effort;
- (c) A statement of the issues which have been resolved through mediation;
- (d) A statement of issues which are still unresolved, if any;
- (e) A recommendation as to whether or not the Commission or its named designee should invoke fact-finding with recommendations for settlement.

The confidential report(s) submitted by the mediator may be utilized by the Commission or its named designee in considering whether or not fact-finding with recommendations for settlement should be invoked. Such reports shall not be considered in any other proceedings before the Commission or be made available or disclosed to any party or any other tribunal.

SUBCHAPTER 4. FACT-FINDING

19:12-4.1 Initiation of Fact-Finding

(a) Whenever the parties to collective negotiations which have or should have commenced pursuant to the provisions of N.J.A.C. 19:12-2.1 (Commencement of Negotiations) shall fail to achieve an agreement by 60 days prior to the public employer's required budget submission date, and neither party shall have requested the appointment of a fact-finder pursuant to the provisions of subsection (b) below, or the mediator appointed, if any, shall not have previously recommended the invocation of fact-finding, the Commission or its named designee shall invoke fact-finding with recommendations for settlement and appoint a fact-finder.

(b) In other circumstances, after the appointment of a mediator and upon his report of a failure to resolve the impasse by mediation, the Commission or its named designee may invoke fact-finding with recommendations for settlement and appoint a fact-finder. The public employer, the employee representative, or the parties jointly, may request the Commission or its named designee, in writing, to invoke fact-finding. An original and four copies of such request shall be filed, and shall be signed and dated and shall contain the following information:

(1) The name, address and telephone number of the public employer who is a party to the collective negotiations, its representative to be contacted and his title, if known;

(2) The name, address and telephone number of the employee representative, its representative to be contacted and his

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title, if known;

(3) The name of the mediator;

(4) The number and duration of mediation sessions;

(5) The date of the last mediation effort;

(6) The unresolved issues to be submitted to a
fact-finder; and

(7) A statement that the parties have failed to
achieve an agreement.

19:12-4.2 Appointment of Fact-Finder

(a) Upon the invocation of fact-finding pursuant to this Subchapter, the Commission or its named designee shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which he objects, indicate the order of his preference regarding the remaining names, and communicate the foregoing to the Commission or its named designee no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not so responded within the time specified, all names submitted shall be deemed acceptable. The Commission or its named designee shall appoint a fact-finder giving recognition to the parties' preference. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding the foregoing provisions, the Commission or its named designee shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties, whenever the same is deemed to best effectuate the

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purposes of the Act.

(b) The fact-finder appointed pursuant to this Subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's fact-finding panel, or any other fact-finder, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement and/or to make findings of fact and recommend the terms of settlement. If an appointed fact-finder is unable to serve or if for any reason he cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this Subchapter shall not be reviewable under Chapter 17 of these rules (Request for Review).

19:12-4.3 Fact-Finder's Function

(a) The appointed fact-finder shall, as soon as possible after his appointment, meet with the parties or their representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties and the fact-finder agree to have them public, and take such other steps as he deems appropriate.

(b) For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum and to require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before him.

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(c) If the impasse is not resolved prior thereto, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible, except that whenever the fact-finding involves parties to collective negotiations which have or should have commenced pursuant to the provisions of N.J.A.C. 19:12-2.1 (Commencement of Negotiations), the fact-finder shall make findings of fact and recommend the terms of settlement no later than 30 days prior to the public employer's required budget submission date.

(d) Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately and to the Commission or its named designee.

(e) All individually incurred costs shall be borne by the party incurring them. The cost for the services of the fact-finder, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, and any other necessary expenses of the fact-finding proceeding, shall be borne by the Commission.

(f) The parties shall meet within 5 days after receipt of the fact-finder's findings of fact and recommended terms of settlement, in order that statements of position may be exchanged and an opportunity provided for the parties to reach an agreement. In the event of a continuing impasse thereafter, the Commission or its named designee may take whatever steps are deemed expedient to effect a settlement of the impasse.

CHAPTER 13

SCOPE OF NEGOTIATIONS PROCEEDINGS

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CHAPTER 13

SCOPE OF NEGOTIATIONS PROCEEDINGS

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 majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. 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.

SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:13-2.1 Who May File

Any public employer or recognized or certified public employee majority representative, either individually or jointly, may initiate scope of negotiations 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 Determination*

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 wilfully false, I am subject to punishment." Such petition shall contain the following:

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

(b) The full name, address and telephone number of the recognized or certified public employee majority representative who

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

is a party to the collective negotiations relationship;

(c) A clear and concise statement of the matter or matters in dispute concerning which a determination by the Commission is sought; and

(d) A statement that the dispute has arisen:

(1) 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

(2) with respect to the negotiability of a matter or matters sought to be processed pursuant to a collectively negotiated grievance procedure; or

(3) other than in (1) or (2) above, with an explanation of the circumstances.

SUBCHAPTER 3. PROCEDURE

19:13-3.1 "Petitioner" and "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 by order permit intervention to such extent and upon such terms as may be deemed just.

19:13-3.3 Briefs

Within seven days from the filing of a Petition for Scope of Negotiations Determination, the petitioner shall file with the Commission or its named designee an original and nine copies of his brief, together with proof of service of a copy of such brief upon the respondent. Within fourteen days after the service of the petitioner's brief, the respondent shall file with the Commission or its named designee an original and nine copies of his brief, together with proof of service of a copy of such brief upon the petitioner. The petitioner may file with the Commission or its named designee an

original and nine copies of a reply brief within five 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 Commission or its named designee. The Commission or its named designee 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.

19:13-3.4 Request for Evidentiary Hearing

Any party desiring an evidentiary hearing shall file with the Commission or its named designee an original and nine copies of a written request therefor, together with proof of service of a copy of such request upon the other party. Such request shall either be incorporated in, or shall be filed simultaneously with, the requesting party's first brief filed pursuant to N.J.A.C. 19:13-3.3 (Briefs). 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. Upon the timely filing of such a request, the other party may file with the Commission or its named designee an original and nine copies of a written statement in response to the request, together with proof of service of a copy of such statement upon the requesting party. Such statement shall either be incorporated in, or shall be filed simultaneously with, such party's responsive brief filed pursuant to N.J.A.C. 19:13-3.3

(Briefs).

19:13-3.5 Evidentiary Hearings

(a) If a timely request for evidentiary hearing has been filed pursuant to N.J.A.C. 19:13-3.4 (Request for Evidentiary Hearing), the Commission or its named designee shall issue a notice of hearing in compliance with N.J.S.A. 52:14B-9.

(b) Evidentiary hearings pursuant to this Subchapter shall be conducted by a hearing officer designated by the Commission or its named designee, unless the Commission or any member thereof presides. Evidentiary hearings conducted pursuant to this Subchapter shall be governed by the provisions of Subchapter 6 (Hearings) of Chapter 14 of these rules (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 officer 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 officer 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 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 evi-

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dence, and depositions, together with the hearing officer's recommended report and decision and any exceptions, cross-exceptions, briefs, and answering briefs filed in response thereto. The filing of any such exceptions, cross-exceptions, briefs, and answering briefs shall be governed by the provisions of N.J.A.C. 19:14-7.3 (Exceptions; Cross-Exceptions; Briefs; Answering Briefs).

19:13-3.6 Oral Argument

Unless an evidentiary hearing has been conducted pursuant to N.J.A.C. 19:13-3.5 (Evidentiary Hearings), 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 respondent's brief or is ordered by the Commission or its named designee. Such request shall be made by a separate paper, ten 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 Commission or its named designee shall notify the parties of the assigned argument date. The petitioner shall open and conclude argument. The Commission may terminate the argument at any time it deems the issues adequately argued.

19:13-3.7 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 (c) of N.J.A.C. 19:13-3.5 (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

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matter is a required, permissive, or illegal subject for collective negotiations and, where appropriate, an order for remedial or affirmative action reasonably designed to effectuate the purposes of the Act.

CHAPTER 14

UNFAIR PRACTICE PROCEEDINGS

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CHAPTER 14

UNFAIR PRACTICE PROCEEDINGS

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 representative.

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, preceded by a letter designation 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 filed shall be retained in a public docket until the case is closed.

