

CHAPTER 11**REPRESENTATION PROCEDURES****Authority**

N.J.S.A. 34:13A-5.4e, 34:13A-6d and 34:13A-11.

Source and Effective Date

R.2005 d.248, effective June 30, 2005.
37 N.J.R. 961(a), 37 N.J.R. 2890(a).

Chapter Expiration Date

Chapter 11, Representation Procedures, expires on June 30, 2010.

Chapter Historical Note

Chapter 11, Representation Procedures, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 11, Representation Procedures, was readopted as R.1995 d.488, effective August 8, 1995. See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Representation Procedures, was readopted as R.2000 d.320, effective July 14, 2000. See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

Chapter 11, Representation Procedures, was readopted as R.2005 d.248, effective June 30, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. REPRESENTATION PETITIONS**19:11-1.1 Petitions**

(a) Rules concerning who may file are as follows.

1. A petition for certification of public employee representative (RO) may be filed by any public employee or group of public employees, or by any individual or employee organization claiming to be the exclusive representative of public employees.

2. A petition for certification of public employee representative (RE) 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 such employer a claim to be recognized or continue to be recognized as the exclusive representative and the public employer has a good faith doubt concerning the majority status of the representative of its employees.

3. A petition for decertification of public employee representative (RD) may be filed by any public employee or group of public 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 and that the employees no longer desire to be represented by any employee representative. A public employer may not file a petition for decertification of public employee representative.

4. A petition for clarification of unit (CU) may be filed by the exclusive representative or public employer.

5. A petition for amendment of certification (AC) may be filed by an employee organization.

(b) An original and four copies of all petitions shall be filed with the Director of Representation. All petitions shall be in writing. The Director of Representation shall serve a copy of the petition upon the other parties. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from the Commission's website: <http://www.state.nj.us/perc>

Amended by R.1995 d.488, effective September 5, 1995.
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).
Amended by R.2000 d.320, effective August 7, 2000.
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).
Rewrote (b).

Case Notes

Consensual initiation of organizational grievance. Red Bank Regional Education Assn. v. Red Bank Regional High School Bd. of Ed., 78 N.J. 122, 393 A.2d 267 (1978).

Commission has primary jurisdiction to determine employee representative identity. Patrolmen's Benevolent Assn. v. Montclair, 128 N.J.Super. 59, 319 A.2d 77 (Ch.Div.1974) affirmed.

19:11-1.2 Contents of petition for certification

(a) A petition for certification of public employee representative filed by a public employee, a group of public employees, any individual, or an employee organization shall contain:

1. The name, address, and telephone number of the public employer and the name and title of the person to contact, if known;
2. A description of the collective negotiations 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;

3. The 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 collective negotiations agreement, if known to the petitioner;

4. The names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner;

5. Any other relevant facts;

6. The name and affiliation, if any, of the petitioner and its address and telephone number;

7. The name, address, title, and telephone number of the petitioner's representative;

8. This dated and signed certification by the petitioner or its representative: "I declare that I have read the above petition and that the information is true to the best of my knowledge and belief."; and

9. A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 percent of the employees in the unit alleged to be appropriate. An alphabetical list of such designations also shall be submitted to the Director of Representation.

Amended by R.1995 d.488, effective September 5, 1995.
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).
Amended by R.2000 d.320, effective August 7, 2000.
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (a)9, deleted a requirement that the list be typewritten in the last sentence.

Case Notes

Union's "showing of interest" was not defective regarding the number of city attorneys interested in having the union represent them during collective negotiating; any alleged error was remedied by the election itself, in which attorneys voted overwhelmingly in favor of union representation. In re City of Newark, 346 N.J.Super. 460, 788 A.2d 776.

19:11-1.3 Contents of petition for decertification

(a) A petition for decertification of public employee representative shall contain:

1. A statement that the employee representative certified by the Commission or recognized by the public employer no longer represents a majority of the employees in the collective negotiations unit in which it is currently recognized or certified;

2. The information required by N.J.A.C. 19:11-1.2 (Contents of petition for certification), except paragraph (a)9;

3. The petition for decertification shall be accompanied by a showing of interest of not less than 30 per cent of the employees in the unit in which an exclusive 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 negotiations by the recognized or certified employee representative or by any other employee representative.

Amended by R.1995 d.488, effective September 5, 1995.
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

19:11-1.4 Petition for certification filed by a public employer

(a) 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 status of the representative of its employees.

