



New Jersey Public Employment Relations Commission.

RULES AND REGULATIONS AND STATEMENT OF PROCEDURE.

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New Jersey Employer-Employee Relations Act -- 1968

up to date 1971

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Preliminary Statement

In accordance with section 13 of c. 303, Laws of 1968 (N.J.S.A. 34:13A-11), the New Jersey Employer-Employee Relations Act, the Public Employment Relations Commission adopts these Rules to assist public employers, employees and their representatives understand their responsibilities and rights under the Act and to effectuate the proper administration and enforcement of the provisions of this Act.

These Rules also are adopted to aid the Commission, its officers, and all interested parties in proceedings under this Act.

These Rules constitute Subtitle C (chapters 10 through 19) of Title 19 of the New Jersey Administrative Code and are reprinted here for the convenience of the public.

August 29, 1969

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CHAPTER 10

Definitions

19:10-1 Act; Commission

The term "Act", as used herein, shall mean the New Jersey Employer-Employee Relations Act, Chapter 303, Laws of 1968 (N.J.S.A. 34:13A-1 et seq.) and the term "Commission" shall mean the New Jersey Public Employment Relations Commission.

19:10-2 Executive Director

The term "Executive Director", as used herein, shall mean the chief executive officer and administrator of the Division of Public Employment Relations.

19:10-3 Officer

The term "Officer", as used herein, shall include any member, counsel, hearing officer, mediator, fact-finder, election officer, arbitrator, Executive Director or any other individual or employee specifically designated as an officer of the Commission to act on the Commission's behalf. The Commission may delegate to such officer all of the powers conferred upon the Commission in connection with the discharge of the duty or duties so delegated.

(Table of Contents-See last page)

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19:10-4 Hearing Officer

The term "Hearing Officer", as used herein, shall mean an officer of the Commission designated to conduct any hearing and to issue a Report and Recommendations to the Executive Director or the Commission. It shall include a member of the Commission, the Executive Director, and any other officer designated to conduct a hearing.

19:10-5 Party

The term "Party", as used herein, shall mean any person, employee, group of employees, organization or public employer filing a charge, petition, request or application under these Rules and Regulations; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under this Act; or any other person, organization or public employer whose intervention in a proceeding has been permitted or directed by the Commission, Executive Director, or a hearing officer, but nothing herein shall be construed to prevent the Commission, or any designated officer, from limiting any party's participation in the proceedings to the extent of his interest.

19:10-6 Showing of Interest

The term "Showing of Interest", as used herein, shall mean a designated percentage of public employees in an allegedly appropriate negotiating unit, or a negotiating unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiating representative or have signed a petition requesting an election for certification or decertification of public employee representatives.

Such designations shall consist of written authorization cards or petitions, signed and dated by employees, authorizing an employee organization to represent such employees for the purpose of collective negotiations or requesting an election for certification or decertification of public employee representatives; current dues records; an existing or recently expired agreement; or other evidence approved by the Executive Director or the Commission.

19:10-7 Certification

The term "Certification", as used herein, shall mean the designation by the Executive Director or the Commission of an employee organization as the majority representative of employees in an appropriate unit.

19:10-8 Recognition

The term "Recognition", as used herein, shall mean the written acceptance by a public employer of an employee organization as the majority representative of employees in an appropriate unit pursuant to section 19:11-14 of these Rules and Regulations.

19:10-9 Representation Proceeding

The term "Representation Proceeding", as used herein, shall mean a procedure under these Rules and Regulations for the purpose of determining the majority representative of employees, if any, in an appropriate collective negotiating unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations.

19:10-10 Mediator

The term "Mediator", as used herein, shall mean the Commission, its members, employees of the Commission or any officer so designated by the Commission to perform the functions and duties of mediation.

19:10-11 Fact-finder

The term "Fact-finder", as used herein, shall mean the Commission, any member of the Commission or any officer so designated by the Commission.

19:10-12 Arbitrator

The term "Arbitrator", as used herein, shall mean a member of the Arbitration Panel chosen in accordance with these Rules and Regulations.

19:10-13 Mediation Panel

The term "Mediation Panel", as used herein, shall refer to a roster of mediators maintained by the Commission.

19:10-14 Fact-finding Panel

The term "Fact-finding Panel", as used herein, shall refer to a roster of fact-finders maintained by the Commission.

19:10-15 Arbitration Panel

The term "Arbitration Panel", as used herein, shall refer to a roster of arbitrators maintained by the Commission.

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CHAPTER 11

Representation Proceedings

19:11-1 Petitions for Certification of Public Employee Representative or for Decertification of Public Employee Representative.

Who may file:

(a) A petition for certification of public employee representative may be filed by any public employee, group of public employees, any individual or employee organization claiming to be the majority representative of public employees in an appropriate unit.

(b) A petition for certification of public employee representative may be filed by a public employer alleging that one or more public employees, group of public employees, individuals or employee organizations have presented to him a claim to be recognized or continue to be recognized as the majority representative and the public employer has a good faith doubt concerning the majority representative of its employees.

(c) A petition for decertification of public employee representative may be filed by an employee or group of employees or any individual acting on their behalf alleging that the certified or currently recognized employee representative is no longer the majority representative of such employees.

(d) Petitions for clarification or amendment of certification may be filed by the majority representative or public employer.

All petitions shall be in writing and shall be filed with the Executive Director.*

19:11-2 Contents of Petition for Certification of Public Employee Representative.

A petition for certification of public employee representative shall, when filed by a public employee, group of public employees, any individual, employee organization or public employer, contain the following:

(a) Name, address, telephone number of the public employer and the person to contact including his title, if known;

(b) A description of the collective negotiating unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(c) Date of the request for recognition as majority representative and date such request was declined by the public employer or a statement that no reply has been received;

(d) Name, address and telephone number of the recognized or certified exclusive representative, if any, and the date of such certification or recognition and the expiration date of any applicable contract, if known to the petitioner;

(e) Names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner;

(f) Any other relevant facts;

(g) Name and affiliation, if any, of the petitioner and its address and telephone number;

(h) The signature of the petitioner's representative, including his title and telephone number;

(i) A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in Section 19:10-6 of the Rules and Regulations of not less than thirty (30%) percent of the employees in the unit alleged to be appropriate. A typewritten alphabetical list of such designations also shall be submitted to the Executive Director.

19:11-3 Contents of Petition for Decertification of Public Employee Representative.

A petition for decertification of public employee representative shall contain the following:

* Forms for filing such petitions will be supplied by the Executive Director upon request. Address requests to: State of New Jersey, Public Employment Relations Commission, P. O. Box 2209, Trenton, New Jersey 08625.

(a) A statement that the employee representative certified by the Executive Director or the Commission or recognized by the public employer no longer represents a majority of the employees in the collective negotiation unit in which it is currently recognized or certified and such employee organization asserts a claim to be the majority representative of said employees;

(b) The petition for decertification of public employee representative also shall contain the information set forth in section 19:11-2 except subsection (c) thereof;

(c) The petition for decertification shall be accompanied by a showing of interest of not less than thirty (30%) percent of the employees in the unit in which an employee representative has been recognized or certified. A showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective negotiation by the recognized or certified employee representative.

19:11-4 Petition for Certification of Public Employee Representative Filed by a Public Employer.

A petition for certification of public employee representative filed by a public employer shall state that a claim for representation or continued representation has been made by one or more public employees, groups of public employees, individuals or employee organizations and that the public employer has a good faith doubt concerning the majority representative of its employees.

A petition for certification of representative filed by a public employer shall include all of the information set forth in section 19:11-2 except subsection (i) thereof.

19:11-5 Petition for Clarification of Unit or Amendment of Certification.

