

**CHAPTER 14**  
**UNFAIR PRACTICE PROCEEDINGS**

**Authority**

N.J.S.A. 34:13A-5.4c and 34:13A-11.

**Source and Effective Date**

R.2005 d.249, effective June 30, 2005.  
37 N.J.R. 964(a), 37 N.J.R. 2891(a).

**Chapter Expiration Date**

Chapter 14, Unfair Practice Procedures, expires on June 30, 2010.

**Chapter Historical Note**

Chapter 14, Unfair Practice Proceedings, was filed and became effective prior to September 1, 1969.

Subchapter 9, Interim Relief, was adopted as R.1975 d.90, effective April 1, 1975. See: 7 N.J.R. 242(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Unfair Practice Proceedings, was readopted as R.1995 d.489, effective August 8, 1995. See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Unfair Practice Proceedings, was readopted as R.2000 d.321, effective July 14, 2000. See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Chapter 14, Unfair Practice Proceedings, was readopted as R.2005 d.249, effective June 30, 2005. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. CHARGE****19:14-1.1 Who may file**

A charge that any public employer or public employee organization has engaged or is engaging in any unfair practice listed in subsections (a) and (b) of N.J.S.A. 34:13A-5.4 may be filed by any public employer, public employee, public employee organization, or their representatives.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

**Case Notes**

Resident and taxpayer lacked standing to bring action to enforce clause in collective negotiation agreement with police officers' union regarding pay of superior officers; taxpayer was not party to agreement,

taxpayer was seeking to compel expenditure of public funds, and responsibility for labor relations matters was better left to Public Employment Relations Commission. *Loigman v. Township Committee of the Tp. of Middletown*, 297 N.J.Super. 287, 687 A.2d 1091 (A.D.1997).

#### 19:14-1.2 Where to file

Such charge shall be filed with the Commission. Upon receipt, such charge shall be date stamped, and assigned a docket number indicating that the charging party is a public employer (CE), one or more individual public employees (CI), or a public employee organization (CO). A copy of each charge shall be retained in a public docket until the case is closed.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### 19:14-1.3 Form; contents

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

1. The full name, address and telephone number of the public employer, public employee or public employee organization making the charge (the charging party);
2. The full name, address and telephone number of the public employer or public employee organization against whom the charge is made (the respondent); and
3. A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

(b) Forms for filing such charges 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: <http://www.state.nj.us/perc>

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Rewrote (a), added (b).

#### Case Notes

Unfair practice charge. *Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries*, 78 N.J. 25, 393 A.2d 218 (1978).

#### 19:14-1.4 Number of copies; service

The charging party shall file an original and four copies of such charge, together with proof of service of a copy on all

other parties. The Director of Unfair Practices will send a copy to the respondent, but the charging party will remain responsible for formal service of the charge.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2005 d.249, effective August 1, 2005.  
See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).  
Substituted "four" for "nine".

#### 19:14-1.5 Amendment; withdrawal; dismissal

(a) Before a complaint issues, the Director of Unfair Practices may permit the charging party to amend a charge upon such terms as may be deemed just. After a complaint issues, any proposed amendment shall be filed with the hearing examiner.

1. Filing, service, and proof of service of an amended charge shall conform to the provisions of these rules relating to the original charge.

(b) An unfair practice charge and any complaint shall be dismissed and the case closed if the charging party files a notice of withdrawal before the respondent serves an answer or a motion for summary judgment. Unless otherwise stated in the notice of withdrawal, a withdrawal and dismissal under this subsection is without prejudice.

(c) Except as provided by (b) above, a charge may be withdrawn by the charging party, and any complaint dismissed and the case closed, only with the consent of the hearing examiner, or if a hearing examiner's report and recommended decision has issued, with the consent of the Chairman. Unless otherwise provided by the Chairman or the hearing examiner, a withdrawal and dismissal under this subsection is without prejudice.

(d) The Director of Unfair Practices or the assigned hearing examiner may request the charging party to withdraw its charge. Where it appears to the Director of Unfair Practices or the assigned hearing examiner that the charging party has no further interest in processing its charge, the Director or hearing examiner may request the charging party to withdraw the charge or, in the absence of a withdrawal, may dismiss the petition within a reasonable time and after appropriate notice. The Director may exercise such authority before the issuance of a complaint and the hearing examiner may exercise such authority after the issuance of a complaint. Unless otherwise stated, a withdrawal and dismissal under this subsection is without prejudice.

(e) Within 15 days after the date a charge has been dismissed under this section, a charging party may file a written motion to reopen with the Director of Unfair Practices. The charging party 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 shall 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 on a

showing of extraordinary circumstances or to prevent an injustice.

As amended, R.1975 d.89, eff. April 1, 1975.  
See: 7 N.J.R. 243(a).  
Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Rewrote (a) and (c).  
Amended by R.2005 d.249, effective August 1, 2005.  
See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).  
Rewrote (d) and (e).

### 19:14-1.6 Processing of charge

(a) The Director of Unfair Practices will normally assign a charge to a staff member for processing. All parties will be notified of such assignment and will be requested to submit to the staff member:

1. An executed copy of any current or recently expired collective negotiations agreement between the parties; and
2. A written statement of position including an explanation as to why the allegations contained in the charge, if true, would or would not constitute unfair practices on the part of the respondent.