(b) A petition for certification of representative filed by a public employer shall include all of the information set forth in N.J.A.C. 19:11-1.2, except paragraph (a)9.

Amended by R.1995 d.488, effective September 5, 1995.
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

19:11-1.5 Petition for clarification of unit

(a) The exclusive representative or the public employer may file a petition for clarification of unit.

(b) A petition for clarification of unit shall contain:

1. A description of the present negotiations unit and the date of the certification or recognition, if known;
2. A description of the proposed clarification of the unit;
3. A statement by petitioner listing and explaining fully the reasons for the proposed clarification. The reasons may include:
 - i. Changed circumstances;
 - ii. Creation of a new position or title;
 - iii. Dispute over a title in a newly certified/recognized negotiations unit;
 - iv. New operation or facility;
 - v. Statutory exclusions;
 - vi. Any other reasons why the petition is appropriate; and
4. The information required by paragraphs (a)1, and (a)4 through (a)8 of N.J.A.C. 19:11-1.2.

Amended by R.1995 d.488, effective September 5, 1995.
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (b)1, added "if known" at the end.
Amended by R.2005 d.248, effective August 1, 2005.
See: 37 N.J.R. 961(a), 37 N.J.R. 2890(a).
Rewrote (b)3.

19:11-1.6 Petition for amendment of certification

(a) An employee organization may file a petition for amendment of certification issued by the Commission for the purpose of recording a change in the name or in the affiliation of the exclusive representative.

(b) A petition for amendment of certification shall contain:

1. The name of the employer and the name of the certified employee organization involved;
2. The address of the public employer;
3. An identification and description of the existing certification;
4. A statement by the petitioner setting forth the reason for the desired amendment;
5. The name, the affiliation, if any, and the address of the petitioner;
6. Any other relevant facts; and
7. This dated and signed certification by the petitioner or its representative: "I declare that I have read the above petition and that the information is true to the best of my knowledge and belief."

(c) A petition for amendment of certification shall be supported by an affidavit attesting that the membership of the certified employee representative voted in favor of the change in name and affiliation. Such affidavit shall specify that:

1. The membership was given advance and adequate notice of the election, as evidenced by an attached copy of a notice of election and a statement of the date of the notice and the manner in which it was provided to members;
2. The election was conducted by secret ballot, as evidenced by an attached copy of the ballot, and was held within six months of the filing of the petition;
3. A majority voted in favor of the change in name and affiliation, as evidenced by a document setting forth the results; and
4. The organization's officers and the unit structure remain unchanged.

(d) A petition for amendment of certification will be served by the Director of Representation on all organizations that are part of a certified majority representative. Each organization will be given an opportunity to request intervention under N.J.A.C. 19:11-2.7. If intervention is permitted, the petition will be dismissed if any intervening organization objects to processing the petition.

As amended, R.1973 d.110, effective May 10, 1973.
 See: 5 N.J.R. 61(a), 5 N.J.R. 171(c).
 As amended, R.1974 d.127, effective May 24, 1974.
 See: 6 N.J.R. 127(a), 6 N.J.R. 285(b).
 As amended, R.1974 d.346, effective December 18, 1974.
 See: 6 N.J.R. 456(b), 7 N.J.R. 35(d).
 As amended, R.1974 d.347, eff. December 18, 1974.
 See: 6 N.J.R. 456(a), 7 N.J.R. 36(a).
 Amended by R.1995 d.488, effective September 5, 1995.
 See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).
 Amended by R.2000 d.320, effective August 7, 2000.
 See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).
 In (a), inserted "name or in the" preceding "affiliation".
 Amended by R.2005 d.248, effective August 1, 2005.
 See: 37 N.J.R. 961(a), 37 N.J.R. 2890(a).
 Rewrote (c)1 through 3, and added (d).

SUBCHAPTER 2. PROCESSING OF PETITIONS

19:11-2.1 Validity of showing of interest

The showing of interest shall not be furnished to any of the parties. The Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack. Neither the nature nor the size of the showing of interest shall be divulged. The showing shall be returned to the petitioner once the case is closed.

Amended by R.1995 d.488, effective September 5, 1995.
 See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).
 Amended by R.2000 d.320, effective August 7, 2000.
 See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).
 Added a third sentence.
 Amended by R.2005 d.248, effective August 1, 2005.
 See: 37 N.J.R. 961(a), 37 N.J.R. 2890(a).
 Added the fourth sentence.

19:11-2.2 Investigation of petition

(a) Upon the filing of any petition, the Director of Representation shall investigate the petition to determine the facts.

