

PROPOSAL SECTION

OTHER AGENCIES

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Representation Procedures

Notice of Proposed Substantial Changes Upon Adoption to Proposed Readoption with Amendments: N.J.A.C. 19:11

Proposed: January 21, 2025, at 57 N.J.R. 180(a).

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

Authority: N.J.S.A. 34:13A-5.4.e, 34:13A-6.d, and 34:13A-11.

Submit written comments by September 5, 2025, to:

Mary E. 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.nj.gov or by facsimile to 609-777-0089.

Take notice that the Public Employment Relations Commission (Commission) proposed the readoption of N.J.A.C. 19:11 with amendments on January 21, 2025 at 57 N.J.R. 180(a). The proposed amendments changed multiple filing rules to require that fewer copies of certain forms and briefs be submitted to the Commission. The proposed amendments also added email addresses and telephone numbers to the list of required contact information for certain petitions. The public comment period closed on March 22, 2025. The Commission discussed the public comments during its April 24, 2025 regular meeting and decided to make some substantial

changes to the proposal, which were considered and approved at its May 29, 2025 regular meeting.

The Commission is proposing substantial changes to the notice of proposal in response to comments received. A summary of the comments received and the Commission's responses are provided below.

Summary of Public Comments and Agency Responses:

Comments were received from Charles Wowkanech, President, New Jersey State AFL-CIO.

Comments Regarding N.J.A.C. 19:11-1.5

COMMENT: The AFL-CIO seeks to add new N.J.A.C. 19:11-1.5(c) that incorporates the statutory language from N.J.S.A. 34:13A-5.15c concerning a public employer's responsibility to provide, every 120 days, an exclusive representative employee organization with certain information (name, job title, worksite location, work email, and work phone number) for all employees not represented by an exclusive representative employee organization. The proposal also seeks to include the requirement from N.J.S.A. 34:13A-5.15.c that a public employer provide an exclusive representative employee organization with a job description for each non-represented employee within 30 days of a request.

RESPONSE: As knowledge of which employees are represented and which employees are unrepresented is pertinent to an exclusive representative's decision to file a clarification of unit petition, the Commission finds that a summary of the disclosure requirements at N.J.S.A. 34:13A-5.15.c (unrepresented employees) and 34:13A-5.13.c (represented employees) within the clarification of unit rules could be helpful for parties navigating the statutory and regulatory requirements related to clarification of unit disputes. However, the AFL-CIO's proposal to

include the language from N.J.S.A. 34:13A-5.15.c, without the corresponding limiting language at N.J.S.A. 34:13A-60.1, does not accurately represent the act, as amended by the Responsible Collective Negotiations Act (RCNA), P.L. 2021, c. 11. The RCNA amended the Workplace Democracy Enhancement Act (WDEA), P.L. 2018, c. 15, in part, by adding the non-represented disclosure requirements codified at N.J.S.A. 34:13A-5.15.c. The RCNA also provided, at N.J.S.A. 34:13A-60.1, that amended N.J.S.A. 34:13A-5.15.c “shall not apply” to the following excluded entities: counties and municipalities (and their authorities, commissions, boards, or other instrumentalities); State colleges and universities; county colleges; Rutgers University; and the New Jersey Institute of Technology. Therefore, the Commission’s recitation of the statutory disclosure requirements will incorporate the excluded entities as set forth at N.J.S.A. 34:13A-60.1. This change will be placed at the beginning of the clarification of unit rules at N.J.A.C. 19:11-1.5(a).

COMMENT: The AFL-CIO seeks to add new N.J.A.C. 19:11-1.5(d) that incorporates the statutory language from N.J.S.A. 34:13A-5.15.d concerning the inclusion of employees who perform negotiations unit work, but had not been in a negotiations unit due to not meeting the threshold of hours or percent of time worked as set forth in a certification of representative or collective negotiations agreement.

