

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

## CHAPTER 10

## DEFINITIONS, SERVICE, CONSTRUCTION

## Authority

N.J.S.A. 34:13A-5.4(e), 34:13A-6(b) and 34:13A-11.

## Source and Effective Date

R.2004 d.278, effective June 24, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 10, Definitions, Service, Construction, expires on December 21, 2009. See: 41 N.J.R. 2452(a).

## Chapter Historical Note

Chapter 10, Definitions, was adopted prior to September 1, 1969.

Subchapter 2, Service and Filing of Papers, Subchapter 3, Construction of Rules, Subchapter 4, Delegation of Authority, and Subchapter 5, Description of Organization, were adopted as R.1977 d.272, effective August 2, 1977. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a).

Subchapter 6, Rulemaking Petitions Filed by Interested Persons, was adopted as R.1989 d.461, effective September 5, 1989. See: 21 N.J.R. 1505(a), 21 N.J.R. 2808(b).

Pursuant to Executive Order No. 66(1978), Chapter 10, Definitions, Service, Construction, was readopted as R.1994 d.437, effective July 28, 1994. See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Pursuant to Executive Order No. 66(1978), Chapter 10, Definitions, Service, Construction, was readopted as R.1999 d.219, effective June 24, 1999. See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).

Chapter 10, Definitions, Service, Construction, was readopted as R.2004 d.278, effective June 24, 2004. See: Source and Effective Date. See, also, section annotations.

## CHAPTER TABLE OF CONTENTS

## SUBCHAPTER 1. DEFINITIONS

19:10-1.1 Definitions

## SUBCHAPTER 2. SERVICE AND FILING OF PAPERS

19:10-2.1 Time for filing papers; Commission address  
19:10-2.2 Form of documents  
19:10-2.3 Filing by original, facsimile transmission and email  
19:10-2.4 Service of pleading and proof of service  
19:10-2.5 Electronic filing program

## SUBCHAPTER 3. CONSTRUCTION OF RULES

19:10-3.1 Rules to be liberally construed  
19:10-3.2 Application of rules

## SUBCHAPTER 4. DELEGATION OF AUTHORITY

19:10-4.1 Delegation of authority

## SUBCHAPTER 5. DESCRIPTION OF ORGANIZATION

19:10-5.1 Description of organization

## SUBCHAPTER 6. RULEMAKING: PERIOD FOR PUBLIC COMMENT; NOTICE TO PUBLIC; HEARINGS; RULEMAKING PETITIONS

19:10-6.1 Rulemaking in general  
19:10-6.2 Comments to be in writing; extension of period for public comment  
19:10-6.3 Additional notice of rulemaking activity  
19:10-6.4 Public hearings  
19:10-6.5 Rulemaking petition procedures

## SUBCHAPTER 1. DEFINITIONS

## 19:10-1.1 Definitions

The following words and terms, when used in this subtitle, shall have the following meanings unless the context clearly indicates otherwise:

“Act” means the New Jersey Employer-Employee Relations Act, as amended, (N.J.S.A. 34:13A-1 et seq.).

“Arbitration panel” means a roster of arbitrators maintained by the commission.

“Arbitrator” means a member of an arbitration panel maintained in accordance with these rules, including the grievance arbitration panel established by N.J.A.C. 19:12-5 and the special panel of interest arbitrators established pursuant to N.J.S.A. 34:13A-16e and N.J.A.C. 19:16-5.6(a).

“Certification of representative” means the designation by the commission of an employee organization as the exclusive representative of employees in an appropriate unit.

“Certification of results” means the certification by the commission of the results of an election conducted by the commission in which no employee organization received a majority of the valid ballots cast.

“Chairman” means the full-time member of the Public Employment Relations Commission who is its chief executive officer and administrator and is also the chief executive officer and administrator of the Division of Public Employment Relations.

“Commission” means the New Jersey Public Employment Relations Commission.

“Contested transfer proceeding” means a procedure under these rules for determining whether the transfer of an employee between work sites by an “employer” as defined by N.J.S.A. 34:13A-22 was made for disciplinary reasons.

“Craft employee” means any employee who is engaged with helpers or apprentices in a manual pursuit requiring the exercise of craft skills which are normally acquired through a long and substantial period of training or a formal appren-

ticeship and which in their exercise call for a high degree of judgment and manual dexterity, one or both, and for ability to work with a minimum of supervision. The term shall also include an apprentice or helper who works under the direction of a journeyman craftsman and is in a direct line of succession in that craft.

“Director of Arbitration” means that officer of the commission designated to act on behalf of the commission with respect to arbitration procedures contained in N.J.A.C. 19:12 and 19:16.