The majority representative or the public employer may file a petition for clarification of a negotiating unit or amendment of any certification issued by the Executive Director or the Commission.

A petition for clarification or amendment shall, in addition to setting forth the information required by section 19:11-2 except subsections (b) and (c) thereof, further contain the following:

(a) A description of the present negotiating unit and the date of the certification or recognition;

(b) Proposed clarification or amendment of the unit;

(c) A statement by petitioner setting forth reasons as to why clarification or amendment is requested.

19:11-6 Number of Copies to be Filed

Five (5) copies of all petitions listed in sections 19:11-2, 3, 4 and 5 shall be filed with the Executive Director and copies shall be served simultaneously on all known interested parties and proof of such service shall be furnished to the Executive Director.

19:11-7 Validity of Showing of Interest

The showing of interest submitted pursuant to sections 19:11-2 and 3 shall not be furnished to any of the parties. The Executive Director shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack at a hearing before a hearing officer.

19:11-8 Processing of Petition

Upon the filing of any petition the Executive Director shall investigate the petition to determine the facts.

The Executive Director shall determine whether or not a valid question concerning the representation of employees exists in a prima facie appropriate unit.

19:11-9 Withdrawal or Dismissal of Petition

If the Executive Director determines after an investigation that the petition has not been timely filed or that no valid question concerning the representation of employees exists in a prima facie appropriate unit, he may request the party filing such a petition to withdraw the petition without prejudice or in the absence of such withdrawal, within a reasonable time, he may dismiss the petition. Such action may be taken by the Executive Director at any time prior to the closing of the case.

19:11-10 Posting of Notice of Petition

Upon the request of the Executive Director, after the filing of a petition, the public employer shall post a notice to all employees, in places where notices are normally posted affecting the employees in the unit involved in the proceeding, on forms to be furnished by the Executive Director.

Such notices shall set forth: (1) the name of the petitioner, (2) the description of the unit involved, and (3) a statement that all interested parties are to advise the Executive Director in writing of their interest within ten (10) days from the date of posting of such notice.

The notice shall remain posted for a period of ten (10) days from the date of receipt by the public employer. The public employer shall certify to the Executive Director that the notice has been conspicuously posted for a period of ten (10) days where notices are normally posted and that the notice has not been covered by other material, altered or defaced. In addition, the public employer shall furnish the Executive Director with the names, addresses and telephone numbers of all employee organizations which have within the preceding twelve (12) months claimed to represent any of the employees in the requested unit.

19:11-11 Public Docket

The Executive Director shall maintain a public docket of all petitions filed with the Commission. Such docket shall contain a copy of the petition but shall not include any showing of interest. The petition shall remain in the public docket until the case is closed.

19:11-12 Investigation of Petition

The Executive Director shall, after ascertaining the positions of the parties involved in any representation matter, take appropriate measures to resolve expeditiously the question concerning representation. Such disposition may consist of withdrawal or dismissal as set forth in section 19:11-9; the conduct of an election in an appropriate unit pursuant to the agreement of all interested parties; the conduct of a hearing and the direction of an election in an appropriate unit; or the dismissal of a petition after a hearing.

19:11-13 Intervention

No employee organization will be permitted to intervene in any proceeding to resolve a question concerning the representation of employees unless it has submitted a showing of interest of not less than ten (10%) percent of the employees in the unit involved in the petition or has submitted a current or recently expired agreement with the public employer covering any of the employees involved.

An employee organization seeking to intervene for the purpose of claiming a unit of employees different from that sought by the petitioner shall submit a showing of interest from at least thirty (30%) percent of the employees in the unit it claims to be appropriate or a current or recently expired agreement with the public employer covering such employees.

No employee organization may participate to any extent in any representation proceeding unless it has notified the Executive Director of its desire to intervene within ten (10) days after the posting of the notice of petition as provided in section 19:11-10, unless good cause is shown for extending the period.

19:11-14 Recognition as Exclusive Representative

Whenever a public employer has been requested to recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiating unit, the public employer and the employee organization may resolve such matters without the intervention of the Commission.

The Commission will accord certain privileges to such recognition as set forth in section 19:11-15 provided the following criteria have been satisfied prior to the written grant of such recognition by a public employer:

(a) The public employer has satisfied himself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate collective negotiating unit;

(b) The public employer has conspicuously posted a notice on bulletin boards, where notices to employees are normally posted, for a period of at least ten (10) consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiating unit;

(c) The public employer shall serve written notification upon any employee organizations that have claimed, by a written communication within the year preceding the request for recognition, to represent any of the employees in the unit involved, or any organization with which it has dealt within the year preceding the date of the request for recognition. Such notification shall be made at least ten (10) days prior to the grant of recognition and shall contain the information set forth in section 19:11-14(b);

(d) Another employee organization has not within the ten-day period notified the public employer of a claim to represent any of the employees involved in the collective negotiating unit and has not within such period filed a valid petition for certification of public employee representative with the Executive Director;

(e) Such recognition shall be in writing and shall set forth specifically the collective negotiating unit involved.

19:11-15 Timeliness of Petitions

(a) Where there is no recognized or certified majority representative of the employees, a petition for certification of public employee representative will be considered timely filed provided there has been no valid election within the preceding twelve-month period in the requested negotiating unit or any subdivision thereof.

(b) Where there is a certified or recognized representative, a petition will not be considered as timely filed if during the preceding twelve (12) months an employee organization has been certified by the Executive Director or the Commission as the majority representative of employees in an appropriate unit or an employee organization has been granted recognition by a public employer pursuant to section 19:11-14.

(c) No election shall be conducted within 12 months after the effective date of an agreement provided such agreement is for a period of 12 months or more.

(d) During the period of an existing written agreement containing substantive terms and conditions of employment, a petition for certification of public employee representative or a petition for decertification of public employee representative involving those employees normally will not be considered timely filed unless the petition is filed not less than 120 days and not more than 150 days before the last date, if any, for budget submission of the public employer immediately preceding the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier, unless unusual circumstances exist which will substantially affect the unit or the majority representation. In the absence of a budget submission date the period shall be measured from the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier.

When an agreement has been extended more than 120 days prior to the aforementioned measuring dates, such extension shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided herein.

19:11-16 Agreement for Consent Election

Where one or more employee organizations assert a claim to represent

employees in an appropriate unit and a petition for certification of public employee representative or a petition for decertification of public employee representative has been filed, the parties may stipulate, subject to the approval of the Executive Director, that a secret ballot election shall be conducted by the Commission among the employees in an appropriate collective negotiating unit to determine whether they desire to be represented for purposes of collective negotiations by any or none of the employee organizations involved. The parties to such proceeding shall be the public employer, the petitioner, and any intervenors who shall have complied with the requirements set forth in section 19:11-13.

The parties shall stipulate as to the composition of the collective negotiating unit, the eligibility period for participation in the election, the dates, hours and places of the election and the designations on the ballot.

19:11-17 Notice of Hearing

The Executive Director shall issue a notice of hearing if, after the filing of a valid petition, the petitioner, the public employer, and all intervenors, within the purview of section 19:11-13, are unable to resolve the matter through an agreed-upon method of adjustment approved by the Executive Director.

A notice providing at least ten (10) days notice of hearing shall be served on all interested parties and shall include:

- (a) A statement of the time, place and nature of the hearing;
- (b) A statement of the unit claimed to be appropriate;
- (c) The name of the public employer, petitioner and intervenors, if any;
- (d) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(e) The respective positions of the parties in order to frame, simplify and clarify the issue involved. However, any such material shall not be deemed a part of the record and any party wishing to rely upon them as exhibits shall make an appropriate submission at the hearing.

