

**OTHER AGENCIES**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Contested Transfer Determinations**

**Proposed Readoption with Amendments: N.J.A.C. 19:18**

Authorized By: Public Employment Relations Commission, Mary E. Hennessy-Shotter, Chair.

Authority: N.J.S.A. 34:13A-11 and 34:13A-27.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2024-094.

Submit comments by October 4, 2024, to:

Mary Beth Hennessy-Shotter, Chair

Public Employment Relations Commission

PO Box 429

Trenton, New Jersey 08625-0429

Comments may also be submitted through email to [rulecomments@perc.state.nj.us](mailto:rulecomments@perc.state.nj.us) or by facsimile to 609-777-0089.

The agency proposal follows:

**Summary**

In accordance with N.J.S.A. 52:14B-5.1, the Public Employment Relations Commission (Commission) proposes to readopt N.J.A.C. 19:18 with amendments. N.J.A.C. 19:18 was scheduled to expire on August 21, 2024. As the Commission submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to February 17, 2025, pursuant to N.J.S.A. 52:14B-5.1.c(2). N.J.S.A. 34:13A-25 prohibits transfers of school board employees between work sites for disciplinary reasons. N.J.S.A. 34:13A-27

empowers the Public Employment Relations Commission to resolve a dispute over whether the basis for a transfer between work sites is predominately disciplinary. N.J.A.C. 19:18 specifies the procedures for filing, answering, processing, and deciding petitions in contested transfer cases.

The proposed amendment at N.J.A.C. 19:18-3.8(a) changes the time frame in which the parties have to request an evidentiary hearing to within 10 days after a Commission staff agent-led informal conference is held pursuant to N.J.A.C. 19:18-3.2. Previously, parties had to request an evidentiary hearing within five days of when the other party's brief or reply brief was due following the filing of a contested transfer petition. The rationale for this amendment is that, through engaging in the informal conference, the parties may narrow down or resolve disputes of material fact. The proposed amendment also provides that, in the rare case in which the Commission does not conduct an informal conference, either party may request an evidentiary hearing within 21 days of the date the respondent's answer to the petition was due.

Several non-substantial changes are proposed throughout N.J.A.C. 19:18. At N.J.A.C. 19:18-2.2(a), the website in the footnote is updated. At N.J.A.C. 19:18-2.2(b), the proposed amendment modifies the required information for the contested transfer form to include an "email address" for both the petitioner and respondent. At N.J.A.C. 19:18-3.15, a cross-reference to the interim relief provisions of the rules on unfair practice proceedings is updated to reflect a recent codification change. The Commission's website is updated to <https://www.nj.gov/perc/>. Throughout the chapter, every filing rule that had required multiple copies is proposed for amendment to just the original and one copy.

A summary of each section at N.J.A.C. 19:18, including the proposed amendments, follows:

Subchapter 1, Nature of Proceeding, describes the nature of a contested transfer proceeding and stresses that the procedures in Chapter 18 are intended to avoid protracted administrative litigation.

Subchapter 2, Institution of Proceedings, states who may file a petition, what information must be included, and when a petition must be filed.

Subchapter 3, Procedure, governs the procedures for each of the following topics: intervention; conference; amendment, withdrawal, dismissal, or consolidation; answers; amendment of answers; replies to answers; request for evidentiary hearing; evidentiary hearings and motions; briefs; record, exceptions, and cross-exceptions; oral argument; final determinations; motions for reconsideration; and interim relief.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

There have been few contested transfer petitions, but the rules proposed for readoption with amendments have worked well in enabling the Commission to process cases smoothly and quickly. The rules proposed for readoption with amendments detail how such cases will be processed and what each party must or may do at each step of the proceedings. The procedures are designed to avoid protracted litigation. Readopting these rules with amendments will, therefore, have a beneficial social impact.

### **Economic Impact**

There should be no discernible economic impact arising from the rules proposed for readoption with amendments. The rules proposed for readoption with amendments are designed

to reduce the expense of litigation for the parties and the Commission by expediting administrative litigation.

### **Federal Standards Statement**

As these rules proposed for readoption with amendments are not subject to Federal standards or requirements, a Federal standards analysis is not required. The National Labor Relations Act excludes from its coverage “any State or political subdivision thereof.” 29 U.S.C. § 152(2).

### **Jobs Impact**

The Commission does not expect that any jobs will be generated or lost as a consequence of the rules proposed for readoption with amendments.

### **Agriculture Industry Impact**

The Commission’s jurisdiction is limited to employer-employee relations in public employment. The rules proposed for readoption with amendments impose no requirements on the agriculture industry.

