

CHAPTER 17

PUBLIC EMPLOYMENT RELATIONS COMMISSION
APPEAL BOARD

Authority

N.J.S.A. 34:13A-5.9.

Source and Effective Date

R.2008 d.208, effective June 26, 2008.
See: 40 N.J.R. 1812(a), 40 N.J.R. 4345(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 17, Public Employment Relations Commission Appeal Board, expires on June 26, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 17, Public Employment Relations Commission Appeal Board, was adopted as R.1983 d.310, effective August 1, 1983. See: 14 N.J.R. 903(a), 15 N.J.R. 1257(a).

Subchapter 3, Amount of Representation Fee in Lieu of Dues, and Subchapter 4, Review of Representation Fee in Lieu of Dues, were adopted as R.1987 d.248, effective June 15, 1987. See: 19 N.J.R. 196(a), 19 N.J.R. 1105(a).

Pursuant to Executive Order No. 66(1978), Chapter 17, Public Employment Relations Commission Appeal Board, was readopted as R.1988 d.301, effective June 8, 1988. See: 20 N.J.R. 891(a), 20 N.J.R. 1571(d).

Pursuant to Executive Order No. 66(1978), Chapter 17, Public Employment Relations Commission Appeal Board, was readopted as R.1993 d.322, effective June 7, 1993. See: 25 N.J.R. 1842(b), 25 N.J.R. 2907(a).

Pursuant to Executive Order No. 66(1978), Chapter 17, Public Employment Relations Commission Appeal Board, was readopted as R.1998 d.320, effective June 1, 1998. See: 30 N.J.R. 1214(a), 30 N.J.R. 2516(b).

Chapter 17, Public Employment Relations Commission, was readopted as R.2003 d.342, effective July 25, 2003. See: 35 N.J.R. 1796(a), 35 N.J.R. 3834(a).

Chapter 17, Public Employment Relations Commission, was readopted as R.2008 d.208, effective June 26, 2008. See: Source and Effective Date.

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SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

19:17-1.1 Description of the Appeal Board

The Public Employment Relations Commission Appeal Board (the "Appeal Board") is the board established by N.J.S.A. 34:13A-5.6 to consider petitions of appeal of public employees, who are not members of the employee organization which represents the employees' collective negotiations unit, concerning the amount of the representation fee in lieu of dues paid by the nonmember employees.

Case Notes

Tender by union of disputed fees rendered moot teachers' challenge to fees. *Daly v. High Bridge Teachers' Ass'n*, 242 N.J.Super. 12, 575 A.2d 1373 (A.D.1990), certification denied 122 N.J. 356, 585 A.2d 366.

19:17-1.2 Staff of the Appeal Board

The staff of the Appeal Board shall consist of the personnel of the Division of Public Employment Relations (N.J.S.A. 34:13A-5.1), and the Appeal Board may utilize the services of the personnel of the Division of Public Employment Relations as well as the offices and equipment of the said Division, to process those matters which come before it and to otherwise perform its functions pursuant to N.J.S.A. 34:13A-5.6.

19:17-1.3 Delegation of authority to staff of the Division
of Public Employment Relations, officers of
the Appeal Board

When the personnel of the Division of Public Employment Relations are carrying out functions on behalf of the Appeal Board, it shall be understood that such personnel are acting as officers of the Appeal Board and that the Appeal Board has delegated all the powers necessary to permit the discharge of the duty or duties delegated.

SUBCHAPTER 2. PROCEDURES

19:17-2.1 Rules to be read in conjunction with the rules
of the Office of Administrative Law

These rules are to be read in conjunction with the Uniform Administrative Procedure Rules of Practice (UAPRP),

N.J.A.C. 1:1-1, and the rules of special applicability for hearings initiated in contested cases before the Public Employment Relations Commission Appeal Board, N.J.A.C. 1:20.

Amended by R.1987 d.248, effective June 15, 1987.

See: 19 N.J.R. 196(a), 19 N.J.R. 1105(a).

Added text "in contested cases"; substituted "N.J.A.C. 1:20" for "hereafter adopted by the Office of Administrative Law."

SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES

19:17-3.1 Designation of fiscal year

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a fiscal year system of accounting for the expenditures of such organization.

(b) The fiscal year may be the calendar year or any other 12 month period.

19:17-3.2 Designation of dues year

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a dues year.

(b) The dues year may be the calendar year or any other 12 month period, except that the dues year may not commence prior to the start of the fiscal year.

19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer

(a) Prior to the commencement of payroll deductions of the representation fee in lieu of dues for any dues year, the majority representative shall provide all persons subject to the fee with a notice adequately explaining the basis of the fee, which shall include:

1. A statement, verified by an independent auditor or by some other suitable method, of the expenditures of the majority representative for its fiscal year ending within 12 months prior to the date the notice required by this section is served on all persons subject to the fee. The statement shall set forth the major categories of expenditures and shall also identify expenditures of the majority representative and its affiliates which are in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of benefits only available to members of the majority representative.

2. A copy of the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6, including instructions to persons paying the representation fee in lieu of dues as to how to request review of the amount assessed as a representation fee in lieu of dues.