Hearings under this section of these Rules and Regulations are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record upon which the hearing officer may base a meaningful report and recommendation. To accomplish this end the rule of relevancy and materiality are paramount; there will be no burdens of proof and the technical rules of evidence will not apply.

Representation hearings and the procedures following such hearings shall be in accordance with these Rules and Regulations.

19:11-18 Notices of Election; Improper Use of Notices

Appropriate notices of election shall be furnished by the Executive Director to the public employer for suitable posting. Such notices shall set forth the details and procedures for an election, the appropriate unit, the eligibility period, the date(s), hours and place(s) of the election and shall contain a sample ballot.

The reproduction of any document purporting to be a copy of the Commission's official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

19:11-19 Election Procedure: Conduct of Elections, Tally of Ballots, Objections, Challenges and Determination of Challenges and Objections.

(a) All elections shall be by secret ballot.

(b) Whenever two or more employee organizations are included as choices in an election, any employee organization may request the Executive Director to remove its name from the ballot. The request must be received not later than five (5) days before the date of the election. Such request shall be subject to the approval of the Executive Director, whose decision shall be final; provided, however, that in a proceeding involving a public employer-filed petition or a petition for decertification the employee organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Executive Director, disclaiming any representation interest among the employees in the unit.

(c) Any party may be represented at the polling place(s) by observers of his own selection, subject to such limitations as the Executive Director may prescribe.

(d) Any party or the election officer may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

(e) Upon the conclusion of the election, the Executive Director shall cause to be furnished to the parties a tally of ballots.

(f) Within five (5) days after the tally of ballots has been furnished, any party may file with the Executive Director an original and four (4) copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made.

(g) If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held, the Executive Director shall forthwith issue to the parties a certification of the results of the election, including certification of representative, where appropriate.

(h) If objections are filed to the conduct of the election or conduct affecting the result of the election, or if the challenged ballots are sufficient in number to affect the result of the election, the Executive Director shall investigate such objections or challenges, or both.

(i) Where objections are filed, or challenges are determinative, the Executive Director shall conduct an investigation and shall, where appropriate, issue a notice of hearing designating a hearing officer to hear the matters alleged and to issue a report and recommendations. The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election.

19:11-20 Runoff Election

(a) The Executive Director shall conduct a runoff election when an election in which the ballot provided for not less than three (3) choices (i.e., at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast and any objections filed have been disposed of, as provided herein. Only one runoff election shall be held pursuant to this section.

(b) Employees who were eligible to vote in the original election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(d) An inconclusive election is one in which none of the choices on the ballot has received a majority of the valid ballots cast. In the event the number of ballots cast in an inconclusive election in which the ballot provided for a choice among two (2) or more representatives and "neither" or "none" is equally divided among the several choices; or in the event the number of ballots cast for one choice in such election is equal to the number cast for another of the choices but less than the number cast for the third choice, the Executive Director shall declare the first election a nullity and shall conduct another election, providing for a selection from among the choices afforded in the original ballot and he shall thereafter proceed in accordance with section 19:11-20 (a), (b), and (c). In the event two (2) or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots, there shall be no runoff election and a certification of results of election shall be issued.

Only one such further election pursuant to this section may be held.

(e) Upon the conclusion of the runoff election, the provisions of section 19:11-19 shall govern, insofar as applicable.

19:11-21 Determination of Majority Representative.

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

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CHAPTER 12

Impasses

19:12-1 Filing of Notice of Impasse

In the event that a public employer and a certified or recognized employee organization have failed to achieve an agreement after genuine and sincere efforts through direct negotiation, either the public employer, the employee organization, or the parties jointly may notify the Executive Director, in writing, of the existence of an impasse and request the assignment of a mediator. Five (5) copies of the notification shall be filed with the Executive Director, and copies shall be served simultaneously upon all parties to the negotiations. Proof of such service shall be furnished to the Executive Director. Such notification and request shall contain the following information: *

- (a) 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;
- (b) The name, address and telephone number of the exclusive representative and its representative to be contacted and his title, if known;
- (c) A description of the collective negotiation unit including the approximate number of employees in the unit;
- (d) The dates and duration of negotiation sessions;
- (e) The termination date of the current agreement, if any;
- (f) The last date, if any, for the submission of the budget;
- (g) Whether the request is a joint request;
- (h) A detailed statement of the facts giving rise to the request, including all issues in dispute.

19:12-2 Appointment of a Mediator

The Executive Director, or an officer acting on his behalf, either upon his own motion, or upon a request, as set forth in section 19:12-1, shall appoint a mediator if he determines, after investigation, that (1) mediation is not being resorted to prematurely; (2) the parties have been unable to reach agreement after genuine and sincere efforts through direct negotiation; and (3) an impasse does in fact exist concerning the terms and conditions of employment of the employees in the negotiating unit.

The mediator so appointed may be one or more members of the Commission, an officer of the Commission, an employee of the Commission, a member of the

* Forms for filing such request will be supplied by the Executive Director upon request. Address requests to: State of New Jersey, Public Employment Relations Commission, P. O. Box 2209, Trenton, New Jersey 08625.

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 resolution of the impasse.

The parties may jointly request the assignment of a particular mediator; however, the Commission reserves the authority to assign a mediator of its choice.

19:12-3 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. The mediator is to make no public recommendation on any negotiation issue in connection with the performance of his service nor is he to make a public statement or report which evaluates the relative merits of the positions of the parties. He may, however, advise the parties that he is of the opinion that the invocation of fact-finding procedures with recommendations for settlement would be useful in resolving the impasse.

19:12-4 Confidential Information

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.

19:12-5 Mediator's Report to the Executive Director

The mediator shall, as soon as possible, submit one or more confidential reports to the Executive Director, 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 Executive Director should invoke fact-finding with recommendations for settlement.

The confidential report(s) submitted by any mediator may be utilized by the Executive Director or the Commission 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 Executive Director or the Commission or be made available or disclosed to any party or any other tribunal.

19:12-6 Invocation of Fact-finding

(a) After the appointment of a mediator, and upon his report of a failure to resolve the impasse by mediation, the Executive Director may invoke fact-finding with recommendations for settlement.

(b) The Executive Director may invoke fact-finding when a resolution of the impasse has not been reached within fifteen (15) days of the appointment of a mediator, provided, however, the Executive Director may extend or limit the period of mediation at the request of the parties and/or the mediator for good cause shown.

(c) The public employer or the employee organization, involved in an impasse affecting terms and conditions of employment of the employees in the collective negotiations unit, may individually or jointly request the Executive Director to invoke fact-finding with recommendations for settlement. Joint requests are encouraged. Five (5) copies of the request for fact-finding shall be filed with the Executive Director, signed by the party or parties filing the request, and shall be served upon all other parties to the negotiation impasse. Proof of such service shall be furnished to the Executive Director. The request 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 exclusive representative, its representative to be contacted and his 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;

(7) The names and addresses to which the fact-finder's bill is to be sent.

19:12-7 Appointment of Fact-finder(s)

Upon the invocation of fact-finding by the Executive Director, he shall submit simultaneously to each party to the dispute, as soon as possible, an identical list of names of at least five (5) fact-finders. Each party to the dispute shall have seven (7) days from the date of mailing the list in which to examine said list, cross off any two names to which he objects, number the remaining names indicating the order of his preference, and return the list to the Executive Director. When any party fails to return the list within the specified time, all persons named therein shall be deemed acceptable to that party. The Executive Director shall appoint a fact-finder or

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fact-finders giving recognition to the designated orders of preference, if any. If the appointed fact-finder(s) declines, or is unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the Executive Director shall have the power to make the appointment of a fact-finder(s), not previously rejected by either party, without submission of any additional list. The panel of fact-finders submitted by the Executive Director shall not include the mediator appointed pursuant to section 19:12-2 unless the parties mutually agree in writing requesting such mediator to serve as the fact-finder.