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19:14-1.3 Form; Contents

Such charge 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 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

* A blank form for making a charge will be supplied upon request. Address requests to: Public Employment Relations Commission, Trenton, New Jersey 08625.

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wilfully false, I am subject to punishment." Such charge shall contain the following:

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

(b) The full name, address and telephone number of the public employer or public employee organization against whom the charge is made (the respondent); and

(c) A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated.

19:14-1.4 Number of Copies; Service

The charging party shall file an original and four copies of such charge, and simultaneously shall serve a copy thereof upon the respondent. Proof of such service shall be filed. The Commission will, as a matter of course, cause a copy of such charge to be furnished to the respondent, but it shall not be deemed to assume responsibility for formal service thereof.

19:14-1.5 Amendment; Withdrawal; Dismissal

The Commission or its named designee may permit the charging party to amend such charge at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended charge shall conform to the provisions of these rules relating to

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the original charge. Any charge may be withdrawn only with the consent of the Commission or its named designee, and upon such withdrawal any complaint based thereon shall be dismissed and the case closed.

19:14-1.6 Investigation

Upon the filing of such charge, the Commission or its named designee shall cause an investigation to be conducted into the matters and allegations set forth therein. The charging party, the respondent, and any intervenor(s) shall present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in such charge. The charging party shall have the burden of proffering sufficient evidence to support a prima facie finding of unfair practice.

19:14-1.7 Investigatory Conference

During the course of the investigation conducted pursuant to N.J.A.C. 19:14-1.6 (Investigation), the Commission or its named designee may cause an investigatory conference to be held, which conference shall be attended by all of the parties, either in person or by authorized representative.

SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING

19:14-2.1 Contents; Service

After a charge has been filed, if it appears to the Commission or its named designee prima facie that the respondent has engaged or is engaging in an unfair practice and that formal proceedings in respect thereto should be instituted, the Commission or its named designee shall issue and cause to be served on all parties a formal complaint in the name of the Commission stating the specific unfair practice charged and including a notice of hearing before an administrative law judge at a stated time and place. The complaint with notice of hearing shall also contain:

(a) A clear and concise description of the facts which are claimed to constitute unfair practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed, and a statement of the portion or portions of the Act alleged to have been violated.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A statement of the time and place of any pre-hearing conference to be held pursuant to N.J.A.C. 19:14-6.2 (Pre-Hearing Conference).

Upon its own motion or upon proper cause shown, the Commission or its named designee may extend the date of such hearing.

19:14-2.2 Amendment; Withdrawal

Any such complaint may be amended at any time by the Commission or its named designee upon such terms as may be deemed just.

Any such complaint may be withdrawn before the hearing by the Commission or its named designee on its own motion.

19:14-2.3 Refusal to Issue or Reissue; Appeal

If, after a charge has been investigated, either prior or subsequent to any investigatory conference held pursuant to N.J.A.C. 19:14-1.7 (Investigatory Conference), the Commission or its named designee declines to issue a complaint, or having withdrawn a complaint pursuant to N.J.A.C. 19:14-2.2 (Amendment; Withdrawal), declines to reissue it, the parties shall be so advised in writing, accompanied by a simple statement of the procedural or other grounds for such action. The charging party may obtain a review of such action by the Commission's named designee, if any, by filing an original and nine copies of an appeal with the Commission within ten days from the service of the notice of such refusal to issue or reissue. A copy shall be served simultaneously upon all other parties, and proof of such service shall be filed with the Commission. An appeal must be a self-contained document enabling the Commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented. Any party may file a statement in opposition to an appeal within five days from the service of the appeal. Such statement in opposition shall be filed and served in like manner as the appeal. The Commission may sustain the refusal to issue or reissue a complaint, stating the grounds of its affirmance, or may direct that further action be taken. The Commission's determination shall be served on all the parties.

SUBCHAPTER 3. ANSWER

19:14-3.1 Time for Filing; Contents; Form

The respondent shall, within ten days from the service of the complaint, file an answer thereto. Upon its own motion or upon proper cause shown, the Commission or its named designee may extend the time within which the answer shall be filed. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he 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. The answer 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 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 wilfully false, I am subject to punishment."

