



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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*Unfair practice proceedings:
[rules]*

NOTICE

On March 27, 1975 the Public Employment Relations Commission adopted revisions of its rules concerning the processing of unfair practice cases, and adopted new rules of practice governing applications for interim relief in unfair practice proceedings. Attached hereto are copies of these rules, which are effective immediately.

Any person desiring advance notice of the rule-making proceedings of the Public Employment Relations Commission should so indicate by addressing a written request to the Executive Director, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625. Notice of future rule-making activities of the Commission shall be distributed to persons making such a request.

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CHAPTER 14

UNFAIR PRACTICE PROCEEDINGS

SUBCHAPTER 1. CHARGE

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19:14-1.5 Amendment; Withdrawal; Dismissal

(a) The Commission or its named designee may permit the charging party to amend such charge at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended charge shall conform to the provisions of these rules relating to the original charge. [Any charge may be withdrawn only with the consent of the Commission or its named designee, and upon such withdrawal any complaint based thereon shall be dismissed and the case closed.]

(b) An unfair practice proceeding and any complaint issued therein shall be dismissed and the case closed if the charging party files a notice of withdrawal of the charge at any time subsequent to the filing of the charge and prior to service by the respondent of an answer to the complaint or of a motion for summary judgment, whichever first occurs. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) Except as provided by subsection (b) hereof, a charge may be withdrawn by the charging party, and any complaint based thereon dismissed and the case closed, only with the consent of the Commission or its named designee. Unless otherwise provided by the Commission or its named designee, a withdrawal and dismissal under this subsection is without prejudice.

19:14-1.6 [Investigation] Processing of Case

(a) Upon the filing of such charge, the Commission or its named designee [shall cause an investigation to be conducted into the matters and allegations set forth therein. The charging party, the respondent, and any intervenor(s) shall

present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in such charge. The charging party shall have the burden of proffering sufficient evidence to support a prima facie finding of unfair practice.] will normally assign the case to a staff member for processing. All parties to the case will be notified of such assignment and will be requested to submit to such staff member within a reasonable period of time:

(1) An executed copy of any current or recently expired contract between the parties; and

(2) A written statement of position explaining why the allegations contained in the charge, if true, would or would not constitute unfair practices on the part of the respondent.

(b) In the course of processing the case, the assigned staff member may request the parties to submit, within a reasonable period of time, briefs setting forth detailed arguments concerning all relevant legal issues pertaining to the case.

(c) In the course of processing the case, the assigned staff member may cause an exploratory conference or conferences to be held with the parties, either individually or jointly, for the purpose of clarifying the issues and of exploring the possibility of voluntary resolution and settlement of the case. Upon notification of any such exploratory conference, the party or parties so notified shall attend such conference, either in person or by authorized representative.

[19:14-1.7 Investigatory Conference]

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

SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING

19:14-2.1 Contents; Service

After a charge has been filed and processed, if it appears to the Commission or its named designee [prima facie] that the [respondent has engaged or is engaging in an unfair practice] allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the Commission or its named designee shall issue and cause to be served on all parties a formal complaint [in the name of the Commission stating the specific unfair practice charged and] including a notice of hearing before a hearing examiner at a stated time and place. The complaint with notice of hearing shall [also] contain:

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

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

(c) A statement of the time and place of any pre-hearing conference

to be held pursuant to N.J.A.C. 19:14-6.2 (Pre-Hearing Conference).

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

19:14-2.2 Amendments; [Withdrawal] Dismissal

(a) Any such complaint may be amended [at any time] by the Commission or its named designee [upon such terms as may be deemed just. Any such complaint may be withdrawn before the hearing by the Commission or its named designee on its own motion.] to conform to the allegations set forth in any amended charge thereafter filed by the charging party.

(b) Any such complaint shall be dismissed under the circumstances set forth in subsections (b) and (c) of N.J.A.C. 19:14-1.5 (Amendment; Withdrawal; Dismissal).

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

If, after a charge has been [investigated] processed, [either prior or subsequent to any investigatory conference held pursuant to N.J.A.C. 19:14-1.7 (Investigatory Conference),] the Commission or its named designee declines to issue a complaint, [or having withdrawn a complaint pursuant to N.J.A.C. 19:14-2.2 (Amendment, Withdrawal), declines to reissue it,] the parties shall be so advised in writing, accompanied by a simple statement of the procedural or other grounds for such action. The charging party may obtain a review of such action by the Commission's named designee, if any, by filing an original and nine copies of an appeal with the Commission within ten days from the service of the notice of such refusal to issue [or reissue]. A copy shall be served simultaneously upon all other parties, and proof of service shall be filed with the Commission. An appeal must be a self-contained document enabling the Commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented

unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented. Any party may file a statement in opposition to an appeal within five days from the service of the appeal. Such statement in opposition shall be filed and served in like manner as the appeal. The Commission may sustain the refusal to issue [or reissue] a complaint, stating the grounds of its affirmance, or may direct that further action be taken. The Commission's determination shall be served on all the parties.