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

As amended, R.1974 d.127, eff. May 24, 1974.
 See: 6 N.J.R. 127(a), 6 N.J.R. 285(b).
 Amended by R.1995 d.488, effective September 5, 1995.
 See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

19:11-2.3 Withdrawal or dismissal of petition

(a) If the Director of Representation determines after an investigation that any petition has not been timely filed; or, in a petition for certification or decertification, that no valid question concerning the representation of employees exists in a prima facie appropriate unit; or, in a petition for clarification of unit, that there is no dispute concerning the composition of the unit of public employees, the Director 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 may dismiss the petition.

(b) If it appears to the Director of Representation or the assigned hearing officer that the petitioner has no further interest in processing its petition, the Director or the hearing officer may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such a withdrawal, may dismiss the petition within a reasonable time and after appropriate notice.

(c) Within 15 days after the date a petition has been dismissed, a petitioner may file a motion to reopen with the Director of Representation. The petitioner shall file an original and two copies of such motion, together with proof of service of a copy on all other parties. Any party opposing the motion may file an original and two copies of its response within five days of receipt of the motion, together with proof of service of a copy on all other parties. The motion may be granted based on a showing of extraordinary circumstances or to prevent an injustice.

Amended by R.1995 d.488, effective September 5, 1995.
 See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).
 Amended by R.2005 d.248, effective August 1, 2005.
 See: 37 N.J.R. 961(a), 37 N.J.R. 2890(a).
 Rewrote (b) and added (c).

19:11-2.4 Posting of notice of petition

(a) After the filing of a representation petition, the Director of Representation will direct that the public employer 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 Director of Representation.

(b) 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 Director of Representation in writing of their interest as soon as possible.

(c) The notice shall remain posted for a period of 10 days from the date of receipt by the public employer. The public employer shall certify to the Director of Representation that the notice has been conspicuously posted for a period of 10 days where notices are normally posted and that the notice has not been covered by other material, altered or defaced.

(d) In addition, the public employer shall furnish the Director of Representation with the names, addresses and telephone numbers of all employee organizations which have within the preceding 12 months claimed to represent any of the employees in the requested unit.

(e) The failure of the Director of Representation to direct the posting of such notices or the failure of the public

employer to post notices normally shall not serve to delay or invalidate any subsequent Commission action which occurs pursuant to the filing of a petition.

As amended, R.1974 d.127, effective May 24, 1974.
See: 6 N.J.R. 127(a), 6 N.J.R. 285(b).
Amended by R.1995 d.488, effective September 5, 1995.
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

19:11-2.5 Public docket

The Director of Representation shall maintain (at the Commission's offices in Trenton) a public docket of all petitions. 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.

Amended by R.1995 d.488, effective September 5, 1995.
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

19:11-2.6 Investigation of petition; disposition

(a) If no agreement for consent election has been reached pursuant to N.J.A.C. 19:11-4.1, the Director of Representation shall conduct a further investigation. The petitioner, the public employer, 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 the petition. Such submissions shall be simultaneously served upon the parties.

(b) Information disclosed to a staff member in confidence regarding any representation matter shall not be divulged. All files, records, reports, documents or other papers received or prepared by a staff member for purposes of settlement shall be classified as confidential. The staff member shall not produce any confidential records of, or testify in regard to, any settlement discussions conducted by him or her, on behalf of any party in any type of proceeding.

(c) After the investigation of such petition, the Director of Representation shall either:

1. Request the petitioner to withdraw the petition, or in the absence of withdrawal, dismiss the petition, pursuant to N.J.A.C. 19:11-2.3;
2. Issue a decision dismissing the petition, if it appears to the Director of Representation that there is not reasonable cause to believe that a valid question concerning representation exists in an appropriate unit;
3. Issue a decision directing an election in an appropriate unit, if it appears to the Director of Representation that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit and that an election reflecting the free choice of the employees in the appropriate unit will effectuate the policies of the Act (N.J.S.A. 34:13A-1.1 et seq.);
4. Issue a decision clarifying a unit;

5. Issue a decision amending a certification; or

6. Take other measures the Director of Representation deems appropriate.

(d) Action by the Director of Representation pursuant to (c) above shall be based on an administrative investigation or a hearing conducted pursuant to N.J.A.C. 19:11-6.1 (Hearings).