19:14-3.2 Where to File; Number of Copies; Service

An original and nine copies of the answer shall be filed with the Commission. Simultaneously therewith a copy shall be served upon all other parties; and proof of such service shall be filed with the Commission.

19:14-3.3 Amendment

The respondent may amend his answer at any time prior to the hearing. During or after the hearing the answer may, in the discretion of the administrative law judge or the Commission, upon motion, be amended upon such terms and within such periods as may be fixed by the administrative law judge or the Commission. Filing, service, and proof of service of an amended answer shall conform to the provisions of these rules relating to the original answer.

SUBCHAPTER 4. MOTIONS

19:14-4.1 Where to File

All motions for an extension of the date of the hearing, for an extension of time within which the answer shall be filed, or for leave to intervene, made prior to the hearing, shall be filed in writing with the Commission or its named designee. All motions for summary judgment made prior to the hearing shall be filed in writing with the Commission. All motions made at the hearing, or subsequent to the hearing but prior to transfer of the case to the Commission, shall be made in writing to the administrative law judge or stated orally on the record. All motions made subsequent to transfer of the case to, and while it is pending before, the Commission shall be filed in writing with the Commission.

19:14-4.2 Contents; Number of Copies; Service

All motions, other than those stated orally at the hearing, shall be made in writing, shall briefly state the order or relief applied for, and shall be accompanied by affidavits setting forth the grounds therefor. The moving party shall file an original and nine copies of his motion papers, together with proof of service of a copy thereof upon the other parties.

19:14-4.3 Answering Affidavits

Answering affidavits, if any, shall be served and filed within five days after service of the motion papers. Filing, service, and proof of service of answering affidavits shall conform to the provisions of these rules relating to the motion papers.

19:14-4.4 Rulings

Rulings and orders by the Commission or its named designee on motions shall be issued in writing and a copy served upon each of the parties. Rulings and orders by the administrative law judge, if announced at the hearing, shall be stated orally on the record; in all other cases the administrative law judge shall issue such rulings and orders in writing and shall cause a copy thereof to be served upon each of the parties, or shall make his ruling in his recommended report and decision, provided that whenever the administrative law judge has reserved his ruling and the case is thereafter transferred to and continued before the Commission, the Commission shall rule thereon. Any motion filed prior to the hearing may be referred to the administrative law judge, in which case the parties shall be notified in writing of such reference.

19:14-4.5 Motions and Rulings Part of the Record; Appeal on Special Permission

All motions, rulings and orders shall become part of the record, except that rulings on motions to quash a subpoena shall become a part of the record only upon the request of the party aggrieved thereby. Unless expressly authorized by these rules, rulings and orders by the Commission's named designee, if any, and by the administrative law judge on motions, and by the administrative law judge on objections, shall not be appealed directly to the Commission except by special permission of the Commission, but shall be considered by the Commission in reviewing the record, if exception to the ruling or order is included in the statement of exceptions filed with the Commission pursuant to N.J.A.C. 19:14-7.3 (Exceptions;

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Cross-Exceptions; Briefs; Answering Briefs). Requests to the Commission for such special permission to appeal shall be filed in writing within five days from the service of written rulings or statement of oral rulings, as the case may be, and shall briefly state the grounds relied on. An original and nine copies of such request shall be filed with the Commission, and simultaneously a copy shall be served upon each other party and, if the request involves a ruling by an administrative law judge, upon that administrative law judge. Proof of such service shall be filed with the Commission. In the event the Commission grants an appeal on special permission, the proceedings shall not be stayed thereby unless otherwise ordered by the Commission.

19:14-4.6 Motion to Dismiss Complaint; Review

If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the administrative law judge before filing his recommended report and decision, the charging party may obtain a review of such action by filing an original and nine copies of a request therefor with the Commission, stating the grounds for review and immediately on such filing shall serve a copy thereof upon the other parties. Proof of such service shall be filed with the Commission. Unless such request for review is filed within ten days from the date of the order of dismissal, the case shall be closed.

