

CHAPTER 17
PUBLIC EMPLOYMENT RELATIONS
COMMISSION APPEAL BOARD

Authority

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

Source and Effective Date

R.1993 d.322, effective June 7, 1993.
See: 25 N.J.R. 1842(b), 25 N.J.R. 2907(a).

Executive Order No. 66(1978) Expiration Date

Chapter 17, Public Employment Relations Commission Appeal Board, expires on June 7, 1998.

Chapter Historical Note

All provisions of this chapter became effective August 1, 1983 as R.1983 d.310. See: 14 N.J.R. 903(a), 15 N.J.R. 1257(a).

1987 Revisions: Revisions to section 2.1 and new subchapters 3 and 4 became effective June 15, 1987 as R.1987 d.248. See: 19 N.J.R. 196(a), 19 N.J.R. 1105(a).

1988 Revisions: This chapter was readopted pursuant to Executive Order 66(1978), effective June 8, 1988 as R.1988 d.301. See: 20 N.J.R. 891(a), 20 N.J.R. 1571(d).

Pursuant to Executive Order No. 66(1978), Chapter 17 was readopted as R.1993 d.322. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

- 19:17-1.1 Description of the Appeal Board
- 19:17-1.2 Staff of the Appeal Board
- 19:17-1.3 Delegation of authority to staff of the Division of Public Employment Relations, officers of the Appeal Board

SUBCHAPTER 2. PROCEDURES

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

SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES

- 19:17-3.1 Designation of fiscal year
- 19:17-3.2 Designation of dues year
- 19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer
- 19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment

SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES

- 19:17-4.1 Period for filing of requests for review
- 19:17-4.2 Fees of nonmembers filing requests for review; escrow of amounts reasonably in dispute
- 19:17-4.3 Time for completion of demand and return system
- 19:17-4.4 Results of demand and return system, payment of interest on amounts returned
- 19:17-4.5 Time for filing petitions with Appeal Board

SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

19:17-1.1 Description of the Appeal Board

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

Case Notes

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

19:17-1.2 Staff of the Appeal Board

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

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

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

SUBCHAPTER 2. PROCEDURES

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

These rules are to be read in conjunction with the Uniform Administrative Procedure Rules of Practice (UAPRP), N.J.A.C. 1:1-1, and the rules of special applicability for hearings initiated in contested cases before the Public Employment Relations Commission Appeal Board, N.J.A.C. 1:20.

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

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

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

SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES

19:17-3.1 Designation of fiscal year

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

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

19:17-3.2 Designation of dues year

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

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

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

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

1. A statement, verified by an independent auditor or by some other suitable method of the expenditures of the majority representative for its most recently completed fiscal year. The statement shall set forth the major categories of expenditures and shall also identify expenditures of the majority representative and its affiliates which are in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of benefits only available to members of the majority representative.

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

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

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

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

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

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

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

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

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

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

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

Law Review and Journal Commentaries

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

SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES

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

(a) Each nonmember shall be afforded a period of at least 30 days after the majority representative has provided the information described in N.J.A.C. 19:17-3.3(a) within which to file a request for review of the amounts assessed by the majority representative as the nonmember's representation fee in lieu of dues.

2. Such emergency order shall continue in effect until the imminent peril to health, safety and welfare has ceased; or for a period of seven days, whichever is shorter, unless extended by the Executive Director or his or her designee of the Authority at a duly scheduled hearing.

3. Written notice of such hearing shall be served upon the affected activity center and the police departments of the municipalities in which the affected activity centers are located.

4. Such hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 19:75-9.4(a)(3).

5. During the effective period of any emergency order, the Authority shall endeavor, by means of bus intercept or other procedures, to minimize the impact of the emergency orders on bus operations at the activity centers.

6. Such emergency orders shall be in accordance with the Authority's Emergency Management Plan as set forth in N.J.A.C. 19:75-10.1.

7. Any emergency orders issued in accordance with (b) above shall be at the sole discretion of the Executive Director or his or her designee of the Authority.

Amended by R.1989 d.81, effective February 6, 1989.

See: 20 N.J.R. 1680(a), 21 N.J.R. 314(c).