19:12-8 Inquiries; Investigations; Hearings

The fact-finder(s) appointed by the Executive Director pursuant to section 19:12-7 shall, within ten (10) days 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(s) agree to have them public; and take such other steps as he deems appropriate. For the purpose of such hearings, investigations and inquiries, the fact-finder(s) 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. If the dispute is not settled prior thereto, the fact-finder(s) shall make findings of fact and recommend the terms of settlement within fifteen (15) days of his appointment and not later than five (5) days after the close of a fact-finding hearing, unless an extension of time for good cause shown has been granted by the Executive Director. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately and to the Executive Director. The findings and recommendations of the fact-finder(s) may be made public by the Executive Director if the impasse is not resolved with five (5) days after the receipt of the recommendations of the fact-finder(s) by the parties. If the parties are able to reach agreement on the matters in dispute during such five-day period, the findings of fact and recommendations for settlement shall not be made public unless the parties mutually agree to do so. 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 equally by the parties. All individually incurred costs shall be borne by the party incurring them.

19:12-9 Impasse; Settlement thereof

In the event that the findings of fact and recommendations are made public and the impasse continues, the Commission shall take whatever steps it deems expedient to effect a settlement of the impasse including the reconvening of the fact-finding inquiry, which shall be public, to:

- (a) Determine the efforts of the parties to effect a voluntary resolution of the impasse;
- (b) Determine the nature and extent of unresolved matters;
- (c) Determine other methods to effect a resolution of the impasse; and
- (d) Determine the causes for the continuation of the impasse.

19:12-10 Costs of Fact-finding Inquiry

All of the costs of the aforementioned fact-finding inquiry of the Commission shall be borne by the parties equally.

19:12-11 Release of Findings and Recommendations

The findings and recommendations of the Commission shall be released to appropriate newspapers of general circulation.

19:12-12 Conduct of Hearing

The hearing may be conducted by one or more persons or officers of the Commission, designated by the Commission to conduct such hearing and make a recommendation to the Commission.

19:12-13 Payment of Fact-finders

The cost of all fact-finding proceedings pursuant to the Act will be submitted to the Executive Director, in triplicate, by the fact-finder(s). The Executive Director shall then transmit such bills to the parties for payment. The joint obligation of the parties to share the cost of fact-finding shall not be excused by a fact-finder's use of mediation techniques to reduce the issues in dispute, to effect a resolution of the impasse or the failure to issue a fact-finder's report due to a resolution of the impasse.

19:12-14 Appointment of an Arbitrator

The Executive Director may, upon the request of either party to an agreement containing a provision providing for arbitration of unresolved grievances, submit simultaneously to each party to the dispute, as soon as possible, an identical list of names of at least five (5) arbitrators. Each party to the dispute shall have seven (7) days from the date of mailing the list in which to examine said list, cross off any two (2) names to which he objects, number the remaining names indicating the order of his preference and return the list to the Executive Director. When any party fails to return the list within the time specified, all persons named therein shall be deemed acceptable to that party. The Executive Director shall appoint an arbitrator giving recognition to the designated order of preference, if any. If the appointed arbitrator declines, or is unable to serve, or if, for any other reason the appointment cannot be made from the submitted list, the Executive Director shall have the power to make the appointment of an

arbitrator not previously rejected by either party, without submission of any additional list.

Parties to any agreement may, by the terms of their agreement, provide an alternative method for the selection of one or more arbitrators. In such instance the Rules contained herein shall apply only in the event of the failure to select an arbitrator by the alternative method.

19:12-15 Cost of Arbitration

The cost of such arbitration shall be borne by the parties in accordance with their agreement and not by the Commission.

* * *

CHAPTER 13

Violations of the Act

The provisions of the Rules and Regulations entitled "Violations of the Act" (Chapter 13) have been deleted herefrom as a result of the New Jersey Supreme Court's decision in Burlington County Evergreen Park Mental Hospital v. Dorothy Cooper, 56 N.J. 579 (1970).

* * *

CHAPTER 14

Hearings

19:14-1 Who Shall Conduct; to be Public Unless Otherwise Ordered

The hearing for the purpose of taking evidence pursuant to section 19:11-17 and section 19:13-7 of these Rules and Regulations shall be conducted by a hearing officer designated by the Executive Director, unless the Commission or any member thereof presides. Such hearings shall be public unless otherwise ordered, for good cause, by the Executive Director, the Commission or the hearing officer.

An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will not be provided by the Executive Director or the Commission. Copies of the transcript may be purchased by arrangement with the official reporter or examined in the Commission's offices in Trenton during normal working hours.

19:14-2 Duties and Powers of the Hearing Officer

It shall be the duty of the hearing officer to inquire fully into the facts as they relate to the matter before him. With respect to cases assigned to him, between the time he is designated and the transfer of the case to the Executive Director or the Commission, the hearing officer shall have the authority, subject to these Rules and Regulations and the Act, to:

- (a) Administer oaths and affirmations;
- (b) Grant applications for subpoenas;
- (c) Rule upon petitions to quash subpoenas;
- (d) Rule upon offers of proof and receive relevant evidence;
- (e) Take or cause depositions to be taken whenever the ends of justice would be served thereby;
- (f) Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant;
- (g) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper question;
- (h) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (i) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the Executive Director and motions to amend pleadings, also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the hearing officer's report and recommendations;
- (j) Call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;
- (k) 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) Take any other action necessary under the foregoing and authorized by the Rules and Regulations of the Commission.

19:14-3 Unavailability of Hearing Officers

In the event the hearing officer designated to conduct the hearing becomes unavailable, the Executive Director or the Commission may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendation on the record as made, or both.

19:14-4 Rights of Parties

Any party shall have the right to appear at such hearing in person, by counsel, or by other 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 hearing officer; and provided further, that five (5) copies of documentary evidence shall be submitted. The hearing officer at his discretion may permit a reduced number of copies of documentary evidence for good cause shown.

19:14-5 Rules of Evidence

The parties shall not be bound by rules of evidence whether statutory, common law, or adopted by the Rules of Court. All relevant evidence is admissible, except as otherwise provided. A hearing officer may, in his discretion, exclude any evidence or offer of proof 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 hearing officer shall give effect to the rules of privilege recognized by law. Every party shall have a right to present his cause by oral and documentary evidence and to submit rebuttal evidence. Every party and the hearing officer shall have the right to examine and cross-examine as may be required for a full and true disclosure of the facts.

19:14-6 Burden of Proof

A charging party in asserting a violation of the Act and these Rules and Regulations shall have the burden of proving the allegations of the charge by a preponderance of the evidence.

19:14-7 Stipulation of Fact

In any proceeding an agreed statement of facts may be introduced into the record with respect to any issue. An agreed statement of facts may be accepted by the Executive Director for a decision without a hearing. The acceptance of an agreed statement of facts by the Executive Director may be deemed a waiver of a right to hearing.

19:14-8 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. Such objection shall not stay the conduct of the hearing.

Automatic exceptions will be allowed to all adverse rulings.

The Executive Director shall, in his discretion, have the authority, for good cause shown, to review any objection to the rulings of a hearing officer or the conduct of a hearing. The aforementioned review by the Executive Director shall not stay the conduct of the hearing unless otherwise ordered by the Executive Director.

19:14-9 Motions Before or After a Hearing

All motions, other than those made during a hearing, shall be made in writing to the Executive Director, shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds for such motion. The moving party shall serve a copy of all motion papers on all other parties and shall within three (3) days thereafter, file with the Executive Director the original and four (4) copies thereof with proof of service. Answering affidavits, if any, must be served on all parties and the original thereof, together with four (4) copies and proof of service, shall be filed with the Executive Director within five (5) days after service of the moving papers, unless the Executive Director directs otherwise. The Executive Director may rule upon all motions filed with him or he may refer the motion to the hearing officer. The Executive Director may decide to hear oral argument or hear testimony thereon, in which case he shall notify the parties of such fact and of the time and place of such argument or for the taking of such testimony. All such motions, rulings and orders thereon shall be part of the record of the proceedings.