RESPONSE: The Commission finds that adding this one particular statutory provision concerning a subset of negotiations unit employees is unnecessary given the current clarification of unit rules and could cause confusion. N.J.A.C. 19:11-1.5(b)3vi (which will be recodified through this notice as N.J.A.C. 19:11-1.5(c)3vi) already covers clarification of unit petitions concerning the addition of employees “who perform negotiations unit work.” This type of

petition, therefore, includes employees who perform negotiations unit work as required pursuant to N.J.S.A. 34:13A-5.15.a, defined at N.J.S.A. 34:13A-5.15.b, and as further explicated at N.J.S.A. 34:13A-5.15.d for employees who do not meet certain hour or percent thresholds. By not including the broader statutory requirement for inclusion of employees who perform negotiations unit work and only amending the rules to include statutory language about a subset of those employees, the AFL-CIO's proposal could lead to unnecessary confusion. As existing N.J.A.C. 19:11-1.5(b)3vi sufficiently covers clarification of unit petitions based on the performance of negotiations unit work, the Commission declines to change the rules to specifically incorporate the language at N.J.S.A. 34:13A-5.15.d.

COMMENT: The AFL-CIO seeks to add new N.J.A.C. 19:11-1.5(e) that would create a new obligation on a public employer to provide written notice to the exclusive representative if it "believes that an employee in a non-supervisory negotiations unit is a supervisor within the meaning of the Act ..." Then, the AFL-CIO proposes, if the exclusive representative does not consent within 60 days to exclude the employee as a supervisor, the employer may file a clarification of unit petition and the employee "shall remain in the negotiations unit pending a decision of the Director of Representation." The AFL-CIO's proposal would also make it an unfair practice for a public employer to fail to comply with the requirements of this new rule. The AFL-CIO cites a Commission case in support of its proposed amendment, asserting that the amendment would incorporate the holding in that case that supervisors may only be removed from their current unit with the consent of the exclusive representative or pursuant to a Commission order.

RESPONSE: In *Wood-Ridge Boro.*, P.E.R.C. No. 88-68, 14 *NJPER* 130 (¶19051 1988), the Commission held: “[S]upervisors are covered by the Act and may only be removed from their current unit with the consent of the majority representative or pursuant to an order of the Commission.” This precedent was recently repeated in *Lawrence Tp.*, D.R. No. 2019-13, 45 *NJPER* 295 (¶76 2019). The Commission finds that the AFL-CIO’s suggested rule text essentially codifies this case law, reinforcing the requirement that parties, in the absence of agreement, only change the composition of existing negotiations units through the Commission’s clarification of unit procedures. However, the Commission will modify the change to clarify that, following written notice to the majority representative of an assertion that an employee should be excluded from a unit based on supervisory status, the public employer retains its right to file a clarification of unit petition at any time pursuant to recodified N.J.A.C. 19:11-1.5(c)3v (statutory exclusions). The AFL-CIO’s proposed 60-day period in which to come to an agreement prior to filing a petition would delay a public employer’s ability to seek the Director’s determination as expeditiously as possible.

COMMENT: The AFL-CIO proposes to add language to existing N.J.A.C. 19:11-1.5(e), providing for an expedited hearing when there is a material factual dispute in a clarification of unit petition based on performance of unit work that is subject to the statutory 60-day deadline.

RESPONSE: N.J.A.C. 19:11-1.5(e) already references the 60-day statutory deadline and the Director of Representation seeks to resolve all such petitions as efficiently as possible within the time constraints. These investigative efforts are subject to the responsiveness and cooperation of the parties. Pursuant to N.J.A.C. 19:11-2.6(f), the Director may order a hearing if he or she determines that substantial and material factual issues exist or that the interests of administrative

convenience and efficiency warrant a hearing. An additional rule within the clarification of unit procedures to characterize a hearing as “expedited” for petitions subject to the 60-day deadline is an unnecessary distinction.

COMMENT: The AFL-CIO seeks to add new N.J.A.C. 19:11-1.5(g), providing that the public employer has the burden of proving an assertion that an employee is statutorily excluded from a negotiations unit based on being a statutory supervisor, managerial executive, or confidential employee. The AFL-CIO asserts that this proposal would codify what the Commission has clearly stated in recent case law.

RESPONSE: The Commission has held that asserted exclusions to an employee’s eligibility for representation are to be strictly construed and that whichever party asserts a statutory exclusion to an employee’s placement in a negotiations unit bears the burden of establishing such claim.