Added "or established bus volume"; "final", "in the city of".

Amended by R.1994 d.70, effective February 7, 1994.

See: 25 N.J.R. 4874(a), 26 N.J.R. 831(a).

19:75-4.4 Additional site approval; requests by activity centers to increase or modify on-site bus capacity or discharging or loading areas

(a) Additional sites may be approved as activity centers with on-site bus capacity and designated discharging and loading areas by the Authority upon written application, containing, without limitation, the following:

1. Location, dimensions and legal description of the proposed location;
2. Number of buses proposed to be on site at any one time;
3. Security measures and traffic control to be provided;
4. Evidence of on-site radio/telecommunication equipment;
5. A traffic impact statement including impact on other activity centers, need, and physical capabilities;
6. Drawing to scale, with dimension in feet, showing discharging/loading site.

(b) All applications shall be submitted with an original and eight copies. One additional copy of the application shall be served upon the police department of the municipality in which the proposed site is located and proof of

such service by way of affidavit or certified mail return receipt shall be filed with the Authority. Upon filing with the Authority, the application shall be acted upon in the manner and in accordance with the procedure set forth in N.J.A.C. 19:75-9.4, and thereafter the Authority shall issue a certificate, pursuant to N.J.A.C. 19:75-4.2(b).

(c) In making a determination, the Authority shall consider, among other things, the availability of other sites, anticipated traffic conditions, the impact of the request on the traffic flow, the necessity to the applicant for the additional site, and compatibility with designated routes as provided herein.

(d) As a condition of approval, all discharge/loading sites shall have:

1. Dimensions no less than 45 feet by 12 feet for each bus;
2. Supervisory personnel on site during discharging/loading of passengers;
3. Radio or telecommunication equipment for the purpose of intercept and dispatch procedures.

(e) No discharging/loading site located in a traffic or curb lane, or similar area where the site impedes traffic flow, shall be utilized without prior Authority approval of a plan to mitigate the effect on traffic flow. Mitigation plans shall be submitted to the Authority in accordance with the requirement of (a) through (d) above.

Amended by R.1989 d.81, effective February 6, 1989.

See: 20 N.J.R. 1680(a), 21 N.J.R. 314(c).

Amended by R.1994 d.70, effective February 7, 1994.

See: 25 N.J.R. 4874(a), 26 N.J.R. 831(a).

SUBCHAPTER 5. BUS OPERATIONS

19:75-5.1 Procedure following discharge of passengers

Upon discharge of all passengers, buses shall forthwith proceed to an authorized bus parking facility in accordance with all traffic regulations, unless otherwise exempted in accordance with N.J.A.C. 19:75-6.2(d). Buses shall not be operated solely for the convenience of the driver between discharge and loading of passengers. Buses picking up passengers shall not arrive more than 15 minutes prior to scheduled departure.

Amended by R.1994 d.70, effective February 7, 1994.

See: 25 N.J.R. 4874(a), 26 N.J.R. 831(a).

Amended by R.1995 d.535, effective October 2, 1995.

See: 27 N.J.R. 2128(b), 27 N.J.R. 3800(b).

19:75-5.2 Speed limit in parking lots

Operating speeds in parking lots will not exceed five miles per hour.

19:75-5.3 Engine idling requirements

No buses shall be stopped with their engine running except as is specifically permitted by the New Jersey Department of Environmental Protection Idle Standard set forth in N.J.A.C. 7:27-14.3. Bus parking lot owners and bus operators will be mutually responsible for compliance with this regulation.

Amended by R.1989 d.81, effective February 6, 1989.
See: 20 N.J.R. 1680(a), 21 N.J.R. 314(c).
Amended by R.1994 d.70, effective February 7, 1994.
See: 25 N.J.R. 4874(a), 26 N.J.R. 831(a).

19:75-5.4 Bus safety inspection

The Authority, in cooperation with the Department of Transportation (DOT), may direct buses, after passengers are unloaded, to an authorized facility for a bus safety inspection.

New Rule, R.1995 d.535, effective October 2, 1995.
See: 27 N.J.R. 2128(b), 27 N.J.R. 3800(b).

