

## 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-5.1b, Chapter 13, Scope of Negotiations Proceedings, expires on November 21, 2013. See: 43 N.J.R. 1203(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 as R.1975 d.10, effective January 20, 1975. See: 7 N.J.R. 78(a).

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

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

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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](http://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.

**19:13-3.4 Amendment; withdrawal; dismissal**

(a) The Chairman of the Commission or such other person designated by the Commission may permit the petitioner to amend its petition for scope of negotiations determination at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition for scope of negotiations determination shall conform to the provisions of these rules relating to the original petition for scope of negotiations determination.

(b) A petition for scope of negotiations determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal of the petition for scope of negotiations determination at any time prior to the issuance of the Commission's decision. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) In the absence of a notice of withdrawal, the Chairman of the Commission or such other person designated by the Commission may request the petitioner to file such notice. Where it appears to the Chairman of the Commission or such other person designated by the Commission that the petitioner has no further interest in processing its petition, that individual may, upon appropriate notice, deem the petition to have been withdrawn. Unless otherwise stated, a withdrawal and dismissal under this subsection is without prejudice.

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

Capitalized "Chairman", "Commission" and "Commission's" throughout.

**19:13-3.5 Notice of filing; additional submissions; case processing; briefs**

(a) No briefs or other legal argument shall be filed until the petitioner has received from the Commission a notice of filing. The notice may include a request for additional information.

(b) The petitioner shall file a brief in support of its petition within 14 days of receipt of the notice of filing setting a briefing schedule, unless the Chairman, or such other person designated by the Commission, postpones the filing of briefs and advises the parties how the case will be processed. An original and nine copies of the brief shall be filed together with proof of service of a copy of such brief upon the respondent.

(c) Within 14 days after the service of the petitioner's brief, the respondent shall file with the Chairman or such other person designated by the Commission an original and nine copies of its brief, together with proof of service of a copy of such brief upon the petitioner.

(d) The petitioner may file with the Chairman or such other person designated by the Commission an original and nine copies of a reply brief within seven days after the service of the respondent's brief, together with proof of service of a copy of such reply brief upon the respondent. No other briefs

shall be served or filed without leave of the Chairman or such other person designated by the Commission.

(e) The Chairman or such other person designated by the Commission may grant written requests for extensions of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

(f) All briefs filed with the Commission shall:

1. Recite all pertinent facts supported by certification(s) based upon personal knowledge.
2. Cite all pertinent statutes, rules and cases and, where the brief exceeds 20 pages in length, include a Table of Authorities;
3. Apply all relevant negotiability tests and precedents to the particular facts of the dispute; and
4. Contain an appendix with all pertinent documents not previously filed.

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 "Briefs". Capitalized "Commission" and "Chairman" throughout; rewrote (a); added present (b); recodified existing (b) through (d) as (c) through (e); and added (f).

**19:13-3.6 Request for evidentiary hearing**

(a) Any party desiring an evidentiary hearing shall file with the Chairman or such other person designated by the Commission an original and two copies of a written request therefor, together with proof of service of a copy of such request upon the other party. Such request shall be filed no later than five days from the receipt of respondent's initial brief. Failure to file a timely request for evidentiary hearing shall constitute a waiver of any right to such hearing. Any such request shall set forth in detail the substantial and material disputed factual issues that the requesting party contends necessitate an evidentiary hearing. Factual allegations not raised shall be deemed to be not in dispute.

(b) Upon a timely filing of such request, the other party shall within seven days from the service of the request file with the chairman or such other person designated by the commission an original and two copies of a written response to the request, together with proof of service of a copy of the response upon the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed not to be in dispute.

(c) The request for an evidentiary hearing and response, together with the petition for scope of negotiations determination, shall constitute the pleadings for the evidentiary hearing.

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

In (a), in the first sentence, capitalized "Chairman" and "Commission" and substituted "request" for "requests", and in the fourth sentence, deleted "specific factual issues which the requesting party contends are" preceding "substantial" and substituted "that the requesting party contends necessitate" for "necessitating".

#### Case Notes

If scope of negotiability turns on factual dispute, Commission, not arbitrator, should resolve dispute through evidentiary hearings. Bd. of Ed., Vocational School, Camden Cty. v. CAM/VOC Teachers Assn., 183 N.J.Super. 286, 443 A.2d 756 (App.Div.1982).

#### 19:13-3.7 Evidentiary hearings

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to N.J.A.C. 19:13-3.6, it appears to the Chairman of the Commission or such other person designated by the Commission that there exist substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. Evidentiary hearings pursuant to this subchapter shall be conducted by a hearing examiner so designated by the Chairman or such other person designated by the Commission.