(e) A hearing shall be conducted:

1. If it appears to the Director of Representation that substantial and material factual issues exist which, in the exercise of reasonable discretion, may more appropriately be resolved after a hearing; or

2. If it appears to the Director of Representation that the particular circumstances of the case are such that, in the exercise of reasonable discretion, the Director determines that a hearing will best serve the interests of administrative convenience and efficiency.

Amended by R.1995 d.488, effective September 5, 1995.
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).
Amended by R.2000 d.320, effective August 7, 2000.
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (a), added a third sentence; inserted a new (b); recodified former (b) through (d) as (c) through (e); and in the new (d), made an internal reference change.

19:11-2.7 Intervention

(a) Any party seeking to intervene in a representation proceeding must submit a written request to the Director of Representation.

(b) To intervene in a proceeding initiated by a petition for certification, an incumbent employee organization must submit either:

1. Evidence that it is currently certified or recognized in accordance with N.J.A.C. 19:11-3.1 (Recognition as exclusive representative) as the exclusive representative of any of the employees sought by the petition; or
2. A current or recently expired collective negotiations agreement covering any of the petitioned-for employees.

(c) An employee organization other than the incumbent representative seeking to intervene in a proceeding initiated by a petition for certification must submit a showing of interest of not less than 10 percent of the employees in the petitioned-for unit or not less than 30 percent of the employees in the unit it claims to be appropriate if it seeks to represent a unit different from that sought by the petitioner.

(d) To intervene in a proceeding initiated by a petition for decertification, the incumbent representative must submit evidence as set forth in (b)1 or 2 above, and express in writing its continued interest in representing the unit of employees named in the petition. Whenever the incumbent representative fails to intervene pursuant to this subsection, the Director may, upon adequate notice, determine without an

election that the incumbent organization is no longer the majority representative.

(e) To intervene in a proceeding initiated by a petition for clarification of unit, an employee organization must submit either:

1. Evidence that it is the currently certified or recognized representative of any of the employees named in the petition; or
2. A current or recently expired collective negotiations agreement covering any of the employees named in the petition.

(f) To intervene in a proceeding initiated by a petition for amendment of certification, an employee organization must submit evidence that it is an organization that is part of the currently certified representative of the employees named in the petition.

(g) A request by an employee organization to intervene in a representation proceeding may be made at any time before:

1. The opening of a hearing held pursuant to N.J.A.C. 19:11-6.1 (Hearings); or
2. The issuance of a decision by the Director of Representation without a hearing, pursuant to N.J.A.C. 19:11-2.6 (Investigation of petition; disposition); or
3. Approval by the Director of Representation of an agreement for consent election, pursuant to N.J.A.C. 19:11-4.1 (Agreement for consent election).

(h) A motion to intervene during a hearing shall comply with N.J.A.C. 19:11-6.9 (Motions), but shall not be granted unless it is accompanied by a valid showing of interest and upon good cause shown which reasonably prevented the moving party from having filed a timely notice to intervene.

R.1974 d.344, eff. December 18, 1974.

See: 6 N.J.R. 457(a), 7 N.J.R. 35(b).

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

Rewrote the section.

Amended by R.2005 d.248, effective August 1, 2005.

See: 37 N.J.R. 961(a), 37 N.J.R. 2890(a).

Added new (f), recodified existing (f)-(g) as (g)-(h).

19:11-2.8 Timeliness of petitions

(a) Where there is no recognized or certified exclusive 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 12-month period in the requested negotiations unit or any subdivision of the unit.

(b) Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during the preceding 12 months an

employee organization has been certified by the Commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative).

(c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

1. In a case involving employees of the State of New Jersey, any agency of the State or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;
2. In a case involving employees of a county or a municipality, any agency of a county or municipality or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;
3. In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement.

(d) For the purpose of determining a timely filing, an agreement for a term in excess of three years will be treated as a three-year agreement and will not bar a petition filed at any time after the end of the third year of the agreement; an agreement for an indefinite term shall be treated as a one-year agreement measured from its effective date and will not bar a petition filed at any time after the end of the first year of the agreement.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2005 d.248, effective August 1, 2005.

See: 37 N.J.R. 961(a), 37 N.J.R. 2890(a).

Rewrote (d).

Case Notes

One year conclusive presumption of majority status. *Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries*, 78 N.J. 1, 393 A.2d 207 (1978).

SUBCHAPTER 3. RECOGNITION AS EXCLUSIVE REPRESENTATIVE

19:11-3.1 Recognition as exclusive representative

(a) 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 negotiations unit, the public employer and