SUBCHAPTER 6. PARKING**19:75-6.1 Approved parking lots**

(a) All buses subject to the provisions of this chapter shall park in lots approved by the Authority unless otherwise exempted, in accordance with N.J.A.C. 19:75-6.2(d).

(b) A list of approved bus parking lots is available from the Authority upon request.

(c) Bus parking lots, including Authority lots, which currently are approved or conditionally approved must submit by December 1, 1995 an application with plans that comply with these rules.

(d) Bus parking lots which submit applications as provided in (c) above shall operate in full compliance with these rules by December 1, 1996. Failure to comply by this date shall result in rescission of approval and/or conditional approval to operate a bus parking lot.

(e) The Authority shall deny an application for bus parking lot approval if the bus parking demand during the peak parking month does not exceed 85 percent of the existing number of Authority approved bus parking spaces. The peak parking month and existing number of approved parking spaces shall be as determined by the Authority.

(f) Subsection (e) above shall not apply to bus parking lots approved or conditionally approved as of October 2, 1995.

Amended by R.1986 d.472, effective January 5, 1987.
See: 18 N.J.R. 1688(a), 19 N.J.R. 142(a).
Added (a)1iii and (d).

Amended by R.1989 d.81, effective February 6, 1989.
See: 20 N.J.R. 1680(a), 21 N.J.R. 314(c).
Amended by R.1994 d.70, effective February 7, 1994.
See: 25 N.J.R. 4874(a), 26 N.J.R. 831(a).
Amended by R.1995 d.535, effective October 2, 1995.
See: 27 N.J.R. 2128(b), 27 N.J.R. 3800(b).

19:75-6.2 Bus parking lot approvals

(a) The Authority bus parking lot approval required by these rules shall be in addition to any and all other required municipal, county, state or Federal approvals. Authority approval shall be granted only if the applicant bus parking lot satisfies each of the criteria as follows:

1. Has filed an impact statement acceptable to the Authority.
2. Is within a driving distance of five miles of that portion of Atlantic Avenue between Maine and Albany Avenues within the corporate limits of Atlantic City;
3. Has a minimum of 50 bus parking spaces, with each space having a minimum dimension of 45 feet by 12 feet;
4. Permits only bus parking at this site;
5. Has lighting and is attended during all hours of operation;
6. Contains signs conforming to the standards of the municipality in which the lot is located;
7. Participates in the Authority's Bus Management Program;
8. Possesses two-way radio or telephone equipment sufficient to participate in bus intercept and dispatch activity;
9. Does not materially impair the intent and purpose of these regulations;
10. Demonstrates that it complements the Authority's bus management program, and does not adversely affect any portion of the program as contained in this chapter;
11. Is on an Authority approved bus route;
12. Possesses sufficient specific area which is made available when needed to the New Jersey Department of Transportation (NJDOT) for bus safety inspections.
13. Provides on-site driver services including food services, rest rooms, security, lounge areas, television rooms, recreational areas and communication services;
14. Is in conformance with the Noise Control Act (N.J.S.A. 13:1G) and the rules of the Department of Environmental Protection promulgated pursuant thereto and the standards contained in the Atlantic City Land Use Development Ordinance (Chapter 163-73H);
15. A building or structure setback of 100 feet from any residential use property line;
16. A 25-foot front yard, rear yard, and side yard setback from uses other than residential;

17. A 25-foot buffer along the site boundary in accordance with a submitted landscaping plan;

18. A minimum circulation aisle width of 18 feet for one-way flow and 25 feet for two-way flow, with signs and striping as required by the Manual on Uniform Traffic Control Devices (MUTCD) standards;

19. A minimum lot depth of 100 feet; and

20. Is in conformance with municipal land use ordinances to the extent that such conformance is not inconsistent with these rules.

(b) The requirements of (a)15, 16 and 17 above shall not apply to bus parking lots approved or conditionally approved as of October 2, 1995.