19:14-10 Review of Rulings

Unless expressly authorized by the Commission, rulings by a hearing officer or by the Executive Director shall not be appealed directly to the Commission, but shall be considered by the Commission only upon the filing of a request for review in accordance with section 19:15-2 of the Rules and Regulations.

19:14-11 Waiver of Objections

An objection not duly urged before a hearing officer shall be deemed waived unless the failure to urge such objection shall be excused by the Executive Director or the Commission because of extraordinary circumstances.

19:14-12 Filing of Brief and Oral Argument at the Hearing

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 hearing officer who may fix a reasonable time for such filing, but not in excess of twenty-one (21) days from the close of the hearing. Requests for further extensions of time for good cause shown shall be made to the Executive Director. No request will be considered unless received at least three (3) days prior to the expiration of the time fixed for the filing of briefs or

proposed findings and conclusions, unless expressly authorized by the Executive Director. Notice of the request for any extension shall be served simultaneously on all other parties, and proof of service shall be furnished. Five (5) copies of any brief or proposed findings and conclusions shall be filed with the hearing officer, and copies shall be served simultaneously on the other parties, and a statement of such service shall be furnished.

19:14-13 Continuance or Adjournment

At the discretion of the hearing officer, 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 hearing officer, or by other appropriate notice.

19:14-14 Misconduct

Misconduct of an aggravated character at a hearing before a hearing officer, Executive Director or the Commission, when engaged in by an attorney or other representative of a party, shall be ground for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

19:14-15 Submission of the Hearing Officer's Report to the Executive Director

After completion of the hearing, or upon the consent of the parties prior to the conclusion of the hearing, the hearing officer shall transfer the case to the Executive Director including the hearing officer's report and recommendations and record. The hearing officer's report and recommendations, where appropriate, should include the remedial action to be taken and notices to be posted. The record shall include the petition or charge, notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, exceptions, documentary evidence and any briefs or other documents submitted by the parties. The Executive Director shall cause the report and recommendations of the hearing officer to be served promptly on all parties to the proceeding. Five (5) copies of any exceptions to the hearing officer's report and recommendations may be filed by any party with the Executive Director within seven (7) days after service of the report and recommendations, provided, however, that the Executive Director may for good cause shown extend the time for filing such exceptions. Copies of such exceptions and any supporting briefs shall be served simultaneously on all other parties, and a statement of such service shall be furnished to the Executive Director.

19:14-16 Filing of Exceptions to Hearing Officer's Report

Exceptions to a hearing officer's report shall:

(a) Set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;

(b) Identify that part of the hearing officer's report to which objection is made;

(c) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

Any exception to a ruling, finding, conclusion, or recommendation 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.

19:14-17 Briefs in Support of Exceptions

Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

(a) A concise statement of the case containing all that is material to the consideration of the questions presented;

(b) A specification of the questions involved and to be argued;

(c) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

Answering briefs to the exceptions, and cross-exceptions and supporting briefs, may be filed upon application at the discretion of the Executive Director or the Commission.

19:14-18 Action by the Executive Director

After considering the hearing officer's report and recommendations, the record and any exceptions filed, the Executive Director shall issue his decision. In cases alleging a violation of the Act and these Rules and Regulations and upon finding such violation the Executive Director shall order the respondent to cease and desist from conduct violative of the Act and these Rules and Regulations and may require the respondent to take such affirmative corrective action as he deems appropriate to effectuate the policies of the Act and these Rules and Regulations.

19:14-19 Compliance with Decisions and Orders of the Executive Director

Where remedial action is ordered, compliance with decisions and orders of the Executive Director or the Commission shall be achieved by the respondent reporting to the Executive Director, within a specified period, that the required remedial action has been taken. Where the Executive Director finds that the required remedy has not been effected, he shall refer the matter to the Commission for appropriate action.

* * *

CHAPTER 15

Duties and Powers of the Executive Director; Appeals from Action of the Executive Director; Transfer of the Case to the Commission

19:15-1 Duties and Powers of the Executive Director

(a) It shall be the duty of the Executive Director to investigate all petitions, requests, charges and all other matters coming before the Commission. If it appears to the Executive Director that there is reasonable cause to believe that (1) a question of representation exists, or (2) a mediator should be assigned to assist in collective negotiations, or (3) a fact-finder should be assigned to make recommendations for settlement, or (4) an arbitrator should be assigned pursuant to the collectively negotiated agreement, or (5) a hearing should be held on a charge alleging a violation of the Act and these Rules and Regulations, he shall take appropriate action on behalf of the Commission.

(b) Whenever the Executive Director deems it necessary in order to effectuate the purposes of the Act or to avoid unnecessary costs or delay, he may order any proceeding to be transferred to or consolidated with any other proceeding which may have been instituted or he may in his discretion sever proceedings which previously have been consolidated.

(c) A decision or order of the Executive Director in representation matters and proceedings involving a violation of the Act and these Rules and Regulations shall set forth findings of fact, conclusions of law, decision, order, or direction. The decision, order or direction of the Executive Director shall be a final administrative determination subject to the filing of a request for review with the Commission.

19:15-2 Request for Review

(a) Within ten (10) days of the date of delivery to the parties of record of the Executive Director's decision, order or direction, any aggrieved party may file a request for review with the Commission.

(b) A request for review shall be submitted in ten (10) copies to the Commission and shall be printed or otherwise legibly duplicated. A copy shall be served on the parties of record and the Executive Director. A statement of service shall be filed with the request for review. The filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the Executive Director.

19:15-3 Grounds for Granting a Request for Review

The Commission will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only

upon one or more of the following grounds:

(a) That a substantial question of law or policy is raised concerning the interpretation or administration of the Act or these Rules and Regulations.

(b) That the Executive Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(c) That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error.

(d) That there are compelling reasons for reconsideration of an important Commission rule or policy.

19:15-4 Contents of Request for Review; Timely Presentment of Facts

A request for review must be a self-contained document enabling the Commission to rule on the basis of its contents without the necessity of recourse to the record. With respect to ground (b) in section 19:15-3, and other grounds where appropriate, said request must contain a summary of all evidence and rulings bearing on the issues together with page citations from the official transcript and a summary of argument.

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

19:15-5 Statements in Opposition to a Request for Review

Any party may, within seven (7) days after the last day on which the request must be filed, file with the Commission ten (10) copies of a statement in opposition thereto, which shall be duplicated and served in accordance with the requirements of section 19:15-2.

19:15-6 Waiver of Right to Request Review

The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from re-litigating, in any subsequent proceeding, any issue which was, or could have been raised in the proceeding. An order denying a request for review shall constitute the final administrative determination of the Commission.

19:15-7 Stay of Decision; Filing of Briefs with the Commission; Commission Consideration

The granting of a request for review shall not stay the Executive Director's decision unless otherwise ordered by the Commission. Within seven (7) days after issuance of an order granting review the appellants and other parties may file ten (10) copies of a brief with the Commission, which shall be duplicated and served in accordance with the requirements of section 19:15-2. A statement of such service shall be filed simultaneously with the Commission. Such briefs may be reproductions of those previously filed with the Executive

Director and/or other briefs which shall be limited to the issues raised in the request for review. Where review has been granted, the Commission will consider the entire record in the light of the grounds relied on for review. Any request for review may be withdrawn with the permission of the Commission at any time prior to the issuance of the decision of the Commission thereon.