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SUBCHAPTER 5. INTERVENTION

19:14-5.1 Intervention

A motion for leave to intervene shall be filed in writing or, if made at the hearing, made orally on the record, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. Filing, service, and proof of service shall conform to Subchapter 4 (Motions) of this Chapter. The Commission or its named designee, or the administrative law judge, as the case may be, may by order permit intervention to such extent and upon such terms as may be deemed just.

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SUBCHAPTER 6. HEARINGS

19:14-6.1 Who Shall Conduct; To Be Public Unless Otherwise Ordered

The hearing for the purpose of taking evidence upon a complaint shall be conducted by an administrative law judge designated by the Commission or its named designee, unless the Commission or any member thereof presides. At any time an administrative law judge may be designated by the Commission or its named designee to take the place of the administrative law judge previously designated to conduct the hearing. The hearing shall be public unless otherwise ordered by the Commission or the administrative law judge.

19:14-6.2 Pre-Hearing Conference

The administrative law judge assigned to conduct such hearing, or an alternate designee, may hold a pre-hearing conference for the purpose of clarification of issues. All of the parties shall attend any such pre-hearing conference, either in person or by authorized representative.

19:14-6.3 Duties and Powers of Administrative Law Judge

It shall be the duty of the administrative law judge to hear fully the facts as to whether the respondent has engaged or is engaging in an unfair practice as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Commission, subject to these rules and the Act:

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- (a) To administer oaths and affirmations;
- (b) To grant applications for subpoenas;
- (c) To rule upon motions to quash subpoenas;
- (d) To rule upon offers of proof and receive relevant evidence;
- (e) To take or cause to be taken depositions whenever the ends of justice would be served thereby;
- (f) To regulate the course of the hearing, and if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;
- (g) To hold conferences for the settlement or simplification of the issues;
- (h) To dispose of procedural requests, motions, or similar matters, including pre-hearing motions referred to him and motions for summary judgment or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of his recommended report and decision;
- (i) To approve a stipulation voluntarily entered into by all parties which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by the respective parties of their right to file with the Commission exceptions to the findings of fact (but not to conclusions of law or recommended order) which the administrative law judge shall make in his recommended report and decision;
- (j) To make and file recommended reports and decisions in

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conformity with N.J.S.A. 52:14B-10;

(k) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(l) To take any other action necessary under the foregoing and authorized by these rules.

19:14-6.4 Unavailability of Administrative Law Judge

In the event the administrative law judge designated to conduct the hearing becomes unavailable to the Commission after the hearing has been conducted and before the filing of his recommended report and decision, the Commission may transfer the case to itself for the purposes of further hearing or issuance of a proposed decision and order on the record as made, or both, or may cause the designation of another administrative law judge for such purposes.

19:14-6.5 Rights of Parties

Any party shall have the right to appear at such hearing in person or by authorized representative to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the administrative law judge. Ten copies of documentary evidence shall be submitted, unless the administrative law judge permits a reduced number of copies upon good cause shown.

19:14-6.6 Rules of Evidence Not Controlling

The parties shall not be bound by rules of evidence whether

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statutory, common law, or adopted by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized facts within the Commission's specialized knowledge. The material noticed shall be referred to in the administrative law judge's recommended report and decision, and any party may contest the material so noticed by filing timely exceptions thereto pursuant to N.J.A.C. 19:14-7.3 (Exceptions; Cross-Exceptions, Briefs; Answering Briefs).

19:14-6.7 Stipulations of Fact

In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue. The parties may submit a stipulation of facts to the Commission for a decision without a hearing.

19:14-6.8 Prosecution by Charging Party; Burden of Proof

In any such proceeding, the charging party either in person or by authorized representative shall prosecute the case and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

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19:14-6.9 Objection to Conduct of Hearing

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

19:14-6.10 Oral Argument at Hearing; Briefs; Proposed Findings

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge who may fix a reasonable time for such filing. Requests for extensions of time for good cause shown shall be made to the administrative law judge. No request will be considered unless received at least three days prior to the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the administrative law judge. Notice of the request for an extension shall be served simultaneously upon all other parties, and proof of service shall be furnished. Five copies of any brief or proposed findings and conclusions shall be filed with the administrative law judge, copies shall be served on the other parties, and proof of service shall be furnished.