(c) Applicants for Authority approval of any bus parking lot shall submit an original and eight copies of the application to the Authority, including any maps, plans or drawings required by the Authority containing, and without limitation, the following:

1. Location, dimensions and legal description of proposed lot;
2. Hours of operation;
3. Security measures to be provided;
4. Provision for lavatory dumping facilities;
5. Evidence of on-site radio/telecommunications equipment and valid licenses, if required, for the same; and
6. Impact statement as defined in N.J.A.C. 19:75-1.1.

(d) One additional copy of the application shall be served upon the police department of the municipality in which the proposed bus parking lot is located and proof of such service by way of affidavit or certified mail return receipt shall be filed with the Authority. Upon filing with the Authority, the application shall be acted upon in the manner and in accordance with the provisions set forth in N.J.A.C. 19:75-9.4.

(e) The requirement of Authority approval shall not apply to a privately owned parking, repair and maintenance facility in existence at a location in Atlantic County as of February 1, 1983, which exclusively accommodates motor buses owned by the owner of a parking facility and does not rent or lease the facility or its use to any other motorbus provided there is no increase in the capacity of the facility after August 9, 1991, except that any such facility located within the City limits of Atlantic City may provide repair and maintenance service to its motorbuses and other motorbuses and attendant storage and may expand its facility to an adjoining property, subject to municipal planning and zoning ordinances. The requirements for Authority approval shall also not apply to a privately owned parking, repair or maintenance facility located outside the City limits of Atlantic City in existence on February 1, 1983, and in continuous operation thereafter, which exclusively accommodates motorbuses, tractors, trailers and limousines owned directly or through a corporation by an owner or a contract

purchaser of the facility, provided there is no increase in the land area of the entire facility after February 1, 1983, the number of buses parked at any one time does not exceed 85, and on or after January 1, 1992 this exemption shall not transfer with title to the facility.

(f) All approvals shall be conditioned upon compliance with the following:

1. Municipal zoning or planning board approval;
2. Maintenance of the bus parking lot in the condition set forth in the application or any amended application approved by the Authority;
3. On-site posting in a conspicuous place of Authority-approved bus routes and regulations; and
4. Submission of monthly reports on forms supplied by the Authority setting forth arrival/departure times, the bus operator's name, bus number, point of origin, number of passengers and whether or not it is a combination bus.

(g) The Authority retains the right to enter upon and inspect all approved bus parking lots during hours of operation for the purpose of verifying compliance with the provisions of this chapter. In the event that the owner and/or operator of any bus parking lot shall fail to comply with any provision of this subchapter, the Authority shall notify such owner and/or operator of the specific violation thereof. The Authority, in addition to any other penalty provided for herein, shall revoke approval of such bus parking lot unless the enumerated violations have been corrected within 15 days of notification to the owner and/or operator.

(h) All approvals granted by the Authority pursuant to this subchapter shall be for a period of one year. Any renewal or extension of any approval shall only be granted pursuant to the provisions of (h) below. Such approval may be earlier terminated by the Authority in the event that:

1. The use of the property as a bus parking lot is terminated within such one year period; or
2. The approval by the Authority is withdrawn pursuant to (f) above.

(i) Renewals: 120 days prior to the expiration of the approval period provided for in this section, the owner of a bus parking lot shall file with the Authority a written request for a one year renewal of the approval. Such written request shall contain certification by the owner that the bus parking lot complies with all the terms and conditions set forth in this subchapter governing the granting of bus parking lot approval, including any amendments to this subchapter taking effect prior to the expiration of the term of the original approval. The request for renewal shall be processed by the Authority pursuant to the provisions of N.J.A.C. 19:75-9.4. Failure to apply for renewal of a bus parking lot approval within the time provided for herein shall result in the expiration of such approval at the end of one year from the date of issuance. The owner whose bus parking lot approval has expired may file a new application for approval pursuant to the provisions of (a) through (g) above at any time.

Amended by R.1986 d.472, effective January 5, 1987.

See: 18 N.J.R. 1688(a), 19 N.J.R. 142(a).

Added text in (g) and added (h)-(i).

Amended by R.1989 d.81, effective February 6, 1989.

See: 20 N.J.R. 1680(a), 21 N.J.R. 314(c).