19:15-8 Transfer of Case to Commission

In any case in which it appears to the Executive Director that the proceeding raises questions which should be decided by the Commission, he may, at any time, issue an order, to be effective after the close of the hearing and before decision, transferring the case to the Commission for decision. Such an order may be served on the parties upon the record of the hearing.

19:15-9 Filing Exceptions with the Commission

If any case is transferred to the Commission for decision after the parties have filed exceptions with the Executive Director, the parties may, within such time after service of the order transferring the case as is fixed by the Executive Director, file with the Commission ten (10) copies of the exceptions previously filed with the Executive Director. If the case is transferred to the Commission before the time expires for filing of exceptions with the Executive Director and before the parties have filed exceptions, such exceptions shall be filed as set forth above and served in accordance with section 19:15-2 within the time set by the Executive Director. Requests for extension of time in which to file exceptions shall be filed in writing with the Commission and copies thereof shall be served simultaneously on the other parties and the Executive Director. Such requests must be received by the Commission not later than three (3) days before the date such exceptions are due.

19:15-10 Decision by the Commission

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

19:15-11 Transfer to Commission on its Own Motion

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

* * *

CHAPTER 16

Subpoenas

19:16-1 Issuance

The Executive Director or hearing officer may issue subpoenas to require the attendance of witnesses in this State and the production of books and papers at a hearing held under the provisions of these Rules and Regulations.

19:16-2 Application for Subpoenas

A party may file a written application for subpoena with the Executive Director before the opening of a hearing, or with a hearing officer at the hearing. The application for subpoena need not name the witness or the books and papers sought. Notice of an application for subpoena need not be communicated to the parties. The Executive Director or hearing officer shall furnish all subpoenas requested.

19:16-3 Petition to Quash

A petition to quash a subpoena may be filed with the Executive Director or hearing officer not later than five (5) days from the date of service of the subpoena. The Executive Director or hearing officer shall give notice of the filing of a petition to quash to the applicant for subpoena.

19:16-4 Ruling on Petition to Quash

The Executive Director or hearing officer may quash a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry or hearing; or the subpoena does not describe with sufficient particularity the evidence sought or that the evidence sought from the witness is privileged under the law or these Rules and Regulations. The Executive Director or hearing officer shall make a statement as to the basis for his ruling.

19:16-5 Timeliness of Petition to Quash

A failure to file a timely petition to quash shall bar the filing of a subsequent petition to quash a subpoena.

19:16-6 Inclusion in the Record

An aggrieved party may request that the petition to quash a subpoena, the answer thereto and the Executive Director's or hearing officer's statement of the basis for his ruling, as the case may be, be made a part of the record.

19:16-7 Failure to Comply

No person served with a subpoena issued by the Executive Director or a hearing officer, as the case may be, for the purposes aforesaid, shall refuse or neglect to appear or testify or to produce books and papers relevant to such investigation, inquiry or hearing as commanded in such subpoena without the timely filing of a petition to quash a subpoena with the Executive Director or the hearing officer.

A failure to comply with, or neglect of, a subpoena issued by the Executive Director or hearing officer pursuant to section 19:14-2 of these Rules and Regulations may be certified by the Executive Director to a court of competent jurisdiction for an order of compliance.

19:16-8 Fees

The fees for witnesses for attendance and travel shall be paid from appropriations made to the Division of Public Employment Relations to those witnesses subpoenaed by the Executive Director or the hearing officer on his own motion. The fees for witnesses for attendance and travel shall be paid by the party requesting the subpoena.

* * *

CHAPTER 17

Service and Filing of Papers

19:17-1 Time for Filing Papers

(a) Computation of time

In computing any period of time prescribed by or allowed by these Rules and Regulations or by order of the Commission or officer conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a legal holiday. When the period of time prescribed, or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations.

(b) Additional time after service by mail

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served on him by mail, three (3) days shall be added to the prescribed period, provided, however, that three (3) days shall not be added if any extension of such time may have been granted.

(c) Extension of time

The Commission, Executive Director or officer having authority to dispose of the matter, may, for good cause shown, extend any time prescribed in these Rules and Regulations.

(d) When these Rules and Regulations require the filing of any paper, such document must be received by the Commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

19:17-2 Form of Documents

(a) Title

Documents other than correspondence shall clearly show the title of the proceeding and the docket number, if any.

(b) Where to file

All documents, correspondence, and papers filed prior to hearing shall be filed with the Executive Director or the Commission. During the course of the hearing, all matters shall be filed with the hearing officer or fact-finder(s) conducting the hearing. After the close of the hearing, all matters shall be filed with the Executive Director or the Commission unless the hearing officer or fact-finder(s) shall have made other provisions. Copies shall be served simultaneously on all interested parties. Proof of service shall be furnished.

(c) Number of copies; form

Except as otherwise provided in these Rules and Regulations, any documents or papers shall be filed with four (4) copies in addition to the original. All matters filed with the Executive Director or the Commission shall be printed, typed, or otherwise legibly duplicated on letter size paper (8 1/2 x 11); carbon copies of typewritten matter will be accepted only if they are clearly legible.

(d) Signature

The original of each document filed shall be signed by an attorney or representative of record for the party, or, by the party himself, or by an officer of the party and shall contain the address and telephone number of the person signing it.

19:17-3 Service of Pleading and Other Process; Proof of Service

(a) Method of service

Notices of hearings, decisions, orders and other process of papers may be served personally or by registered or certified mail or by telegraph and proof of service established by the verified return of the individual serving the same, setting forth the manner of such service, return post office receipt or telegraph receipt.

(b) Upon whom served

All papers except charges, representation petitions and papers relating to subpoenas, shall be served upon all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law, and upon the Executive Director or the Commission, or its designated officer or agent or upon the fact-finder(s), where appropriate. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) Statement of service

The party or person serving the papers or process shall submit simultaneously to the Executive Director, or the individual conducting the proceeding, a written statement of such service; failure to file a statement of service shall not affect the validity of the service.

* * *

CHAPTER 18

Enforcement

19:18-1 Enforcement of the Provisions of the Act and these Rules and Regulations

In any case wherein it is found, after a hearing, that the Act and these Rules and Regulations have been violated and the respondent has refused to comply with a final decision and order of the Executive Director or of the Commission, the Commission may institute proceedings before any court of competent jurisdiction for the enforcement of such order and for such appropriate temporary or final relief as may be necessary.

19:18-2 Temporary Restraining Orders

The Commission may apply to a court of competent jurisdiction for a temporary restraining order, interlocutory injunction and other temporary or permanent relief to enjoin substantial and irreparable harm to a charging party alleging a violation of the Act in a proceeding subject to these Rules and Regulations.

* * *

CHAPTER 19

Construction of Rules

19:19-1 Rules to be Liberally Construed

Whenever the Executive Director or the Commission finds that unusual circumstances or good cause exist and that strict compliance with the terms of these Rules and Regulations will work an injustice or unfairness, it shall construe these Rules and Regulations liberally to prevent injustices and to effectuate the purposes of the law.

When an act is required or allowed to be done at or within a specified time the Executive Director or the Commission may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the Act.

19:19-2 Application of Rules and Regulations

Any valid action by parties prior to the effective date of the Rules and Regulations will not be held invalid because of a failure to comply with the procedural requirements set forth herein.

19:19-3 Effective Date

These Rules and Regulations and Statement of Procedure shall take effect on August 29, 1969.

NEW JERSEY
EMPLOYER-EMPLOYEE
RELATIONS ACT

CHAPTER 303, LAWS OF 1968

An Act to amend the title of "An act to promote the mediation, conciliation and arbitration of labor disputes and the creation of a board of mediation for the promotion thereof," approved April 30, 1941 (P.L. 1941, c. 100), so that the same shall read "An act concerning employer-employee relations in public and private employment, creating a board of mediation, a public employment relations commission and prescribing their functions, powers and duties," and to amend and supplement the body of said act and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Title amended.