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19:14-6.11 Continuance or Adjournment

In the discretion of the administrative law judge, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the administrative law judge, or by other appropriate notice to the parties.

19:14-6.12 Misconduct at Hearing

Misconduct at any hearing before an administrative law judge or before the Commission shall be ground for summary exclusion from the hearing. Such misconduct of an aggravated character, when engaged in by a representative of a party, shall be ground for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

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SUBCHAPTER 7. ADMINISTRATIVE LAW JUDGE'S DECISION AND
TRANSFER OF CASE TO THE COMMISSION

19:14-7.1 Administrative Law Judge's Decision; Transfer of Case
to the Commission

After the hearing for the purpose of taking evidence upon a complaint, or upon the consent of the parties prior to the conclusion of the hearing, the administrative law judge 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 including, where appropriate, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The administrative law judge 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.

19:14-7.2 Record in the Case

The record in the case shall consist of the charge and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, rulings, order, official transcript of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the administrative law judge's recommended report and decision and any exceptions, cross-exceptions, briefs, and answering briefs.

19:14-7.3 Exceptions; Cross-Exceptions; Briefs; Answering Briefs

(a) Within ten days, or within such further period as the

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Commission may allow, from the date of the service of the administrative law judge's recommended report and decision, any party may file with the Commission an original and nine copies of exceptions to such recommended report and 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 recommended report and decision. Requests for extension of time to file exceptions or briefs shall be in writing and copies thereof shall be served simultaneously upon the other parties and proof of such service furnished. Such requests must be received by the Commission no later than three days prior to the due date.

(b) Each exception shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; shall identify that part of the recommended report and decision to which objection is made; shall designate by precise citation of page the portions of the record relied on; and shall state the grounds for the exception and shall 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 the foregoing requirements may be disregarded.

(c) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain the points of fact and law relied on in support of the posi-

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tion taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(d) Within five days, or such further period as the Commission may allow, from the last date on which exceptions may be filed, a party opposing the exceptions may file an original and nine copies of an answering brief, which shall be limited to the questions raised in the exceptions and in the brief in support thereof. Filing, service, and proof of service of requests for extension of time shall conform to the provisions of subsection (a) relating to requests for extension of time.

(e) Any party who has not previously filed exceptions may, within five days, or such further period as the Commission may allow, from the last date on which exceptions may be filed, file an original and nine copies of cross-exceptions to any portion of the recommended report and decision, together with a supporting brief, in accordance with the provisions of subsection (b).

(f) Within five days, or such further period as the Commission may allow, from the last date on which cross-exceptions may be filed, any other party may file an original and nine copies of an answering brief in accordance with the provisions of subsection (c), limited to the questions raised in the cross-exceptions. Filing, service, and proof of service of requests for extension of time shall conform to the provisions of subsection (a) relating to requests for extension of time.

(g) No further briefs shall be filed except by special leave of the Commission. Requests for such leave shall be in writing,

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accompanied by proof of service upon the other parties.

(h) No matter not included in exceptions or cross-exceptions may thereafter be urged before the Commission, or in any further proceeding.

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SUBCHAPTER 8. PROCEDURE BEFORE THE COMMISSION

19:14-8.1 Action by the Commission

Upon receipt of the record, the Commission shall adopt, reject or modify the administrative law judge's recommended report and decision. The Commission may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before the entire Commission, a member or members thereof, or other designated officer.

19:14-8.2 Oral Argument

Should any party desire permission to argue orally before the Commission, request therefor must be made in writing to the Commission 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 thereof upon the other parties. The Commission shall notify the parties of the time and place of oral argument, if such permission is granted.

19:14-8.3 Hearings Before the Commission

Whenever the Commission deems it necessary in order to effectuate the purposes of the Act or to avoid unnecessary costs or delay, it may, at any time after issuance of a complaint, order that such complaint and any proceeding which may have been instituted with respect thereto 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 insofar as applicable.

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19:14-8.4 Settlement or Adjustment of Issues

All interested parties shall have opportunity to submit to the Commission or its named designee, for consideration, facts, arguments, offers of settlement, or proposals of adjustment.