### **Regulatory Flexibility Statement**

Neither the Commission nor any employer and employee covered by its rules is considered a small business pursuant to the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as the rules proposed for readoption with amendments concern employer-employee relations in public employment. Therefore, a regulatory flexibility analysis is not necessary.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments would not have an impact on the average costs associated with housing or on the affordability of housing, as the rules proposed for readoption with amendments concern employer-employee relations in public employment.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments would not have an impact on housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan, as the rules proposed for readoption with amendments concern employer-employee relations in public employment.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The rules proposed for readoption with amendments will not have an impact on pre-trial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:18.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 2. INITIATION OF PROCEEDINGS

### 19:18-2.1 Who may file

Any employee, as defined [in] **at** N.J.S.A. 34:13A-22, or the employee's majority representative may initiate a contested transfer proceeding by filing with the Commission, an original and [nine copies] **one copy** of a petition for contested transfer determination together

with proof of service of a copy of the petition on the employer. A copy of each petition filed shall be retained in a public docket until the case is closed.

#### 19:18-2.2 Contents of petition for contested transfer determination

(a) A petition<sup>1</sup> shall be in writing and the party or representative filing the petition shall make this dated and signed certification: “I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.”

(b) Such petition shall contain the following:

1. The full name, address, **email address**, and telephone number of the petitioner;
2. The full name, address, **email address**, and telephone number of the affected employee if the petitioner is an employee organization;
3. The full name, address, **email address**, and telephone number of the employer who has notified the employee of a transfer;
- 4.-8. (No change.)

<sup>1</sup>Petition forms will be supplied upon request. Address such requests to: Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from the Commission's website:

[[www.state.nj.us/perc](http://www.state.nj.us/perc)] <https://www.nj.gov/perc/>.

### SUBCHAPTER 3. PROCEDURE

#### 19:18-3.1 Intervention

A motion for leave to intervene in proceedings [under] **pursuant to** this chapter shall be filed, in writing, with the Commission, 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] **one copy** of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The Chair, or such other Commission designee, in his or her discretion, may permit intervention to such extent and upon such terms as may be deemed just.

#### 19:18-3.5 Where to file; number of copies; service

An original and [nine copies] **one copy** of the answer shall be filed with the Commission, together with proof of service of a copy of the answer on the petitioner and any intervenor.

#### 19:18-3.7 Reply

Within five days of receipt of the answer, the petitioner may file an original and [nine copies] **one copy** of a reply and any supporting documents and affidavits together with proof of service of a copy of the reply on the respondent and any intervenor. No further replies shall be permitted without permission of the Chair, or such other Commission designee.

#### 19:18-3.8 Request for evidentiary hearing

(a) Any party desiring an evidentiary hearing shall file with the Commission an original and [nine copies] **one copy** of a request therefor, together with proof of service of a copy of the request on the other party. [The petitioner shall file such a request no later than five days from receipt of the respondent's answer. The respondent shall file such a request no later than five days from the date a reply is due.] **Either party may file a request for an evidentiary hearing no later than 10 days after the informal conference is conducted or, in the absence of an informal conference, no later than 21 days after the date the respondent's answer is due.**

Failure to file a timely request for an evidentiary hearing shall constitute a waiver of any claim to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends necessitate an evidentiary hearing and shall explain why these issues are substantial and material. Factual allegations not raised shall be deemed to be undisputed for purposes of determining whether there shall be an evidentiary hearing.

(b) Within five days of receipt of a request for a hearing, the other party shall file with the Commission an original and [nine copies] **one copy** of a written response, together with proof of service of a copy of the response on 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 to be undisputed for purposes of determining whether there shall be an evidentiary hearing.

(c) (No change.)

#### 19:18-3.9 Briefs

(a) In the absence of a hearing, the Chair, or such other Commission designee, shall notify each party that it has 14 days from the date of notification to file an original and [nine copies] **one copy** of a supporting brief, with proof of service of a copy of such brief on the other party.

(b) Within seven days after receipt of the initial brief, each party may file with the Commission an original and [nine copies] **one copy** of a reply brief, together with proof of service of a copy of such brief, on the other party. No other briefs shall be served or filed without leave of the Chair, or such other Commission designee.

(c) The Chair, or such other Commission designee, in his or her discretion, 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.

#### 19:18-3.12 Oral argument

Proceedings [under] **pursuant to** this chapter shall be submitted for the Commission's consideration without argument unless ordered by the Chair, or such other Commission designee. Requests for oral argument shall be filed by any party along with its initial brief, or where a hearing has been conducted, along with its exceptions or cross-exceptions. Such request shall be made by a separate paper, an original and [two copies] **one copy** of which shall be filed with the Commission, together with proof of service of a copy of such request on the other party. The Chair, or such other Commission designee, shall notify the parties of the assigned argument date, if permission to argue orally is granted. The Commission may terminate any argument permitted at any time it deems the issues adequately argued.

#### 19:18-3.15 Interim relief

Upon the filing of a petition, the petitioner may apply to the Commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the proceeding. Such a request shall be governed by the provisions [of] **at** N.J.A.C. 19:14-9.1 through [9.5] **9.6** on unfair practice proceedings, insofar as applicable.