(b) Any such evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and N.J.A.C. 19:14-4 through 8 on unfair practice proceedings, insofar as applicable.

(c) After completion of the evidentiary hearing, or upon the consent of the parties prior to the conclusion of the evidentiary hearing, the hearing examiner shall prepare a report and recommended decision, which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made by the Commission. The hearing examiner shall file the original with the Commission, and shall serve a copy on the parties. Service shall be complete upon mailing and the case shall be deemed transferred to the Commission. The record in the case shall consist of the petition for scope of negotiations determination, the parties' briefs, the request for evidentiary hearing and any statement filed in response thereto, the notice of hearing, the official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's report and recommended decision and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3, Exceptions; cross-exceptions; briefs; answering briefs.

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 "Chairman" throughout; substituted "N.J.A.C. 19:13-3.6" for "section 6 of this subchapter" in (a); substituted "N.J.A.C. 19:14-4 through 8" for "N.J.A.C. 19:4-4.1 through 19:14-8.1 et seq." in (b); in (c), substituted "report and recommended" for "recommended report and" in the first and fourth sentences, in the second sentence, deleted "thereof" following "original" and substituted

"serve a copy on the parties. Service shall be complete upon mailing and the case shall be deemed transferred to the Commission" for "cause a copy to be served upon the parties. Upon service thereof upon the parties, which shall be complete upon mailing, the case shall be deemed transferred to the commission"; and deleted the parenthesis around "Exceptions; cross-exceptions; briefs; answering briefs" at the end.

#### Case Notes

If scope of negotiability turns on factual dispute, Commission not arbitrator, should resolve dispute through evidentiary hearings. Bd. of Ed., Vocational School, Camden Cty. v. CAM/VOC Teachers Assn., 183 N.J.Super. 286, 443 A.2d 756 (App.Div.1982).

#### 19:13-3.8 Oral argument

(a) Proceedings under this chapter shall be submitted for the Commission's consideration without argument, unless argument is requested by one of the parties within seven days after service of the respondent's brief or is ordered by the Chairman or such other person designated by the Commission, and said request is granted by the Commission.

(b) An original and nine copies of a request for oral argument shall be filed separately from any briefs or other prior submissions, together with proof of service of a copy of such request upon the other party.

(c) The Chairman or such other person designated by the Commission shall notify the parties of the assigned argument date, if permission to argue orally is granted.

(d) The petitioner shall open and conclude argument. The Commission may terminate the argument at any time it deems the issues adequately argued.

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's", "Commission" and "Chairman" throughout; inserted designations for (a) through (d); substituted "respondent's" for "respondents" in (a); and in (b), substituted "An original and nine copies of a request for oral argument shall be filed separately from any briefs or other prior submissions" for "Such request shall be made by a separate paper, 10 copies of which shall be filed with the commission".

#### 19:13-3.9 Final determination

Based upon the parties' submissions and oral argument, if any, or where an evidentiary hearing has been conducted, based upon the record in the case as set forth in subsection (b) of N.J.A.C. 19:13-3.7, Evidentiary hearings, the Commission shall issue and cause to be served upon the parties its findings of fact and conclusions of law, including its determination as to whether the disputed matter is a required, permissive, or illegal subject for collective negotiations and, where appropriate, an order reasonably designed to effectuate the purposes of the act.

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

Deleted parentheses around "Evidentiary hearings" and capitalized "Commission".

**Case Notes**

Former N.J.A.C. 19:13-3.7 cited. Ridgefield Park Education Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 393 A.2d 278 (1978).

Negotiable issues (cited as former N.J.A.C. 19:13-3.7). In re: Byram Twp. Bd. of Ed., 152 N.J.Super. 12, 377 A.2d 745 (App.Div.1977).

**19:13-3.10 Interim relief**

Upon the filing of a petition for scope of negotiations determination or during the pendency of a scope of negotiations proceeding, the petitioner may apply to the Chairman of the Commission or such other person designated by the Commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the scope of negotiations proceeding. The request for specified interim relief shall be governed by the provisions of N.J.A.C. 19:14-9 on unfair practice proceedings, insofar as applicable.

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

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

Capitalized "Chairman" and "Commission" throughout, deleted ".1 et seq." following N.J.A.C. reference.

**19:13-3.11 Motion for reconsideration**

A motion for reconsideration may be filed within five days after the Commission decision has been rendered in accordance with the provisions of N.J.A.C. 19:14-8.4, Motion for reconsideration. The movant shall specify the extraordinary circumstances warranting reconsideration.

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

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

Inserted "within five days", capitalized "Commission", deleted parentheses around "Motion for reconsideration" and added final sentence.