SUBCHAPTER 3. ANSWER

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

The respondent shall, within ten days from the service of the complaint, file an answer thereto. Upon its own motion or upon proper cause shown, the Commission or its named designee may extend the time within which the answer shall be filed. The respondent shall specifically admit, deny or explain each of the [facts alleged] charging party's allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. The answer shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment."

SUBCHAPTER 4. MOTIONS

19:14-4.1 Where to file

All motions [for an extension of the date of the hearing, for an extension of time within which the answer shall be filed, or for leave to intervene,] made subsequent to the filing of the charge and prior to the hearing [,] shall be filed in writing with the Commission or its named designee [.] , except that [All] all motions for summary judgment made subsequent to the issuance of the complaint and prior to the hearing shall be filed in writing with the Commission. All motions made at the hearing, or subsequent to the hearing but prior to transfer of the case to the Commission, shall be made in writing to the hearing examiner, or stated orally on the record. All motions made subsequent to transfer of the case to, and while it is pending before, the Commission shall be filed in writing with the Commission.

CHAPTER 14

UNFAIR PRACTICE PROCEEDINGS

SUBCHAPTER 9. INTERIM RELIEF [New]

19:14-9.1 Application By Order to Show Cause

(a) Upon the filing of an unfair practice charge or during the pendency of an unfair practice proceeding, the charging party may apply to the Commission or its named designee for an order requiring the respondent to show cause why specified interim relief should not be granted pending the disposition of the unfair practice proceeding. The order to show cause shall not, however, include any temporary restraints against the respondent unless the respondent has either been given notice of the application and consents thereto or it appears from specific facts shown by affidavit or other verified pleading that immediate and irreparable damage will probably result to the charging party before notice can be served or informally given and a hearing had thereon. If the order to show cause includes temporary restraints and was issued without notice to the respondent, provision shall be made therein that the respondent shall have leave to move for the dissolution or modification of the restraints on two days' notice or on such other notice as the Commission or its named designee fixes in the order. The order may further provide for the continuation of the restraints until the further order of the Commission or its named designee. The order shall be returnable within such time as the Commission or its named designee fixes, unless within such time the Commission or its named designee on good cause shown extends the time.

(b) The charging party shall serve the order to show cause and any supporting affidavits upon the respondent at least ten days prior to the return date and in the manner prescribed by N.J.A.C. 19:17-1.3 (Service of Pleading and Other Process; Proof of Service), unless the Commission or its named designee orders a shorter or longer time or other manner of service. If the order to show cause

issues upon the filing of the unfair practice charge, a copy of such charge shall be served simultaneously with the order and supporting affidavits.

19:14-9.2 Briefs

(a) By no later than five days prior to the return date of the order to show cause, unless otherwise ordered by the Commission or its named designee, the charging party shall file with the Commission or its named designee an original and four copies of his brief and appendix, together with proof of service of a copy thereof upon the respondent. The brief shall explain clearly the nature of the proceeding, the interim relief the charging party seeks and why he is entitled thereto. It may, for purposes of clarity, summarize the unfair practice charge, any other pleadings, and other undisputed papers or records which do not appear in the appendix.

(b) By no later than two days prior to such return date, unless otherwise ordered by the Commission or its named designee, the respondent shall file with the Commission or its named designee an original and four copies of his answering brief and appendix, together with proof of service of a copy thereof upon the charging party. The answering brief shall set forth with equal explicitness the grounds of opposition, annexing an appendix containing copies of any papers relied on which are not in the charging party's appendix. If no answering brief is filed the application may be considered to be unopposed.

19:14-9.3 Hearing on Return Date

A hearing shall be conducted on the return date of the order to show cause and on the return date of the respondent's motion to dissolve or modify the temporary restraints. The parties shall have the right to present oral argument, and oral testimony may be taken in the discretion of the hearer(s). The Commission

shall conduct such hearings unless it shall have designated one of its members or officers to act on its behalf, in which case such designation shall be deemed to be a delegation to such designee of authority to render a final decision on behalf of the Commission.

19:14-9.4 Decision; Enforcement

(a) A final decision in proceedings under this Subchapter shall be in writing and shall include findings of fact and conclusions of law. Any order granting an injunction and any restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the unfair practice charge or other pleading or document, the act or acts sought to be restrained; and shall apply to only such parties to the unfair practice proceeding and such of their officers, agents, employees, and attorneys, and such persons in active concert or participation with them, as receive actual notice of the order by service in the manner prescribed by N.J.A.C. 19:17-1.3.

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

19:14-9.5 Construction and Relaxation

The rules in this Subchapter shall be construed to secure a just determination, simplicity in procedure, fairness in administration, the elimination of unjustifiable expense and delay, and the effectuation of the purposes of the Act. Any rule may be relaxed or dispensed with if strict adherence to it would result in an injustice or would not effectuate the purposes of the Act.