3. The name and address of the financial institution where the majority representative maintains an account in which to escrow portions of representation fees in lieu of dues which are reasonably in dispute. The interest rate of the account in effect on the date the notice required by (a) above is issued shall also be disclosed.

4. The amount of the annual representation fee in lieu of dues, or an explanation of the formula by which the representation fee is set, and the schedule by which the fee will be deducted from pay.

(b) The majority representative shall provide a copy of the demand and return system referred to in (a)2 above to the public employer.

Amended by R.1993 d.322, effective July 6, 1993.

See: 25 N.J.R. 1842(b), 25 N.J.R. 2907(a).

Amended by R.1998 d.320, effective July 6, 1998.

See: 30 N.J.R. 1214(a), 30 N.J.R. 2516(b).

In (a)1, rewrote the first sentence.

19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment

(a) The maximum representation fee in lieu of dues assessed nonmembers in any dues year shall be the lower of:

1. Eighty-five percent of the regular membership dues, fees and assessments charged by the majority representative to its own members.

2. Regular membership dues, fees and assessments, charged by the majority representative to its own members, reduced by the percentage amount spent during the most recently completed fiscal year by the majority representative and any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative on benefits available to or benefitting only its members and in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment. The amount shall be based upon the figures contained in the statement provided nonmembers prior to the start of the dues year in accordance with N.J.A.C. 19:17-3.3(a)1.

(b) Every majority representative shall annually recalculate its representation fee in lieu of dues in accordance with (a) above.

Law Review and Journal Commentaries

Public Employment—Representation Fees, P.R. Chenoweth, 134 N.J.L.J. No. 16, 61 (1993).

Case Notes

Regulation requiring representative body to deduct political-activity portion of fee as to all nonmembers. *New Jersey Educ. Ass'n v. New Jersey Public Employment Relations Com'n*, 266 N.J.Super. 66, 628 A.2d 789 (A.D.1993), certification denied 134 N.J. 569, 636 A.2d 526.

**SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE
IN LIEU OF DUES**

information described in N.J.A.C. 19:17-3.3(a) within which to file a request for review of the amounts assessed by the majority representative as the nonmember's representation fee in lieu of dues.

19:17-4.1 Period for filing of requests for review

(a) Each nonmember shall be afforded a period of at least 30 days after the majority representative has provided the

(b) Any request for review of a representation fee in lieu of dues, filed within the time period set by the majority representative in accordance with (a) above, will be deemed effective to entitle the employee to a return of any portion of the employee's representation fee in lieu of dues which is determined to be non-chargeable to the employee.

19:17-4.2 Fees of nonmembers filing requests for review; escrow of amounts reasonably in dispute

(a) Prior to receiving representation fees in lieu of dues in any dues year, the majority representative shall open an interest-bearing escrow account in any financial institution in which to place all or part of representation fees in lieu of dues to be collected from nonmembers who have filed timely requests for review pursuant to N.J.A.C. 19:17-4.1.

(b) The majority representative shall place in escrow any amount which is reasonably in dispute.

Law Review and Journal Commentaries

Public Employment—Representation Fees. P.R. Chenoweth, 134 N.J.L.J. No. 16, 61 (1993).

19:17-4.3 Time for completion of demand and return system

(a) Proceedings in the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6 shall be completed within 60 days after the commencement of payroll deductions of representation fees in lieu of dues for the current dues year.

(b) After 60 days from the commencement of payroll deductions of representation fees in lieu of dues for the current dues year, or the completion of demand and return system proceedings, whichever date is earlier, any nonmember who has a pending request for review shall be deemed to have exhausted demand and return system proceedings pursuant to N.J.A.C. 1:20-4.1 and N.J.A.C. 19:17-4.5 and may file a petition of appeal with the Appeal Board in accordance with N.J.A.C. 1:20-6.1.

(c) Any majority representative which has commenced, but has not completed, demand and return system proceed-

ings within the time set forth in (a) above shall continue such proceedings to completion, notwithstanding the filing of petitions with the Appeal Board by nonmembers who have requests for review pending with the majority representative, unless all pending requests have been withdrawn or presented to the Appeal Board.

(d) This section shall also apply to demand and return system proceedings conducted by any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative.

19:17-4.4 Results of demand and return system, payment of interest on amounts returned

(a) On completion of demand and return system proceedings, a written decision shall be served on each nonmember whose request for review of the fee is involved in such proceeding.

(b) If the demand and return system proceedings results in a determination that the amount charged to the nonmember was in excess of the amount allowed by statute, such excess amount shall accompany the written decision.

(c) If the amount returned is equal to or less than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the actual interest earned on the amount returned shall be paid to the nonmember.

(d) If the amount returned is greater than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the nonmember will receive interest payable at the judgment rate for the entire amount of the rebate. (See N.J. Court Rules, R. 4:42-11.)

19:17-4.5 Time for filing petitions with Appeal Board

A petition of appeal seeking review by the Appeal Board of a representation fee in lieu of dues charged by a majority representative pursuant to N.J.S.A. 34:13A-5.5 shall be filed within six months after payroll deductions to collect the petitioner's fee have commenced.