

CHAPTER 13**SCOPE OF NEGOTIATIONS PROCEEDINGS****Authority**

N.J.S.A. 34:13A-5.4d, 34:13A-11 and 34:13A-27.

Source and Effective Date

R.2006 d.230, effective May 25, 2006.
See: 38 N.J.R. 1309(a), 38 N.J.R. 2735(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 13, Scope of Negotiations Proceedings, expires on November 21, 2011. See: 43 N.J.R. 1189(a).

Chapter Historical Note

Chapter 13, Scope of Negotiations Proceedings, was adopted prior to 1969.

Chapter 13, Scope of Negotiations Proceedings, was deleted by R.1973 d.248, effective September 4, 1973. See: 5 N.J.R. 358(c).

Chapter 13, Scope of Negotiations Proceedings, was adopted by R.1975 d.10, effective January 20, 1975. See: 7 N.J.R. 78(a).

Chapter 13, Scope of Negotiations Proceedings, was readopted by R.2006 d.230, effective May 25, 2006. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. NATURE OF PROCEEDINGS; LIMITS OF JURISDICTION**19:13-1.1 Nature of proceedings; limits of jurisdiction**

(a) N.J.S.A. 34:13A-5.4(d) provides that the Commission shall at all times have the power and duty, upon the request of

any public employer or exclusive representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The procedure set forth in this chapter is intended to avoid protracted administrative litigation with respect to disputes that normally will involve solely questions of law and policy. Accordingly, scope of negotiations proceedings will normally be expeditiously resolved on the basis of the parties' submissions.

(b) Where the dispute concerns the legal arbitrability of a grievance sought to be submitted to binding arbitration pursuant to a collectively negotiated grievance/arbitration procedure, the Commission will not determine:

1. Whether the grievance is covered by the arbitration clause of an agreement;
2. Whether the facts are as alleged by the grievant;
3. Whether a contract provides a defense for the employer's alleged action;
4. Whether there is a valid arbitration clause in an agreement; or
5. Any other similar question.

Amended by R.2006 d.230, effective June 19, 2006.
See: 38 N.J.R. 1309(a), 38 N.J.R. 2735(a).

Section was "Nature of proceedings". Inserted designations for (a) and (b); capitalized "Commission" throughout; added second and third sentences in (a); and rewrote (b).

Case Notes

Grievance procedures. *Twp. of West Windsor v. Public Employment Relations Commission*, 78 N.J. 98, 393 A.2d 255 (1978).

Public employee layoff procedure and effect of seniority not negotiable. *State v. State Supervisory Employees Assn.*, 78 N.J. 54, 393 A.2d 233 (1978).

Citation. In re: *Bryam Twp. Bd. of Ed.*, 152 N.J. Super. 12, 377 A.2d 745 (App.Div.1977).

PERC lacks authority to hear and decide unfair labor practice cases and issue affirmative remedial orders (under former statutory authorization). *Burlington County Evergreen Park Mental Hospital v. Cooper*, 56 N.J. 579, 267 A.2d 533 (1970).

SUBCHAPTER 2. INITIATION OF PROCEEDINGS**19:13-2.1 Who may file**

Any public employer or recognized or certified public employee exclusive representative, either individually or jointly, may initiate scope of negotiation proceedings by filing with the Commission an original and nine copies of a petition for scope of negotiations determination, together with proof of service of a copy of such petition upon the other party to the collective negotiations relationship. A copy of each such petition filed shall be retained in a public docket until the case is closed.

Amended by R.2006 d.230, effective June 19, 2006.

See: 38 N.J.R. 1309(a), 38 N.J.R. 2735(a).

Capitalized "Commission" and substituted "nine" for "four".

19:13-2.2 Contents of petition for scope of negotiations determination

(a) A petition for scope of negotiations determination shall be in writing. The party representative filing the petition shall make this signed and dated certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief." Such petition shall contain the following:

1. The full name, address and telephone number of the public employer that is a party to the collective negotiations relationship;

2. The full name, address and telephone number of the recognized or certified public employee exclusive representative that is a party to the collective negotiations relationship;

3. A clear and concise explanation of the matter or matters in dispute, which shall include a statement of the pertinent facts, and, in cases involving the withholding of an increment of a teaching staff member, shall be accompanied by a copy of the statement of reasons issued to the teaching staff member at the time the increment was withheld;

4. A statement that the dispute has arisen:

i. During the course of collective negotiations, and that one party seeks to negotiate with respect to a matter that the other party contends is not a required subject for collective negotiations;

ii. With respect to the negotiability and legal arbitrability of a matter sought to be submitted to binding arbitration pursuant to a collectively negotiated grievance procedure;

iii. With respect to the legal arbitrability of a dispute as to whether the withholding of an increment of a teaching staff member is disciplinary or predominately relates to the evaluation of a teaching staff member's teaching performance; or

iv. Other than in (a)4i, ii, and iii above, with an explanation of any special circumstances warranting the exercise of the Commission's scope of negotiations jurisdiction; and

5. A list of any other actions which the petitioner knows about that involve the same or a related dispute, before the Commission or any other administrative agency, arbitrator or court.

(b) A blank form for filing a petition for scope of negotiations determination may be downloaded from the Commission's website at www.state.nj.us/perc and is also avail-

able upon request made to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) The filing of a petition for scope of negotiations determination shall not stay the conduct of a grievance arbitration hearing, unless otherwise ordered by the Commission or its named designee.

Amended by R.2006 d.230, effective June 19, 2006.

See: 38 N.J.R. 1309(a), 38 N.J.R. 2735(a).

Deleted footnote; in (a), deleted "and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person or persons signing it: 'I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.'" and added the next-to-last sentence; substituted "that" for "who" in (a)1 and (a)2, rewrote (a)3, in (a)4i, substituted "that" for "or matters which" and deleted "or" from the end, in (a)4ii, inserted "and legal arbitrability", deleted "or matters" and "or" and substituted "submitted to binding arbitration" for "processed", added present (a)4iii and recodified and rewrote existing (a)4iii as (a)4iv and added (a)5; and added (b) and (c).

Case Notes

Pension system transfer issue negotiability referred to Commission. *Policemen's Benevolent Assn. v. Public Employment Relations Commission*, 187 N.J.Super. 202, 453 A.2d 1373 (App.Div.1982), certiorari denied 93 N.J. 269, 460 A.2d 672 (1983).

SUBCHAPTER 3. PROCEDURE

19:13-3.1 "Petitioner" or "respondent"

As used in this subchapter, the term "petitioner" shall refer to the party initiating the proceeding or, in the case of a joint petition, the party contending that the disputed matter is within the scope of collective negotiations; the term "respondent" shall refer to the other party to the proceeding.

19:13-3.2 Intervention

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the Commission or its named designee, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The Commission or its named designee may permit intervention to such extent and upon such terms as may be deemed just.

Amended by R.2006 d.230, effective June 19, 2006.

See: 38 N.J.R. 1309(a), 38 N.J.R. 2735(a).

Capitalized "Commission" throughout and deleted "be ordered" from the last sentence.

19:13-3.3 Informal conference

An officer of the commission may hold a conference for the purpose of clarifying the issues in dispute, exploring the possibility of voluntary resolution and settlement of the dispute, or for the taking of stipulations of fact.