1. The title of chapter 100 of the laws of 1941 is amended to read as follows: An act concerning employer-employee relations in public and private employment, creating a board of mediation, a public employment relations commission and prescribing their functions, powers and duties.

2. Section 1 of P.L. 1941, chapter 100 (C. 34:13A-1) is amended to read as follows:

C. 34:13A-1 Short title.

1. This act shall be known and may be cited as "New Jersey Employer-Employee Relations Act."

3. Section 2 of P.L. 1941, chapter 100 (C. 34:13A-2) is amended to read as follows:

C. 34:13A-2 Policy declaration.

2. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment

of the provisions of this act is hereby declared as a matter of legislative determination.

4. Section 3 of P.L. 1941, chapter 100 (C.34:13A-3) is amended to read as follows:

C. 34:13A-3 Definitions.

3. When used in this act:

(a) The term "board" shall mean New Jersey State Board of Mediation.

(b) The term "commission" shall mean New Jersey Public Employment Relations Commission.

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

(d) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless this act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subject to the provisions of the Railway Labor Act. This term shall include public employee, i.e. any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions, provided that in any school district this shall exclude only the superintendent of schools or other chief administrator of the district.

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

C. 34:13A-5.1 Division of Public Employment Relations and Division of Private Employment Dispute Settlement; establishment, functions State Board of Mediation.

5. There is hereby established a Division of Public Employment Relations and a Division of Private Employment Dispute Settlement.

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievance procedures. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Public Employment Relations is hereby allocated within the Department of Labor and Industry, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof.

(b) The Division of Private Employment Dispute Settlement shall assist in the resolution of disputes in private employment. The New Jersey State Board of Mediation, its objectives and the powers and duties granted by this act and the act of which this act is amendatory and supplementary shall be concerned exclusively with matters of private employment and the office shall continue to be located in the city of Newark.

C 34:13A-5.2 Public Employment Relations Commission; establishment, powers and duties, membership, appointment, qualifications, chairman, terms, vacancies, compensation and reimbursement.

6. (a) There is hereby established in the Division of Public Employment Relations a commission to be known as the New Jersey Public Employment Relations Commission. This commission, in addition to the powers and duties granted by this act, shall have in the public employment area the same powers and duties granted to the labor mediation board in sections 7 and 10 of chapter 100, P.L. 1941 and in sections 2 and 3 of chapter 32, P.L. 1945.* There shall be a chief executive officer and administrator who shall devote his full time to the performance of his duties exclusively in the Division of Public Employment Relations. (b) This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters. The commission shall consist of 7 members to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, 2 shall be representative of public employers, 2 shall be representative of public employee organizations and 3 shall be representative of the public including the appointee who is designated as chairman. Of the first appointees, 2 shall be appointed for 2 years, 2 for a term of 3 years and 3, including the chairman, for a term of 4 years. Their successors shall be appointed for terms of 3 years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant.

* See appropriate excerpts, pages 38 and 39

The members of the Commission shall be compensated at the rate of \$50.00 for each day, or part thereof, spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties.

C. 34:13A-5.3 Public employees' organizations; authorization, membership, representation, written agreements, grievance procedures.

7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to any managerial executive except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for binding arbitration as a means for resolving disputes.

8. Section 6 of P.L. 1941, chapter 100 (C. 34:13A-6) is amended to read as follows:

C.34:13A-6 Powers and duties.

6. (a) Upon its own motion, in an existing, imminent or threatened labor dispute in private employment, the board, through the Division of Private Employment Dispute Settlement, may, and, upon the request of the parties or either party to the dispute, must take such steps as it may deem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

(b) Whenever negotiations between a public employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, take such steps as it may deem expedient to effect a voluntary resolution of the impasse. In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is empowered to recommend or invoke fact-finding with recommendations for settlement, the cost of which shall be borne by the parties equally.

(c) The board in private employment, through the Division of Private Employment Dispute Settlement, and the commission in public employment, through the Division of Public Employment Relations, shall take the following steps to avoid or terminate labor disputes: (1) to arrange for, hold, adjourn or reconvene a conference or conferences between the disputants or one or more of their representatives or any of them; (2) to invite the disputants or their representatives or any of them to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants; (3) to discuss such grievances and differences with the disputants and their representatives; and (4) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

(d) The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the

employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or, (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit. All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision, and not inconsistent with it, are to that extend hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpoenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

(e) For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, 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 described above.

(f) In carrying out any of its work under this act, the board may designate one of its members, or an officer of the board to act in its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated. In carrying out any of its work under this act, the commission may designate one of its members or an officer of the commission to act on its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the powers hereby conferred upon the commission in connection with the discharge of the duty or duties so delegated.

(g) The board and commission may also appoint and designate other persons or groups of persons to act for and on its behalf and may delegate to such persons or groups of persons any and all of the powers conferred upon it by this act so far as it is reasonably necessary to effectuate the purposes of this act. Such persons shall serve without compensation but shall be reimbursed for any necessary expenses.

(h) The personnel of the Division of Public Employment Relations shall include only individuals familiar with the field of public employee-management relations. The commission's determination that a person is familiar in this field shall not be reviewable by any other body.

9. Section 8 of P.L. 1941, chapter 100 (C. 34:13A-8) is amended to read as follows:

C.34:13A-8 Right to engage in lawful activities.

8. Nothing in this act shall be construed to interfere with, impede or diminish in any way the right of private employees to strike or engage in other lawful concerted activities.

C. 34:13A-8.1 Existing agreements and statutes not affected.

10. Nothing in this act shall be construed to annul or modify, or to preclude the renewal or continuation of any agreement heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any statute or statutes of this State.

C. 34:13A-8.2 Filing of contracts.

11. The commission shall collect and maintain a current file of filed contracts in public employment. Public employers shall file with the commission a copy of any contracts it has negotiated with public employee representatives following the consummation of negotiations.

C.34:13A-8.3 Employee-management relations program.

12. The commission in conjunction with the Institute of Management and Labor of Rutgers, the State University, shall develop and maintain a program for the guidance of public employers in employee-management relations, to provide technical advice to public employers on employee-management programs, to assist in the development of programs for training management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service, and for the training of management officials in the discharge of their employee-management relations responsibilities in the public interest.

13. Section 11 of P.L. 1941, chapter 100 (C.34:13A-11) is amended to read as follows:

C. 34:13A-11 Adoption or amendment of rules

11. The board shall have power to adopt, alter, amend or repeal such rules in connection with the voluntary mediation of labor disputes in private employment and the commission shall have the same powers in public employment, as may be necessary for the proper administration and enforcement of the provisions of this act.

14. For the purpose of carrying out the amendatory and supplementary provisions of this act there is hereby appropriated for the use of the commission for the fiscal year 1968-1969, the additional sum of \$100,000.00.

15. This act shall take effect July 1, 1968.

Passed September 13, 1968.

* * *

CHAPTER 100, LAWS OF 1941

N.J.S.A. 34:13A-7 Arbitration.

7. Whenever a controversy shall arise between an employer and his employees which is not settled either in conference between representatives of the parties or through mediation in the manner provided by this act, such controversy may, by agreement of the parties, be submitted to arbitration, one person to be selected by the employer, one person to be selected by the employees, and a third selected by the representatives of the employer and employees, and in the event of any such appointment or selection not being made upon the request of the parties in the controversy, the department may select the third person to arbitrate the matter submitted; provided, however, that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of the policy or purpose of this act, or of any provision thereof, nor shall failure or refusal to arbitrate constitute a basis for any action at law or suit in equity.