Added (b)4; renumbered (b)4 with changes, and (b)5 to (b)5-(b)6.

Amended by R.1994 d.70, effective February 7, 1994.

See: 25 N.J.R. 4874(a), 26 N.J.R. 831(a).

Amended by R.1995 d.535, effective October 2, 1995.

See: 27 N.J.R. 2128(b), 27 N.J.R. 3800(b).

SUBCHAPTER 7. BUS MANAGEMENT FEE

19:75-7.1 Mandatory payment of fees; proof of payment

(a) The owner/operators of any bus subject to the provisions of this chapter shall:

1. Pay a bus management fee to the Authority in the amount of \$2.00 for each bus which it owns or operates and which enters a municipality within the district in which casino gambling is authorized. This fee shall be adjusted annually by the Authority according to the percentage increase of the Consumer Price Index for the Philadelphia/New Jersey area for the preceding year, as determined by the Bureau of Labor Statistics. Payment of the bus management fee shall be for each such entry by any bus with passengers, and applies to any and all buses not exempt carrying passengers to an approved activity center.

2. Exhibit proof of such payment by way of permit in the front windshield of the vehicle, which proof shall be visibly displayed and contain complete information to be considered valid, including the name of the company, bus number and month, day and year of entry.

3. In lieu of the bus management fee required by (a)1 above, the Authority offers a daily or annual bus management fee for each bus in the form of a medallion which may be purchased from the Authority. The annual medallion fee is \$550.00 per each company fleet bus and is payable on a quarterly basis. Annual medallions are available for \$500.00 per fleet bus if purchased on an annual basis by October 1 of each year. The daily medallion fee is \$4.00 per bus.

4. A bus company may obtain company wide daily entry permits pursuant to (a)1 above or daily medallions pursuant to (a)3 above on an annual basis. On or before October 1 of each year, a bus company may apply for such annual entry permits by filing an application with the Authority which includes a complete list of the prior year bus activity and the amount expended for entry permits. The fee for such an annual permit shall be calculated by multiplying the number of bus permits used each day during the prior year by the \$4.00 or \$2.00 fee, as appropriate.

5. Upon written notice to the Authority, the bus company may transfer annual medallions from bus to bus within the same company fleet up to four times per year.

6. A bus company shall include affiliates which operate under different names, but under the ownership of the same particular company, if satisfactory proof of ownership is presented to the Authority.

7. A daily or annual Medallion as issued by the Authority shall be visibly displayed or a company wide approval certificate provided upon demand.

8. On entry permit purchases greater than \$5,000, handling fees shall be waived.

(b) Casino oriented buses that do not have a valid permit or do not purchase a valid permit are subject to a fine in accordance with N.J.A.C. 19:75-8.

Amended by R.1994 d.70, effective February 7, 1994.

See: 25 N.J.R. 4874(a), 26 N.J.R. 831(a).

Amended by R.1995 d.535, effective October 2, 1995.

See: 27 N.J.R. 2128(b), 27 N.J.R. 3800(b).

19:75-7.2 Modes of payment

(a) All bus operators or owners required to pay the bus management fee shall do so in accordance with the following:

1. Payment of the bus management fee shall be made in advance by sending a check or money order payable to the Authority, at South Jersey Transportation Authority, Farley Plaza Service Plaza, P.O. Box 351, Hammonton, NJ 08037. Such advance payment including costs for postage and handling must be received no less than two weeks prior to the scheduled arrival date of any bus subject to this subchapter.

2. Payment of the fee shall be made in advance or at all Authority-approved bus parking facilities and activity centers.

3. The Authority, in its sole discretion, may authorize the purchase of a permit on an emergency basis at an Authority-approved activity center. The following conditions are considered emergency situations:

i. Motorbuses that operate on a limited basis traveling to Atlantic City (less than 10 trips per year);

ii. Motorbus companies that are unaware of Authority rules;

iii. Motorbuses that originate from distances to Atlantic City in excess of 300 miles;

iv. Unscheduled emergency trips to Atlantic City if the motorbus company has contacted the Authority prior to entry;

v. Motorbus drivers that encounter unusual or special circumstances and do not have a valid permit in their possession; and