“Director of Conciliation” means that officer of the commission designated to act on behalf of the commission with respect to those matters related to negotiations impasses contained in N.J.A.C. 19:12 and 19:16.

“Director of Representation” means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to representation procedures contained in N.J.A.C. 19:11.

“Director of Unfair Practices” means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to unfair practice proceedings contained in N.J.A.C. 19:14.

“Election agent” means that officer of the commission designated to conduct elections in accordance with the procedures set forth in N.J.A.C. 19:11.

“Fact-finder” means the Commission, any member of the Commission or any officer so designated by the Commission to perform the functions of a fact-finder as set forth in these rules.

“Fact-finding panel” means a roster of fact-finders maintained by the commission.

“Hearing examiner” means an officer of the Commission designated to conduct any unfair practice, scope of negotiations or contested transfer hearings and to issue a recommended report and decision.

“Hearing officer” means an officer of the commission designated to conduct any representation hearing and to issue a report and recommendations.

“Mediation panel” means a roster of mediators maintained by the commission.

“Mediator” means the commission, its members, employees of the commission or any officer so designated by the commission to perform the functions and duties of mediation.

“Officer” means all personnel of the Division of Public Employment Relations or any other individual designated by the commission to act on the commission’s behalf. The commission may delegate to such officer all of the powers conferred upon the commission in connection with the discharge of its duty or duties.

“Party” means any person, employee, group of employees, organization or public employer filing a charge, petition, request or application or other document under these rules; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under this act; or any person, organization or public employer whose intervention in a proceeding has been permitted or directed by the commission, or any designated officer.

“Payroll deduction determination proceeding” means the procedure to determine if the majority representative of a negotiations unit of employees has satisfied the conditions required by N.J.S.A. 34:13A-5.5 to have the Commission order that the public employer initiate payroll deductions of a representation fee in lieu of dues from all unit employees who are not members of the majority representative.

“Professional employee” means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

“Recognition” means the written acceptance by a public employer of an employee organization as the exclusive representative of employees in an appropriate unit.

“Representation proceeding” means a procedure under these rules for the purpose of determining the exclusive representative of employees, if any, in an appropriate collective negotiations unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations, including a question concerning the composition of a unit designated for the purpose of collective negotiations.

"Scope of negotiations proceeding" means a procedure under these rules for the purpose of determining whether a matter in dispute is within the scope of collective negotiations.

"Showing of interest" means a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; current dues records; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

"Super conciliator" means a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation or fact-finding panel, or any other super conciliator approved by the Director of Conciliation to perform the functions and duties of a super conciliator.

"Unfair practice proceeding" means a procedure under these rules for the purpose of determining whether or not anyone has engaged or is engaging in any unfair practice as set forth in N.J.S.A. 34:13A-5.4(a) and (b).

As amended, R.1974 d.56, effective March 7, 1974.  
See: 6 N.J.R. 40(b), 6 N.J.R. 159(a).  
Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Public Notice: Receipt of Petition for Rulemaking.  
See: 28 N.J.R. 4533(b).  
Public Notice: Action on Petition for Rulemaking.  
See: 28 N.J.R. 4534(a).  
Public Notice: Action on Petition for Rulemaking.  
See: 28 N.J.R. 4680(a).  
Amended by R.1999 d.219, effective July 19, 1999.  
See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).  
Rewrote "Arbitrator".  
Amended by R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).  
Added "Contested transfer proceeding", "Payroll deduction determination proceeding", and "Super conciliator"; amended "Fact-finder" and "Hearing examiner".

#### Case Notes

Scope of negotiability issue determination delegated to Chairman. Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J.Super. 71, 469 A.2d 80 (App.Div.1983).

PERC has exclusive unfair practice proceedings jurisdiction. Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 25, 393 A.2d 218 (1978).

Certification of representative; representation proceedings. Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 1, 393 A.2d 207 (1978).

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. SERVICE AND FILING OF PAPERS

### 19:10-2.1 Time for filing papers; Commission address

(a) In computing any period of time prescribed by or allowed by these rules or by order of the commission or officer conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations.

(b) Regarding additional time after service of a Commission document by mail, whenever a party has the right or is required to do some act or take some action within a prescribed period after service of a Commission notice or other paper, and the notice or paper is served by mail, three days shall be added to the prescribed period, provided, however, that three days shall not be added if any extension of such time may have been granted, or if service has been made by facsimile or other electronic means.

(c) Regarding extensions of time, the commission or officer having authority to dispose of the matter, may, for good cause shown, extend any time prescribed in these rules.