See, for example, *State of N.J. (CNJSCL, AFT)*, P.E.R.C. No. 2025-25, 51 *NJPER* 235 (¶56 2025); *State of New Jersey*, P.E.R.C. No. 86-18, 11 *NJPER* 507 (¶16179 1985). As the AFL-CIO’s suggestion essentially codifies longstanding Commission case law pertaining to statutory exclusions from representation, the Commission will amend the clarification of unit rules to reflect this precedent. Additionally, the Commission proposes adding a sentence acknowledging case law establishing that, whether a party seeks to include an employee in or exclude an employee from a negotiations unit, the Director’s determination shall be made based on sufficient, competent evidence in the record as developed from both parties through the investigatory clarification of unit process. See, for example, *Rutgers University*, P.E.R.C. No. 2024-1, 50 *NJPER* 119 (¶30 2023); and *State of N.J. (CNJSCL, AFT)*, P.E.R.C. No. 2025-25, *supra*.

Effect of Proposed Changes on Impact Statements Included in Original Proposal:

The changes to the proposed amendments will not affect the impact statements included in the original rule proposal.

Full text of the proposed substantial changes to the rules proposed for readoption with amendments follows (additions to proposal indicated in italicized boldface ***thus***; deletions from proposal indicated in italicized cursive brackets {*thus*}):

SUBCHAPTER 1. REPRESENTATION PETITIONS

19:11-1.5 Petition for clarification of unit

(a) Pursuant to N.J.S.A. 34:13A-5.13.c, public employers shall provide exclusive representatives with the requisite contact information for all unit employees within 10 days of their date of hire and every 120 days. Pursuant to N.J.S.A. 34:13A-5.15.c, public employers shall provide exclusive representatives with the requisite contact information for all non-represented employees every 120 days and, within 30 days of a request by the exclusive representative, shall provide a job description for each non-represented employee. Pursuant to N.J.S.A. 34:13A-60.1, the disclosure requirements pursuant to N.J.S.A. 34:13A-5.15.c shall not apply to the following excluded entities: the several counties and municipalities (and their authorities, commissions, boards, or other instrumentalities); State colleges and universities (including Kean University, Montclair State University, and Rowan University); county colleges; Rutgers, the State University of New Jersey; and the New Jersey Institute of Technology.

Recodify existing (a)-(b) as **(b)-(c)** (No change in text.)

{(c)} **(d)** A petition for clarification of unit filed pursuant to {(b)3vi} **(c)3vi** above shall:

1.-2. (No change.)

{(d)} **(e)** Upon the filing of any petition pursuant to {(b)3vi} **(c)3vi** above, the Director of Representation shall investigate the petition to determine the facts. The Director shall issue a written request to the employer for relevant information, which shall be supplied to the Director and petitioner within 10 calendar days of receipt of the request.

{(e)} **(f)** The petition filed pursuant to {(b)3vi} **(c)3vi** above shall be resolved within 60 calendar days after such petition is filed with the Commission.

(g) If a public employer believes that an employee in a non-supervisory negotiations unit is a supervisor within the meaning of the Act, the public employer shall provide written notice to the majority representative and seek the majority representative's consent to the supervisory exclusion. The public employer may file a clarification of unit petition pursuant to (c)3v above (statutory exclusions) at any time following such written notice. The petitioned-for employee shall remain in the negotiations unit unless and until either the majority representative consents to the exclusion or the Director of Representation makes a clarification of unit determination to exclude them. Failure to comply with this subsection prior to removing an employee from a unit based on alleged supervisory status shall constitute an unfair practice pursuant to N.J.S.A. 34A:13A-5.4.a(7).

(h) A party asserting that an employee should be excluded or remain excluded from a negotiations unit pursuant to (c)3v above (statutory exclusions) because they are a confidential employee, managerial executive, or supervisor within the meaning of the Act, bears the burden of establishing such claim. All clarification of unit determinations made by the Director, whether to include employees in or exclude employees from a negotiations unit, shall be based on sufficient, competent evidence in the record.