N.J.S.A. 34:13A-10 Disqualifications.

10. No member or officer of the board having any financial or other interest in a trade, business, industry or occupation in which a labor dispute exists or is threatened and of which the board has taken cognizance, shall be qualified to participate in any way in the acts or efforts of the board in connection with the settlement or avoidance thereof.

* * *

CHAPTER 32, LAWS OF 1945

N.J.S.A. 34:13A-9 Personnel compensation.

2. (1) For the performance of its work, under this act, the board may request and shall avail itself of and utilize the service of any officer or employee of the Department of Labor who shall render such assistance as the board may require without additional compensation. The board may, within the amount available therefor by appropriation, appoint a secretary and such other assistants and employees as it may require for the consummation of its work, prescribe their duties and fix their compensation. (2) Each member of the board shall be entitled to be reimbursed for his traveling and other expenses actually and necessarily incurred by him in the performance of his duties, and, in addition, shall receive a per diem allowance of twenty-five dollars (\$25.00) for each day, or part thereof, spent in the rendition of service to or for the board under this act; provided, however, that no member shall in any case receive per diem compensation as such member in an amount in excess of five thousand dollars (\$5,000.00) for any one fiscal year.

N.J.S.A. 34:13A-10.1 Board members; participation; membership or employment in other agencies.

3. No member of the board shall take any part, directly or indirectly, in any proceeding involving any relation between employees and employers before any board, bureau, commission, officer or court, unless such member in such proceeding takes the part of the same group whether employees, employers, or the public, as he represents on the Board of Mediation.

No member of the board shall be a member or employee of any other public board, body, commission, bureau or agency which deals with employer and employee relations, whether Federal, State or local, except that he may be a member of any such board, body, commission, bureau or agency if his membership thereon is as a representative of the same group, whether employees, employers or the public, as it is on the Board of Mediation.

CONTENTS

	Page
Chapter 10 - Definitions	1
19:10-1 Act; Commission	1
10:10-2 Executive Director.....	1
19:10-3 Officer	1
19:10-4 Hearing Officer.....	2
19:10-5 Party	2
19:10-6 Showing of Interest	2
19:10-7 Certification	2
19:10-8 Recognition	2
19:10-9 Representation Proceeding	2
19:10-10 Mediator	3
19:10-11 Fact-finder	3
19:10-12 Arbitrator	3
19:10-13 Mediation Panel	3
19:10-14 Fact-finding Panel	3
19:10-15 Arbitration Panel	3
Chapter 11 - Representation Proceedings	3
19:11-1 Petitions for Certification of Public Employee Representative or for Decertification of Public Employee Representative	3
19:11-2 Contents of Petition for Certification of Public Employee Representative	4
19:11-3 Contents of Petition for Decertification of Public Employee Representative	4
19:11-4 Petition for Certification of Public Employee Repre- sentative Filed by a Public Employer	5
19:11-5 Petition for Clarification of Unit or Amendment of Certification	5
19:11-6 Number of Copies to be Filed	5
19:11-7 Validity of Showing of Interest	6
19:11-8 Processing of Petition	6
19:11-9 Withdrawal or Dismissal of Petition	6
19:11-10 Posting of Notice of Petition	6
19:11-11 Public Docket	6
19:11-12 Investigation of Petition	7
19:11-13 Intervention	7
19:11-14 Recognition as Exclusive Representative	7
19:11-15 Timeliness of Petitions	8
19:11-16 Agreement for Consent Election.....	8
19:11-17 Notice of Hearing	9
19:11-18 Notices of Election; Improper Use of Notices	9
19:11-19 Election Procedure: Conduct of Elections, Tally of Ballots, Objections, Challenges and Determination of Challenges and Objections	10

	Page
19:11-20 Runoff Election.....	11
19:11-21 Determination of Majority Representative	11
Chapter 12 - Impasses	12
19:12-1 Filing of Notice of Impasse	12
19:12-2 Appointment of a Mediator	12
19:12-3 Mediator's Function	13
19:12-4 Confidential Information	13
19:12-5 Mediator's Report to the Executive Director	13
19:12-6 Invocation of Fact-finding	14
19:12-7 Appointment of Fact-finder(s)	14
19:12-8 Inquiries; Investigations; Hearings	15
19:12-9 Impasse; Settlement Thereof	15
19:12-10 Costs of Fact-finding Inquiry	16
19:12-11 Release of Findings and Recommendations	16
19:12-12 Conduct of Hearing	16
19:12-13 Payment of Fact-finders	16
19:12-14 Appointment of an Arbitrator	16
19:12-15 Cost of Arbitration	17
Chapter 13 - Violations of the Act	17
Chapter 14 - Hearings	18
19:14-1 Who Shall Conduct: to be Public Unless Otherwise Ordered	18
19:14-2 Duties and Powers of the Hearing Officer	18
19:14-3 Unavailability of Hearing Officers	19
19:14-4 Rights of Parties	19
19:14-5 Rules of Evidence.....	19
19:14-6 Burden of Proof	19
19:14-7 Stipulation of Fact.....	19
19:14-8 Objection to Conduct of Hearing	19
19:14-9 Motions Before or After a Hearing	20
19:14-10 Review of Rulings	20
19:14-11 Waiver of Objections	20
19:14-12 Filing of Brief and Oral Argument at the Hearing....	20
19:14-13 Continuance or Adjournment.....	21
19:14-14 Misconduct.....	21
19:14-15 Submission of the Hearing Officer's Report to the Executive Director.....	21
19:14-16 Filing of Exceptions to Hearing Officer's Report...	21
19:14-17 Briefs in Support of Exceptions.....	22
19:14-18 Action by the Executive Director.....	22
19:14-19 Compliance with Decisions and Orders of the Execu- tive Director.....	22

	Page
Chapter 15 - Duties and Powers of the Executive Director; Appeals from Action of the Executive Director; Transfer of the Case to the Commission.....	23
19:15-1 Duties and Powers of the Executive Director.....	23
19:15-2 Request for Review.....	23
19:15-3 Grounds for Granting a Request for Review.....	23
19:15-4 Contents of Request for Review; Timely Presentment of Facts.....	24
19:15-5 Statements in Opposition to a Request for Review.....	24
19:15-6 Waiver of Right to Request Review.....	24
19:15-7 Stay of Decision; Filing of Briefs with the Commis- sion; Commission Consideration.....	24
19:15-8 Transfer of Case to Commission.....	25
19:15-9 Filing Exceptions with the Commission.....	25
19:15-10 Decision by the Commission.....	25
19:15-11 Transfer to Commission on its Own Motion.....	25
Chapter 16 - Subpoenas.....	26
19:16-1 Issuance.....	26
19:16-2 Application for Subpoenas.....	26
19:16-3 Petition to Quash.....	26
19:16-4 Ruling on Petition to Quash.....	26
19:16-5 Timeliness of Petition to Quash.....	26
19:16-6 Inclusion in the Record.....	26
19:16-7 Failure to Comply.....	27
19:16-8 Fees.....	27
Chapter 17 - Service and Filing of Papers.....	27
19:17-1 Time for Filing Papers.....	27
19:17-2 Form of Documents.....	28
19:17-3 Service of Pleading and Other Process; Proof of Service.....	28
Chapter 18 - Enforcement.....	29
19:18-1 Enforcement of the Provisions of the Act and these Rules and Regulations.....	29
19:18-2 Temporary Restraining Orders.....	29
Chapter 19 - Construction of Rules.....	29
19:19-1 Rules to be Liberally Construed.....	29
19:19-2 Application of Rules and Regulations.....	30
19:19-3 Effective Date.....	30
New Jersey Employer-Employee Relations Act, 1968.....	31