(b) The assigned staff member may request the parties to submit briefs setting forth detailed arguments concerning all relevant legal issues.

(c) The assigned staff member may hold an exploratory conference to clarify the issues, explore the possibility of settlement, or take stipulations of fact. The party or parties or an authorized representative shall attend such conference.

(d) Information disclosed to a staff member in confidence regarding any unfair practice 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.

As amended, R.1975 d.89, eff. April 1, 1975.  
See: 7 N.J.R. 243(a).  
Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Added (d).

## SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING

### 19:14-2.1 Contents; service

(a) After a charge has been processed, if it appears to the Director of Unfair Practices that the allegations of the charge,

if true, may constitute unfair practices on the part of the respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the Director shall issue and serve a formal complaint including a notice of hearing before a hearing examiner at a stated time and place. The complaint with notice of hearing shall contain:

1. The allegations of the charge and a statement of the subsection(s) of the Act alleged to have been violated;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held; and
3. A statement of the time and place of any pre-hearing conference. The hearing examiner, upon proper cause shown, may postpone any hearing or pre-hearing conference. If the hearing examiner is unavailable to make that determination in a timely manner, the Director may exercise such authority.

As amended, R.1975 d.89, eff. April 1, 1975.  
See: 7 N.J.R. 243(a).  
Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2005 d.249, effective August 1, 2005.  
See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).  
Rewrote (a)3.

### Case Notes

Director to decide merit of charge to issue complaint. *Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries*, 78 N.J. 25, 393 A.2d 218 (1978).

Citation. *Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries*, 78 N.J. 1, 393 A.2d 207 (1978).

### 19:14-2.2 Amendment; dismissal

(a) Any complaint may be amended by the hearing examiner to conform to the allegations set forth in any amended charge filed pursuant to N.J.A.C. 19:14-1.5(a).

(b) Any amended complaint may be dismissed pursuant to subsections (b), (c) and (d), or reopened pursuant to subsection (e) of N.J.A.C. 19:14-1.5 (Amendment; withdrawal; dismissal).

As amended, R.1975 d.89, eff. April 1, 1975.  
See: 7 N.J.R. 243(a).  
Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### 19:14-2.3 Refusal to issue; appeal

(a) If, after a charge has been processed, the Director of Unfair Practices refuses, in whole or in part, to issue a complaint, the parties shall be notified in writing of the grounds for such action.

(b) Where no complaint is issued, the charging party may appeal that action by filing an original and nine copies of an appeal with the Commission, together with proof of service of

a copy on all other parties, within 10 days from the service of the notice of such refusal to issue. 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 presented. Within five days of being served with an appeal, any party opposing the appeal may file an original and nine copies of its response, together with proof of service of a copy on all other parties. The Commission may sustain the refusal to issue 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 parties.

(c) A decision by the Director of Unfair Practices to issue a complaint or to refuse to issue a complaint on a portion of an unfair practice charge may not be appealed pre-hearing except by special permission to appeal pursuant to N.J.A.C. 19:14-4.6.

As amended, R.1975 d.89, eff. April 1, 1975.  
See: 7 N.J.R. 243(a).  
Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Rewrote (b).

### SUBCHAPTER 3. ANSWER

#### 19:14-3.1 Time for filing; contents; form

Within 10 days of service on it of the complaint, the respondent shall file an answer. The hearing examiner, upon proper cause shown, may extend the time for filing an answer. The answer shall specifically admit, deny or explain each of the 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 specific denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained shall be deemed to be admitted to be true and shall be so found by the hearing examiner and the Commission, unless good cause to the contrary is shown. The answer shall include a detailed statement of any affirmative defenses. The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: "I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief."

As amended, R.1975 d.89, eff. April 1, 1975.  
See: 7 N.J.R. 243(a).  
Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Rewrote section.

#### Case Notes

Citation. Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 1, 393 A.2d 207 (1978).

#### 19:14-3.2 Where to file; number of copies; service

An original and four copies of the answer shall be filed with the hearing examiner, together with proof of service of a copy on all other parties.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2005 d.249, effective August 1, 2005.  
See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).  
Substituted "four" for "nine".

#### 19:14-3.3 Amendment

The respondent may amend its answer at any time before the hearing. During or after the hearing the hearing examiner or the Commission may permit the respondent to amend its answer at any time upon such terms as may be deemed just. Filing, service, and proof of service of an amended answer shall conform to the provisions of these rules relating to the original answer.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### SUBCHAPTER 4. MOTIONS

#### 19:14-4.1 Motions

The motion practice set forth in this subchapter applies after a complaint issues. Before then, relief which might be sought through motions should be sought through N.J.A.C. 19:14-1.5(e).

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Changed appropriate section to read 19:14-1.5.  
Amended by R.2005 d.249, effective August 1, 2005.  
See: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).  
Deleted "the appropriate section of" in the last sentence.

#### 19:14-4.2 Where to file

(a) Except as provided in N.J.A.C. 19:14-4.8 (Motions for summary judgment) or otherwise stated by these rules, all motions and any response to a motion:

1. Made before a case is transferred to the Commission, shall be made in writing to the hearing examiner, or stated orally on the record at the hearing;
2. Made after a case is transferred to the Commission, shall be filed in writing with the Commission.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### 19:14-4.3 Contents; number of copies; service

All written motions, referred to in N.J.A.C. 19:14-4.2, shall briefly state the order or relief sought and, if appropriate,