

## CHAPTER 14

## UNFAIR PRACTICE PROCEEDINGS

## Authority

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

## Source and Effective Date

R.2010 d.278, effective November 3, 2010.  
See: 42 N.J.R. 1693(a), 42 N.J.R. 2968(c).

## Chapter Expiration Date

Chapter 14, Unfair Practice Proceedings, expires on November 3, 2015.

## 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: 37 N.J.R. 964(a), 37 N.J.R. 2891(a).

Chapter 14, Unfair Practice Proceedings, was readopted as R.2010 d.278, effective November 3, 2010. See: Source and Effective Date.

## CHAPTER TABLE OF CONTENTS

## SUBCHAPTER 1. CHARGE

- 19:14-1.1 Who may file
- 19:14-1.2 Where to file
- 19:14-1.3 Form; contents
- 19:14-1.4 Number of copies; service
- 19:14-1.5 Amendment; withdrawal; dismissal
- 19:14-1.6 Processing of charge

## SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING

- 19:14-2.1 Contents; service
- 19:14-2.2 Amendment; dismissal
- 19:14-2.3 Refusal to issue; appeal

## SUBCHAPTER 3. ANSWER

- 19:14-3.1 Time for filing; contents; form
- 19:14-3.2 Where to file; number of copies; service
- 19:14-3.3 Amendment

## SUBCHAPTER 4. MOTIONS

- 19:14-4.1 Motions
- 19:14-4.2 Where to file
- 19:14-4.3 Contents; number of copies; service
- 19:14-4.4 Answering affidavits; further submissions by leave; oral argument or testimony
- 19:14-4.5 Rulings
- 19:14-4.6 Motions and rulings part of the record; appeal on special permission
- 19:14-4.7 Motion to dismiss complaint; appeal
- 19:14-4.8 Motions for summary judgment

## SUBCHAPTER 5. INTERVENTION

- 19:14-5.1 Intervention

## SUBCHAPTER 6. HEARINGS

- 19:14-6.1 Who shall conduct; to be public unless otherwise ordered
- 19:14-6.2 Prehearing conference
- 19:14-6.3 Duties and powers of hearing examiner
- 19:14-6.4 Unavailability of hearing examiner
- 19:14-6.5 Rights of parties
- 19:14-6.6 Rules of evidence not controlling
- 19:14-6.7 Stipulations of fact
- 19:14-6.8 Prosecution by charging party; burden of proof
- 19:14-6.9 Objection to conduct of hearing; waiver of objections
- 19:14-6.10 Oral argument at hearing; briefs; proposed findings
- 19:14-6.11 Continuance or adjournment
- 19:14-6.12 Misconduct at hearing
- 19:14-6.13 Settlement or adjustment of issues

## SUBCHAPTER 7. HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION AND TRANSFER OF CASE TO THE COMMISSION

- 19:14-7.1 Hearing examiner's report and recommended decision and transfer of case to the Commission
- 19:14-7.2 Record in the case
- 19:14-7.3 Exceptions; cross-exceptions; briefs; answering briefs

## SUBCHAPTER 8. PROCEDURE BEFORE THE COMMISSION

- 19:14-8.1 Action by the Commission; decision in the absence of exceptions
- 19:14-8.2 Oral argument
- 19:14-8.3 Hearings before the Commission
- 19:14-8.4 Motions for reconsideration

## SUBCHAPTER 9. INTERIM RELIEF

- 19:14-9.1 Applicability of subchapter; nature of proceedings
- 19:14-9.2 When to file; form
- 19:14-9.3 Briefs
- 19:14-9.4 Hearing on return date
- 19:14-9.5 Decision; enforcement

## SUBCHAPTER 10. COMPLIANCE AND ENFORCEMENT

- 19:14-10.1 Applicability
- 19:14-10.2 Procedures for compliance and enforcement
- 19:14-10.3 Request for compliance and enforcement

## 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 charge 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).