(d) When these rules require the filing of any paper, the original of such document must be received by the Commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

(e) Any filings or other correspondence sent to the Commission by mail should be addressed to:

Public Employment Relations Commission  
PO Box 429  
Trenton, New Jersey 08625-0429

(f) Any filings or other correspondence sent to the Commission by courier or in person should be delivered to:

Public Employment Relations Commission  
495 West State Street  
Trenton, New Jersey 08618

(g) Any filings or other correspondence sent to the Commission by facsimile shall be transmitted to: (609) 777-0089.

Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Amended by R.1999 d.219, effective July 19, 1999.  
See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).

In (d), added "of any document necessary to initiate any proceeding within the jurisdiction of the Commission or any officer of the Commission" at the end; and in (f), changed the zip code.  
Amended by R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).  
Rewrote (b); added (g).  
Administrative correction.  
See: 36 N.J.R. 4165(a).

### 19:10-2.2 Form of documents

(a) Documents other than correspondence shall clearly show the title of the proceeding and the docket number, if any.

(b) The original of each document filed shall be signed by an attorney or representative of record for the party, or by the party, or by an officer of the party and shall contain the address and telephone number of the person signing it.

(c) Except as otherwise provided in these rules, any documents or papers shall be filed with four copies in addition to the original. All matters filed with the Commission shall be printed, typed or otherwise legibly duplicated on letter size paper (8½ inch by 11 inch); copies will be accepted only if they are clearly legible.

Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Amended by R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Deleted former (b), recodified former (c) as (b), and added a new (c).

### 19:10-2.3 Filing by original, facsimile transmission and email

(a) Originals of the following must be timely filed in person or via mail or courier service:

1. Showings of interest in certification and decertification cases;
2. Petitions to Initiate Compulsory Interest Arbitration, Appeals of Interest Arbitration Awards, and Requests for Special Permission to Appeal Interest Arbitration Rulings, accompanied by the filing fee; and

3. Briefs and appendices in Appeals of Interest Arbitration Awards.

(b) Facsimile transmissions will be accepted in lieu of originals for all submissions except those listed in (a) above.

(c) When filing by facsimile transmission, any requirement under N.J.A.C. 19:11, 19:12, 19:13, 19:14, 19:18 and 19:19 that an original and multiple copies of submissions be filed is waived. However, all original filings and submissions shall be retained by a filing party in its file. Such originals shall be produced upon request.

(d) Except as noted below, all correspondence and submissions, such as briefs and motions, may be sent to [mail@perc.state.nj.us](mailto:mail@perc.state.nj.us) as an attachment to an email describing the attachment and identifying the proceeding or matter to which it pertains. Email may not be used for:

1. Initial case filings;
2. Briefs and appendices in Appeals of Interest Arbitration Awards;
3. Answers; and
4. Certifications and affidavits.

Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Repeal and New Rule, R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Section was "Service of pleading and other process; proof of service".

### 19:10-2.4 Service of pleading and proof of service

(a) Service of papers by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, or by private delivery service, or by facsimile transmission.

(b) Service upon an attorney or representative of record for the party shall constitute service upon the party.

New Rule, R.2003 d.62, effective February 3, 2003.  
See: 34 N.J.R. 3171(a), 35 N.J.R. 630(a).  
Repeal and New Rule, R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).  
Section was "Electronic filing program".

### 19:10-2.5 Electronic filing program

The Chairman of the Commission shall have authority to initiate via an announcement on the Commission's website [www.state.nj.us/perc](http://www.state.nj.us/perc) an electronic filing program affecting the filing of certain documents.

New Rule, R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

**19:10-6.5 Rulemaking petition procedures**

(a) Any interested person may petition the Commission to make, amend or repeal any rule. The petition must be written and signed by the petitioner.

(b) The petitioner shall state the following information clearly and concisely:

1. The name of the person making the request;
2. That person's interest in the request, including any relevant organizational affiliation;
3. The substance or nature of the rulemaking request;
4. The proposed text of the rule;
5. The reasons for the request;
6. The statutory authority for the Commission to take the requested action; and
7. Any pertinent law or regulation.

(c) Requests shall be addressed to:

Chair  
Public Employment Relations Commission  
PO Box 429  
Trenton, NJ 08625-0429

(d) Within 15 days of receiving the petition, the Commission shall file with the Office of Administrative Law the notice of petition required by N.J.A.C. 1:30-4.1(c).

(e) The petition shall be provided to the Commission at the next monthly meeting after filing.

(f) Within 60 days of receiving that petition, the Commission shall:

1. Deny the petition, in which case the Commission shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;
2. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or
3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral.

**Petition for Rulemaking.**

See: 31 N.J.R. 4348(b), 32 N.J.R. 329(a).

Recodified from N.J.A.C. 19:10-6.1 and amended by R.2003 d. 63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

In (b), inserted "information" preceding "clearly" in the introductory paragraph, rewrote 7.